
MEMORANDUM

TO: DOPL

FROM: Jennifer Korb and Joni Ostler, Assistant Attorneys General with the Utah Attorney General's Office

SUBJECT: Informal opinion regarding the "Maintenance" Exemption under Utah Code Ann. § 58-55-305(1)(j)

DATE: August 11, 2021

1. Under Utah Code § 58-55-305(1)(j), what does the term "agents" mean? Does that or can that include contractors that have contractual provisions in their agreements with homeowners to be the agent for the homeowner? Does that or can that include a person (that is not licensed) that the homeowner hires to do maintenance under this exemption?

Utah Code § 58-55-305(1)(j) provides as follows:

(1) In addition to the exemptions from licensure in Section 58-1-307, the following persons may engage in acts or practices included within the practice of construction trades, subject to the stated circumstances and limitations, without being licensed under this chapter: . . .

(j) owners and lessees of property and persons regularly employed for wages by owners or lessees of property or their agents for the purpose of maintaining¹ the property, are exempt from this chapter when doing work upon the property;

Neither the Utah Construction Trades Licensing Act (Utah Code Ann. § 58-55-101 et seq.) nor the associated rules in the Utah Administrative Code (R156-55a-101 et seq.) provide a definition for "agent" or "agents". Sometimes a term that is not defined

¹ "Maintenance" means "the repair, replacement and refinishing of any component of an existing structure; but, does not include alteration or modification to the existing weight-bearing or structural components." Utah Administrative Code Rule R156-55a-102(6).

within a specific Act in the Utah Code is defined in Utah Code Ann. § 68-3-12.5 (Definitions for Utah Code); but that is not the case here. There is also no interpretive caselaw that defines “agents” as used in this statute. When terms are not defined within a statute, we give them their ordinary meaning, such as the meaning provided in a dictionary. This comes from well-established case law regarding interpretation of statutes. *See Schindler Elevator Corp. v. U.S. Ex Rel. Kirk*, 131 S.Ct. 1885, 1891 (2011); *Western Rangeland Conservation Ass'n. v. Zinke*, 265 F.Supp.3d 1267, 1283 (D.Utah 2017).

An “agent” is “someone who is authorized to act for or in place of another; a representative.” Black’s Law Dictionary (11th ed. 2019). According to Merriam-Webster’s online dictionary, an “agent” is “one who is authorized to act for or in the place of another . . .” *See* <https://www.merriam-webster.com/dictionary/agent>, visited May 13, 2021. If an “agent” in this statute is someone who is authorized to act for or in place of another, the next question is, who is the agent in this statute authorized to act for or in place of?

Unfortunately, ambiguity in the statute makes it impossible to interpret with certainty. Who does “or their agents” modify, and who has to be “regularly employed for wages” and “for the purpose of maintaining the property”? The answer to these questions determines who the exemption in Section 58-55-305(1)(j) applies to. Some of the possible interpretations of the statute (but not necessarily all) are as follows:

Interpretation A

We could assume that “their agents for the purpose of maintaining the property” modifies “owners and lessees of property”, as represented in the highlighted portions of this diagram:

(j) **owners and lessees of property and** persons regularly employed for wages by owners or lessees of property **or** **their agents for the purpose of maintaining the property**, are exempt from this chapter when doing work upon the property.

Then the owners’ and lessees’ agents for the purpose of maintaining the property would not need to be employed for wages to be exempt. And persons regularly employed for wages by owners or lessees of property would not need be employed for purposes of maintaining the property to be exempt.

Interpretation B

We could assume that “their agents for the purpose of maintaining the property” modifies “persons regularly employed for wages by owners or lessees of property”, as in this diagram:

(j) **owners and lessees of property and** **persons regularly employed for wages by owners or lessees of property** **or** **their agents for the purpose of maintaining the property**, are exempt from this chapter when doing work upon the property.

Again, the agents of the persons regularly employed for wages by owners or lessees would not need to be employed for wages to be exempt as long as they are agents for the purpose of maintaining the property. And persons regularly employed for wages by owners or lessees of property would not need be employed for purposes of maintaining the property to be exempt.

Interpretation C

We could assume that “their agents” modifies “persons regularly employed for wages by owners or lessees of property”, as in this diagram:

(j) owners and lessees of property **and** persons regularly employed for wages by owners or lessees of property **or** their agents for the purpose of maintaining the property, are exempt from this chapter when doing work upon the property.

Then the agents of persons regularly employed for wages by owners or lessees of property, as well as the persons regularly employed for wages by owners or lessees of property can be exempt as long as they were hired or engaged for the purpose of maintaining the property. But the agent would not need to be employed for wages.

Interpretation D

We could assume that “their agents” modifies the second “owners or lessees of property” in the statute, as in this diagram:

(j) owners and lessees of property **and** persons regularly employed for wages by **owners or lessees of property** **or** **their agents** for the purpose of maintaining the property, are exempt from this chapter when doing work upon the property.

Then only the owner and lessee of property, or the person regularly employed for wages by (a) the owner and lessee of property or (b) the agent of the owner and lessee of property, can be exempt, as long as the person is regularly employed for wages, and for the purpose of maintaining the property.

Interpretation D is probably what the Legislature intended when it enacted the law because it provides a narrow exemption from licensure.² The other interpretations would open the exemption up to an agent who is either not regularly employed for wages or not engaged for the purpose of maintaining the property. This would be at odds with other provisions of the Act. The Act defines “Contractor” as “any person who for

² Exemptions built into the Act are “narrowly tailored to ensure that any individuals constructing buildings that members of the public will enter must be licensed in order to engage in their construction trade.” *State v. Bohne*, 2001 UT App 11, ¶ 7, 18 P.3d 514, 516, aff’d, 2002 UT 116, ¶ 7, 63 P.3d 63.

compensation other than wages as an employee undertakes any work in the construction, plumbing, or electrical trade for which licensure is required . . .” Utah Code Ann. § 58-55-102(13)(a). The Act defines “Construction Trade” to include “any trade or occupation involving: . . . construction, alteration, remodeling, repairing, wrecking or demolition, addition to, or improvement of any building, highway, road, railroad, dam, bridge, structure, excavation or other project, development, or improvement to other than personal property . . .” Utah Code Ann. § 58-55-102(11). Based on these definitions, an agent of a person hired for wages by the owners or lessees of property to do maintenance on property, who is doing maintenance work on the property and who is not a W-2 employee, would need to be licensed as a contractor. The exemption provided in Section 58-55-305(1)(j) would be in conflict with the other licensing provisions within the Act. This cannot be what the Legislature intended.

Further support for Interpretation D can be found in case law regarding statutory interpretation. The Supreme Court of Utah in *Bryner v. Cardon Outreach LLC* was asked how to correctly interpret Utah’s Hospital Lien Statute. 2018 UT 52, ¶ 1, 428 P.3d 1096. The Court provided that “the first step of statutory interpretation is to look at the plain language, and ‘[w]here statutory language is plain and unambiguous, this Court will not look beyond the same to divine legislative intent.’” *Id.* (citing *Garrard v. Gateway Fin. Servs., Inc.*, 2009 UT 22, ¶ 9, 207 P.3d 1227). “[W]e read the plain language of the statute as a whole, and interpret its provisions in harmony with other statutes in the same chapter and related chapter.” *See Bryner* 2018 UT 52, ¶ 10. The Court in *Bryner* held that the statute was not ambiguous although it was susceptible to more than one interpretation. *See id.* at ¶¶ 10-11, 18. “A statute susceptible to competing interpretations may nevertheless be unambiguous if the text of the act as a whole, in light of related statutory provisions, makes all but one of those meanings implausible.” *Id.* at ¶ 10 (citation omitted).

In determining that the statute was unambiguous the Court relied on “the Whole-Text Canon” which “calls on the judicial interpreter to consider the entire text, in view of its structure and of the physical and logical relation of its many parts.” *Id.* at ¶ 12 (citing ANTONIN SCALIA & BRYAN A. GARNER, READING LAW: THE INTERPRETATION OF LEGAL TEXTS 167 (2012)). The statute in *Bryner* is similar to the statute here, in that it is not clear (to put it simply) which phrase or word is being modified by which phrase or word. The Court recognized that the relevant sentence in the statute was “complex” but reasoned that “each modifying phrase can be traced to its nearest reasonable referent. ‘[A] prepositive or postpositive modifier normally applies only to the nearest reasonable referent.’” *Id.* at ¶ 14 (citing SCALIA & GARNER at 152). If we apply the same reasoning to the exemption in Section 58-55-305(1)(j), Interpretation D appears all the more likely because “owners and lessors of property” is the nearest reasonable referent to “or their agents”. It may be the only plausible interpretation under the text of the Act as a whole.

Because of the ambiguity in the statute, however, it is impossible to answer the questions posed about who is, or is not, an “agent” with certainty. Under some of the interpretations the answer will be yes, under others the answer will be no.

If we were to answer the questions posed using Interpretation D, which seems to be the most likely intent of the Legislature, it appears that an “agent” could include a contractor who has a contractual provision in their agreements with homeowners to be the agent for the homeowner. And an “agent” could include an unlicensed person that was hired by the homeowner to do maintenance under this exemption (depending on the terms of their arrangement). But under Interpretation D, the statute does not provide that a person is exempt from the licensing requirements if they are an “agent” of the owner or lessee of property. If the agent of the owner or lessee hires a person for wages (meaning a W-2 employee) to do maintenance on the property, that W-2 employee is not required to be licensed under this chapter to perform that maintenance work.

2. Under Utah Code § 58-55-305(1)(j), does or can the term “agents” include a contractor hired by a homeowner as a 1099 independent contractor (non-employee)?

Because of the ambiguity in the statute it is impossible to answer this question with certainty. If we were to answer this question using Interpretation D, which seems to be the most likely intent of the Legislature, it appears that an “agent” could include a contractor hired by a homeowner as a 1099 independent contractor (non-employee) depending on the terms of their agreement. But under Interpretation D that contractor could not engage in maintenance on the property without a license in reliance on this exemption simply because he or she is an agent of the owner or lessee of property. The 1099 independent contractor (non-employee) in this example who engaged in maintenance on property would not qualify for the exemption under 58-55-305(1)(j) because (a) he is not a W-2 employee of the owner or lessee of the property, and (b) he is not a W-2 employee of the owner’s or lessee’s agent. As an agent of the owner or lessee of property, the contractor could hire a W-2 employee to do the maintenance, and that employee could qualify for the exemption.

3. Under Utah Code § 58-55-305(1)(j), can we further define or limit the definition of the term "agents" in rule?

Utah Code § 58-55-305 (Exemptions from licensure) does not mention rulemaking authority. Some sections of the Utah Construction Trades Licensing Act give rulemaking authority to the Construction Services Commission (with the concurrence of the director of the Division of Occupational and Professional Licensing and in accordance with the Utah Administrative Rulemaking Act), but that is not the case here. Only the Division may further define or limit the definition of the term “agents” in rule, in accordance with the Utah Administrative Rulemaking Act.

4. Legislative History and Interpretive Case Law

According to Westlaw legislative history research, the Utah Construction Trades Licensing Act was enacted in 1989. It may have existed in a different form and numbering system from as far back as 1953, but that cannot be confirmed through Westlaw. The Act was recodified to its current numbering system in 1994. Since 1990, other than changes to the numbering, the language of Section 58-55-305(1)(j) has

remained the same. There have been several proposed amendments to Section 58-55-305 over the years (most recently the 2020 legislative session) but none of them implicated the substantive language in subsection (1)(j). For this reason the legislative history, at least since 1990, provides no information regarding how to interpret the exemption provided in the statute.

There are only six legal opinions that address Section 58-55-305. None of those opinions directly address subsection (1)(j), which is at issue here. There is one decision by the Supreme Court of Utah that provides general guidance for exemptions within the Utah Construction Trades Licensing Act. That decision provides that exemptions built into the Act are “narrowly tailored to ensure that any individuals constructing buildings that members of the public will enter must be licensed in order to engage in their construction trade.” *State v. Bohne*, 2001 UT App 11, ¶ 7, 18 P.3d 514, 516, aff’d, 2002 UT 116, ¶ 7, 63 P.3d 63.

5. The following items are attached to this opinion for reference:

- a. Utah Construction Trades Licensing Act, Utah Code Ann. §§ 58-55-101 et seq.;
- b. Utah Administrative Code, R156-55a-101 et seq.;
- c. Black’s Law Dictionary – definition of “Agent”;
- d. Merriam-Webster – definition of “Agent”;
- e. *State v. Bohne*, 2001 UT App 11, 18 P.3d 514, aff’d, 2002 UT 116, 63 P.3d 63;
- f. Utah Administrative Rulemaking Act, Utah Code Ann. §§ 63G-3-101 et seq.;
- g. *Bryner v. Cardon Outreach, LLC*, 2018 UT 52, 428 P.3d 1096.

Chapter 55 **Utah Construction Trades Licensing Act**

Part 1 **General Provisions**

58-55-101 Short title.

This chapter is known as the "Utah Construction Trades Licensing Act."

Renumbered and Amended by Chapter 181, 1994 General Session

58-55-102 Definitions.

In addition to the definitions in Section 58-1-102, as used in this chapter:

- (1) (a) "Alarm business or company" means a person engaged in the sale, installation, maintenance, alteration, repair, replacement, servicing, or monitoring of an alarm system, except as provided in Subsection (1)(b).
(b) "Alarm business or company" does not include:
 - (i) a person engaged in the manufacture or sale of alarm systems unless:
 - (A) that person is also engaged in the installation, maintenance, alteration, repair, replacement, servicing, or monitoring of alarm systems;
 - (B) the manufacture or sale occurs at a location other than a place of business established by the person engaged in the manufacture or sale; or
 - (C) the manufacture or sale involves site visits at the place or intended place of installation of an alarm system; or
 - (ii) an owner of an alarm system, or an employee of the owner of an alarm system who is engaged in installation, maintenance, alteration, repair, replacement, servicing, or monitoring of the alarm system owned by that owner.
- (2) "Alarm company agent":
 - (a) except as provided in Subsection (2)(b), means any individual employed within this state by an alarm business; and
 - (b) does not include an individual who:
 - (i) is not engaged in the sale, installation, maintenance, alteration, repair, replacement, servicing, or monitoring of an alarm system; and
 - (ii) does not, during the normal course of the individual's employment with an alarm business, use or have access to sensitive alarm system information.
- (3) "Alarm system" means equipment and devices assembled for the purpose of:
 - (a) detecting and signaling unauthorized intrusion or entry into or onto certain premises; or
 - (b) signaling a robbery or attempted robbery on protected premises.
- (4) "Apprentice electrician" means a person licensed under this chapter as an apprentice electrician who is learning the electrical trade under the immediate supervision of a master electrician, residential master electrician, a journeyman electrician, or a residential journeyman electrician.
- (5) "Apprentice plumber" means a person licensed under this chapter as an apprentice plumber who is learning the plumbing trade under the immediate supervision of a master plumber, residential master plumber, journeyman plumber, or a residential journeyman plumber.

- (6) "Approved continuing education" means instruction provided through courses under a program established under Subsection 58-55-302.5(2).
- (7)
 - (a) "Approved prelicensure course provider" means a provider that is the Associated General Contractors of Utah, the Utah Chapter of the Associated Builders and Contractors, or the Home Builders Association, and that meets the requirements established by rule by the commission with the concurrence of the director, to teach the 25-hour course described in Subsection 58-55-302(1)(e)(iii).
 - (b) "Approved prelicensure course provider" may only include a provider that, in addition to any other locations, offers the 25-hour course described in Subsection 58-55-302(1)(e)(iii) at least six times each year in one or more counties other than Salt Lake County, Utah County, Davis County, or Weber County.
- (8) "Board" means the Electrician Licensing Board, Alarm System Security and Licensing Board, or Plumbers Licensing Board created in Section 58-55-201.
- (9) "Combustion system" means an assembly consisting of:
 - (a) piping and components with a means for conveying, either continuously or intermittently, natural gas from the outlet of the natural gas provider's meter to the burner of the appliance;
 - (b) the electric control and combustion air supply and venting systems, including air ducts; and
 - (c) components intended to achieve control of quantity, flow, and pressure.
- (10) "Commission" means the Construction Services Commission created under Section 58-55-103.
- (11) "Construction trade" means any trade or occupation involving:
 - (a)
 - (i) construction, alteration, remodeling, repairing, wrecking or demolition, addition to, or improvement of any building, highway, road, railroad, dam, bridge, structure, excavation or other project, development, or improvement to other than personal property; and
 - (ii) constructing, remodeling, or repairing a manufactured home or mobile home as defined in Section 15A-1-302; or
 - (b) installation or repair of a residential or commercial natural gas appliance or combustion system.
- (12) "Construction trades instructor" means a person licensed under this chapter to teach one or more construction trades in both a classroom and project environment, where a project is intended for sale to or use by the public and is completed under the direction of the instructor, who has no economic interest in the project.
- (13)
 - (a) "Contractor" means any person who for compensation other than wages as an employee undertakes any work in the construction, plumbing, or electrical trade for which licensure is required under this chapter and includes:
 - (i) a person who builds any structure on the person's own property for the purpose of sale or who builds any structure intended for public use on the person's own property;
 - (ii) any person who represents that the person is a contractor, or will perform a service described in this Subsection (13), by advertising on a website or social media, or any other means;
 - (iii) any person engaged as a maintenance person, other than an employee, who regularly engages in activities set forth under the definition of "construction trade";
 - (iv) any person engaged in, or offering to engage in, any construction trade for which licensure is required under this chapter; or

- (v) a construction manager, construction consultant, construction assistant, or any other person who, for a fee:
 - (A) performs or offers to perform construction consulting;
 - (B) performs or offers to perform management of construction subcontractors;
 - (C) provides or offers to provide a list of subcontractors or suppliers; or
 - (D) provides or offers to provide management or counseling services on a construction project.
- (b) "Contractor" does not include:
 - (i) an alarm company or alarm company agent; or
 - (ii) a material supplier who provides consulting to customers regarding the design and installation of the material supplier's products.

(14)

- (a) "Electrical trade" means the performance of any electrical work involved in the installation, construction, alteration, change, repair, removal, or maintenance of facilities, buildings, or appendages or appurtenances.
- (b) "Electrical trade" does not include:
 - (i) transporting or handling electrical materials;
 - (ii) preparing clearance for raceways for wiring;
 - (iii) work commonly done by unskilled labor on any installations under the exclusive control of electrical utilities;
 - (iv) work involving cable-type wiring that does not pose a shock or fire-initiation hazard; or
 - (v) work involving class two or class three power-limited circuits as defined in the National Electrical Code.

(15) "Elevator" means the same as that term is defined in Section 34A-7-202, except that for purposes of this chapter it does not mean a stair chair, a vertical platform lift, or an incline platform lift.

(16) "Elevator contractor" means a sole proprietor, firm, or corporation licensed under this chapter that is engaged in the business of erecting, constructing, installing, altering, servicing, repairing, or maintaining an elevator.

(17) "Elevator mechanic" means an individual who is licensed under this chapter as an elevator mechanic and who is engaged in erecting, constructing, installing, altering, servicing, repairing, or maintaining an elevator under the immediate supervision of an elevator contractor.

(18) "Employee" means an individual as defined by the division by rule giving consideration to the definition adopted by the Internal Revenue Service and the Department of Workforce Services.

(19) "Engage in a construction trade" means to:

- (a) engage in, represent oneself to be engaged in, or advertise oneself as being engaged in a construction trade; or
- (b) use the name "contractor" or "builder" or in any other way lead a reasonable person to believe one is or will act as a contractor.

(20)

- (a) "Financial responsibility" means a demonstration of a current and expected future condition of financial solvency evidencing a reasonable expectation to the division and the board that an applicant or licensee can successfully engage in business as a contractor without jeopardy to the public health, safety, and welfare.
- (b) Financial responsibility may be determined by an evaluation of the total history concerning the licensee or applicant including past, present, and expected condition and record of financial solvency and business conduct.

(21) "Gas appliance" means any device that uses natural gas to produce light, heat, power, steam, hot water, refrigeration, or air conditioning.

(22)

- (a) "General building contractor" means a person licensed under this chapter as a general building contractor qualified by education, training, experience, and knowledge to perform or superintend construction of structures for the support, shelter, and enclosure of persons, animals, chattels, or movable property of any kind or any of the components of that construction except plumbing, electrical work, mechanical work, work related to the operating integrity of an elevator, and manufactured housing installation, for which the general building contractor shall employ the services of a contractor licensed in the particular specialty, except that a general building contractor engaged in the construction of single-family and multifamily residences up to four units may perform the mechanical work and hire a licensed plumber or electrician as an employee.
- (b) The division may by rule exclude general building contractors from engaging in the performance of other construction specialties in which there is represented a substantial risk to the public health, safety, and welfare, and for which a license is required unless that general building contractor holds a valid license in that specialty classification.

(23)

- (a) "General electrical contractor" means a person licensed under this chapter as a general electrical contractor qualified by education, training, experience, and knowledge to perform the fabrication, construction, and installation of generators, transformers, conduits, raceways, panels, switch gear, electrical wires, fixtures, appliances, or apparatus that uses electrical energy.
- (b) The scope of work of a general electrical contractor may be further defined by rules made by the commission, with the concurrence of the director, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(24)

- (a) "General engineering contractor" means a person licensed under this chapter as a general engineering contractor qualified by education, training, experience, and knowledge to perform construction of fixed works in any of the following: irrigation, drainage, water, power, water supply, flood control, inland waterways, harbors, railroads, highways, tunnels, airports and runways, sewers and bridges, refineries, pipelines, chemical and industrial plants requiring specialized engineering knowledge and skill, piers, and foundations, or any of the components of those works.
- (b) A general engineering contractor may not perform construction of structures built primarily for the support, shelter, and enclosure of persons, animals, and chattels.

(25)

- (a) "General plumbing contractor" means a person licensed under this chapter as a general plumbing contractor qualified by education, training, experience, and knowledge to perform the fabrication or installation of material and fixtures to create and maintain sanitary conditions in a building by providing permanent means for a supply of safe and pure water, a means for the timely and complete removal from the premises of all used or contaminated water, fluid and semi-fluid organic wastes and other impurities incidental to life and the occupation of such premises, and a safe and adequate supply of gases for lighting, heating, and industrial purposes.
- (b) The scope of work of a general plumbing contractor may be further defined by rules made by the commission, with the concurrence of the director, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(26) "Immediate supervision" means reasonable direction, oversight, inspection, and evaluation of the work of a person:

- (a) as the division specifies in rule;
- (b) by, as applicable, a qualified electrician or plumber;
- (c) as part of a planned program of training; and
- (d) to ensure that the end result complies with applicable standards.

(27) "Individual" means a natural person.

(28) "Journeyman electrician" means a person licensed under this chapter as a journeyman electrician having the qualifications, training, experience, and knowledge to wire, install, and repair electrical apparatus and equipment for light, heat, power, and other purposes.

(29) "Journeyman plumber" means a person licensed under this chapter as a journeyman plumber having the qualifications, training, experience, and technical knowledge to engage in the plumbing trade.

(30) "Master electrician" means a person licensed under this chapter as a master electrician having the qualifications, training, experience, and knowledge to properly plan, layout, and supervise the wiring, installation, and repair of electrical apparatus and equipment for light, heat, power, and other purposes.

(31) "Master plumber" means a person licensed under this chapter as a master plumber having the qualifications, training, experience, and knowledge to properly plan and layout projects and supervise persons in the plumbing trade.

(32) "Person" means a natural person, sole proprietorship, joint venture, corporation, limited liability company, association, or organization of any type.

(33)

- (a) "Plumbing trade" means the performance of any mechanical work pertaining to the installation, alteration, change, repair, removal, maintenance, or use in buildings, or within three feet beyond the outside walls of buildings, of pipes, fixtures, and fittings for the:
 - (i) delivery of the water supply;
 - (ii) discharge of liquid and water carried waste;
 - (iii) building drainage system within the walls of the building; and
 - (iv) delivery of gases for lighting, heating, and industrial purposes.
- (b) "Plumbing trade" includes work pertaining to the water supply, distribution pipes, fixtures and fixture traps, soil, waste and vent pipes, the building drain and roof drains, and the safe and adequate supply of gases, together with their devices, appurtenances, and connections where installed within the outside walls of the building.

(34) "Ratio of apprentices" means the number of licensed plumber apprentices or licensed electrician apprentices that are allowed to be under the immediate supervision of a licensed supervisor as established by the provisions of this chapter and by rules made by the commission, with the concurrence of the director, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(35) "Residential and small commercial contractor" means a person licensed under this chapter as a residential and small commercial contractor qualified by education, training, experience, and knowledge to perform or superintend the construction of single-family residences, multifamily residences up to four units, and commercial construction of not more than three stories above ground and not more than 20,000 square feet, or any of the components of that construction except plumbing, electrical work, mechanical work, and manufactured housing installation, for which the residential and small commercial contractor shall employ the services of a contractor licensed in the particular specialty, except that a residential and small commercial contractor

engaged in the construction of single-family and multifamily residences up to four units may perform the mechanical work and hire a licensed plumber or electrician as an employee.

(36) "Residential building," as it relates to the license classification of residential journeyman plumber and residential master plumber, means a single or multiple family dwelling of up to four units.

(37)

- (a) "Residential electrical contractor" means a person licensed under this chapter as a residential electrical contractor qualified by education, training, experience, and knowledge to perform the fabrication, construction, and installation of services, disconnecting means, grounding devices, panels, conductors, load centers, lighting and plug circuits, appliances, and fixtures in a residential unit.
- (b) The scope of work of a residential electrical contractor may be further defined by rules made by the commission, with the concurrence of the director, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(38) "Residential journeyman electrician" means a person licensed under this chapter as a residential journeyman electrician having the qualifications, training, experience, and knowledge to wire, install, and repair electrical apparatus and equipment for light, heat, power, and other purposes on buildings using primarily nonmetallic sheath cable.

(39) "Residential journeyman plumber" means a person licensed under this chapter as a residential journeyman plumber having the qualifications, training, experience, and knowledge to engage in the plumbing trade as limited to the plumbing of residential buildings.

(40) "Residential master electrician" means a person licensed under this chapter as a residential master electrician having the qualifications, training, experience, and knowledge to properly plan, layout, and supervise the wiring, installation, and repair of electrical apparatus and equipment for light, heat, power, and other purposes on residential projects.

(41) "Residential master plumber" means a person licensed under this chapter as a residential master plumber having the qualifications, training, experience, and knowledge to properly plan and layout projects and supervise persons in the plumbing trade as limited to the plumbing of residential buildings.

(42)

- (a) "Residential plumbing contractor" means a person licensed under this chapter as a residential plumbing contractor qualified by education, training, experience, and knowledge to perform the fabrication or installation of material and fixtures to create and maintain sanitary conditions in residential buildings by providing permanent means for a supply of safe and pure water, a means for the timely and complete removal from the premises of all used or contaminated water, fluid and semi-fluid organic wastes and other impurities incidental to life and the occupation of such premises, and a safe and adequate supply of gases for lighting, heating, and industrial purposes.
- (b) The scope of work of a residential plumbing contractor may be further defined by rules made by the commission, with the concurrence of the director, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(43) "Residential project," as it relates to an electrician or electrical contractor, means buildings primarily wired with nonmetallic sheathed cable, in accordance with standard rules and regulations governing this work, including the National Electrical Code, and in which the voltage does not exceed 250 volts line to line and 125 volts to ground.

(44) "Sensitive alarm system information" means:

- (a) a pass code or other code used in the operation of an alarm system;

- (b) information on the location of alarm system components at the premises of a customer of the alarm business providing the alarm system;
- (c) information that would allow the circumvention, bypass, deactivation, or other compromise of an alarm system of a customer of the alarm business providing the alarm system; and
- (d) any other similar information that the division by rule determines to be information that an individual employed by an alarm business should use or have access to only if the individual is licensed as provided in this chapter.

(45)

- (a) "Specialty contractor" means a person licensed under this chapter under a specialty contractor classification established by rule, who is qualified by education, training, experience, and knowledge to perform those construction trades and crafts requiring specialized skill, the regulation of which are determined by the division to be in the best interest of the public health, safety, and welfare.
- (b) A specialty contractor may perform work in crafts or trades other than those in which the specialty contractor is licensed if they are incidental to the performance of the specialty contractor's licensed craft or trade.

(46) "Unincorporated entity" means an entity that is not:

- (a) an individual;
- (b) a corporation; or
- (c) publicly traded.

(47) "Unlawful conduct" means the same as that term is defined in Sections 58-1-501 and 58-55-501.

(48) "Unprofessional conduct" means the same as that term is defined in Sections 58-1-501 and 58-55-502 and as may be further defined by rule.

(49) "Wages" means amounts due to an employee for labor or services whether the amount is fixed or ascertained on a time, task, piece, commission, or other basis for calculating the amount.

Amended by Chapter 215, 2019 General Session

58-55-103 Construction Services Commission created -- Functions -- Appointment -- Qualifications and terms of members -- Vacancies -- Expenses -- Meetings -- Concurrence.

(1)

- (a) There is created within the division the Construction Services Commission.
- (b) The commission shall:
 - (i) with the concurrence of the director, make reasonable rules under Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to administer and enforce this chapter which are consistent with this chapter including:
 - (A) licensing of various licensees;
 - (B) examination requirements and administration of the examinations, to include approving and establishing a passing score for applicant examinations;
 - (C) standards of supervision for students or persons in training to become qualified to obtain a license in the trade they represent; and
 - (D) standards of conduct for various licensees;
 - (ii) approve or disapprove fees adopted by the division under Section 63J-1-504;
 - (iii) except where the boards conduct them, conduct all administrative hearings not delegated to an administrative law judge relating to the licensing of any applicant;

- (iv) except as otherwise provided in Sections 38-11-207 and 58-55-503, with the concurrence of the director, impose sanctions against licensees and certificate holders with the same authority as the division under Section 58-1-401;
- (v) advise the director on the administration and enforcement of any matters affecting the division and the construction industry;
- (vi) advise the director on matters affecting the division budget;
- (vii) advise and assist trade associations in conducting construction trade seminars and industry education and promotion; and
- (viii) perform other duties as provided by this chapter.

(2)

- (a) Initially the commission shall be comprised of the five members of the Contractors Licensing Board and two of the three chair persons from the Plumbers Licensing Board, the Alarm System Security and Licensing Board, and the Electricians Licensing Board.
- (b) The terms of office of the commission members who are serving on the Contractors Licensing Board shall continue as they serve on the commission.
- (c) Beginning July 1, 2004, the commission shall be comprised of nine members appointed by the executive director with the approval of the governor from the following groups:
 - (i) one member shall be a licensed general engineering contractor;
 - (ii) one member shall be a licensed general building contractor;
 - (iii) two members shall be licensed residential and small commercial contractors;
 - (iv) three members shall be the three chair persons from the Plumbers Licensing Board, the Alarm System Security and Licensing Board, and the Electricians Licensing Board; and
 - (v) two members shall be from the general public.

(3)

- (a) Except as required by Subsection (3)(b), as terms of current commission members expire, the executive director with the approval of the governor shall appoint each new member or reappointed member to a four-year term ending June 30.
- (b) Notwithstanding the requirements of Subsection (3)(a), the executive director with the approval of the governor shall, at the time of appointment or reappointment, adjust the length of terms to stagger the terms of commission members so that approximately 1/2 of the commission members are appointed every two years.
- (c) A commission member may not serve more than two consecutive terms.
- (4) The commission shall elect annually one of its members as chair, for a term of one year.
- (5) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.
- (6) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:
 - (a) Section 63A-3-106;
 - (b) Section 63A-3-107; and
 - (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

(7)

- (a) The commission shall meet at least monthly unless the director determines otherwise.
- (b) The director may call additional meetings at the director's discretion, upon the request of the chair, or upon the written request of four or more commission members.

(8)

- (a) Five members constitute a quorum for the transaction of business.
- (b) If a quorum is present when a vote is taken, the affirmative vote of commission members present is the act of the commission.

- (9) The commission shall comply with the procedures and requirements of Title 13, Chapter 1, Department of Commerce, and Title 63G, Chapter 4, Administrative Procedures Act, in all of its adjudicative proceedings.
- (10)
 - (a) For purposes of this Subsection (10), "concurrence" means the entities given a concurring role must jointly agree for the action to be taken.
 - (b) If a provision of this chapter requires concurrence between the director or division and the commission and no concurrence can be reached, the director or division has final authority.
 - (c) When this chapter requires concurrence between the director or division and the commission:
 - (i) the director or division shall report to and update the commission on a regular basis related to matters requiring concurrence; and
 - (ii) the commission shall review the report submitted by the director or division under this Subsection (10)(c) and concur with the report, or:
 - (A) provide a reason for not concurring with the report; and
 - (B) provide recommendations to the director or division.

Amended by Chapter 339, 2020 General Session

58-55-104 Electrician Education Fund.

- (1) There is created an expendable special revenue fund known as the Electrician Education Fund.
- (2) The fund consists of money from a surcharge fee, established by the division in accordance with Section 63J-1-504, placed on initial, renewal, and reinstatement licensure fees for an apprentice electrician, journeyman electrician, master electrician, residential journeyman electrician, and residential master electrician.
- (3) The surcharge fee described in Subsection (2) may not be more than \$5.
- (4) The fund shall earn interest and all interest earned on fund money shall be deposited into the fund.
- (5) The director may, with the concurrence of the commission, make distributions from the fund for the following purposes:
 - (a) education and training of licensees under this chapter who are practicing in the electrical trade; and
 - (b) education and training of other licensees under this chapter or the public in matters concerning electrical laws and practices.
- (6) If the balance in the fund is more than \$100,000 at the end of any fiscal year, the excess amount shall be transferred to the General Fund.
- (7) The division shall report annually to the Business, Economic Development, and Labor Appropriations Subcommittee regarding the balance in the fund and how the fund is being used.

Enacted by Chapter 215, 2019 General Session

58-55-105 Plumber Education Fund.

- (1) There is created an expendable special revenue fund known as the Plumber Education Fund.
- (2) The fund consists of money from a surcharge fee, established by the division in accordance with Section 63J-1-504, placed on initial, renewal, and reinstatement licensure fees for apprentice plumbers, journeyman plumbers, master plumbers, residential journeyman plumbers, and residential master plumbers.
- (3) The surcharge fee described in Subsection (2) may not be more than \$5.

- (4) The fund shall earn interest and all interest earned on fund money shall be deposited into the fund.
- (5) The director may, with the concurrence of the commission, make distributions from the fund for the following purposes:
 - (a) education and training of licensees under this chapter who are licensed in the professions described in Subsection (2); and
 - (b) education and training of other licensees under this chapter or the public in matters concerning plumbing laws and practices.
- (6) If the balance in the fund is more than \$100,000 at the end of any fiscal year, the excess amount shall be transferred to the General Fund.
- (7) The division shall report annually to the Business, Economic Development, and Labor Appropriations Subcommittee regarding the balance in the fund and how the fund is being used.

Enacted by Chapter 215, 2019 General Session

58-55-106 Surcharge fee.

- (1) In addition to any other fees authorized by this chapter or by the division in accordance with Section 63J-1-504, the division shall require each applicant for an initial license, renewal of a license, or reinstatement of a license under this chapter to pay a \$1 surcharge fee.
- (2) The surcharge fee shall be deposited in the General Fund as a dedicated credit to be used by the division to provide each licensee under this chapter with access to an electronic reference library that provides web-based access to national, state, and local building codes and standards.

Amended by Chapter 339, 2020 General Session

**Part 2
Board**

58-55-201 Boards created -- Duties.

- (1) There is created the Plumbers Licensing Board consisting of seven members as follows:
 - (a) three members shall be licensed from among the license classifications of master or journeyman plumber, of whom at least one shall represent a union organization and at least one shall be selected having no union affiliation;
 - (b) three members shall be licensed plumbing contractors, of whom at least one shall represent a union organization and at least one shall be selected having no union affiliation; and
 - (c) one member shall be from the public at large with no history of involvement in the construction trades.
- (2) (a) There is created the Alarm System Security and Licensing Board consisting of five members as follows:
 - (i) three individuals who are officers or owners of a licensed alarm business;
 - (ii) one individual from among nominees of the Utah Peace Officers Association; and
 - (iii) one individual representing the general public.

- (b) The Alarm System Security and Licensing Board shall designate one of its members on a permanent or rotating basis to:
 - (i) assist the division in reviewing complaints concerning the unlawful or unprofessional conduct of a licensee; and
 - (ii) advise the division in its investigation of these complaints.
- (c) A board member who has, under this Subsection (2)(c), reviewed a complaint or advised in its investigation is disqualified from participating with the board when the board serves as a presiding officer in an adjudicative proceeding concerning the complaint.

(3) There is created the Electricians Licensing Board consisting of seven members as follows:

- (a) three members shall be licensed from among the license classifications of master or journeyman electrician, of whom at least one shall represent a union organization and at least one shall be selected having no union affiliation;
- (b) three members shall be licensed electrical contractors, of whom at least one shall represent a union organization and at least one shall be selected having no union affiliation; and
- (c) one member shall be from the public at large with no history of involvement in the construction trades or union affiliation.

(4) The duties, functions, and responsibilities of each board described in Subsections (1) through (3) include the following:

- (a) recommending to the commission appropriate rules;
- (b) recommending to the commission policy and budgetary matters;
- (c) approving and establishing a passing score for applicant examinations;
- (d) overseeing the screening of applicants for licensing, renewal, reinstatement, and relicensure;
- (e) assisting the commission in establishing standards of supervision for students or persons in training to become qualified to obtain a license in the occupation or profession the board represents; and
- (f) acting as presiding officer in conducting hearings associated with the adjudicative proceedings and in issuing recommended orders when so authorized by the commission.

(5) The division, in collaboration with the Plumbers Licensing Board and the Electricians Licensing Board, shall provide a preliminary report on or before October 1, 2019, and a final written report on or before June 1, 2020, to the Business and Labor Interim Committee and the Occupational and Professional Licensure Review Committee that provides recommendations for consistent educational and training standards for plumber and electrician apprentice programs in the state, including recommendations for education and training provided by all providers, including institutions of higher education and technical colleges.

Amended by Chapter 154, 2020 General Session
Amended by Chapter 339, 2020 General Session

Part 3 **Licensing**

58-55-301 License required -- License classifications.

(1)

- (a) A person engaged in the construction trades licensed under this chapter, as a contractor regulated under this chapter, as an alarm business or company, or as an alarm company agent, shall become licensed under this chapter before engaging in that trade or contracting

activity in this state unless specifically exempted from licensure under Section 58-1-307 or 58-55-305.

- (b) The license issued under this chapter and the business license issued by the local jurisdiction in which the licensee has its principal place of business shall be the only licenses required for the licensee to engage in a trade licensed by this chapter, within the state.
- (c) Neither the state nor any of its political subdivisions may require of a licensee any additional business licenses, registrations, certifications, contributions, donations, or anything else established for the purpose of qualifying a licensee under this chapter to do business in that local jurisdiction, except for contract prequalification procedures required by state agencies, or the payment of any fee for the license, registration, or certification established as a condition to do business in that local jurisdiction.

- (2) The division shall issue licenses under this chapter to qualified persons in the following classifications:

- (a) general engineering contractor;
- (b) general building contractor;
- (c) residential and small commercial contractor;
- (d) elevator contractor;
- (e) general plumbing contractor;
- (f) residential plumbing contractor;
- (g) general electrical contractor;
- (h) residential electrical contractor;
- (i) specialty contractor;
- (j) master plumber;
- (k) residential master plumber;
- (l) journeyman plumber;
- (m) apprentice plumber;
- (n) residential journeyman plumber;
- (o) master electrician;
- (p) residential master electrician;
- (q) journeyman electrician;
- (r) residential journeyman electrician;
- (s) apprentice electrician;
- (t) construction trades instructor:
 - (i) general engineering classification;
 - (ii) general building classification;
 - (iii) electrical classification;
 - (iv) plumbing classification; and
 - (v) mechanical classification;
- (u) alarm company;
- (v) alarm company agent; and
- (w) elevator mechanic.

- (3)

- (a) An applicant may apply for a license in one or more classification or specialty contractor subclassification.
- (b) A license shall be granted in each classification or subclassification for which the applicant qualifies.
- (c) A separate application and fee must be submitted for each license classification or subclassification.

Amended by Chapter 411, 2017 General Session

58-55-302 Qualifications for licensure.

- (1) Each applicant for a license under this chapter shall:
 - (a) submit an application prescribed by the division;
 - (b) pay a fee as determined by the department under Section 63J-1-504;
 - (c) meet the examination requirements established by this section and by rule by the commission with the concurrence of the director, which requirements include:
 - (i) for licensure as an apprentice electrician, apprentice plumber, or specialty contractor, no division-administered examination is required;
 - (ii) for licensure as a general building contractor, general engineering contractor, residential and small commercial contractor, general plumbing contractor, residential plumbing contractor, general electrical contractor, or residential electrical contractor, the only required division-administered examination is a division-administered examination that covers information from the 25-hour course described in Subsection (1)(e)(iii), which course may have been previously completed as part of applying for any other license under this chapter, and, if the 25-hour course was completed on or after July 1, 2019, the five-hour business law course described in Subsection (1)(e)(iv); and
 - (iii) if required in Section 58-55-304, an individual qualifier must pass the required division-administered examination if the applicant is a business entity;
 - (d) if an apprentice, identify the proposed supervisor of the apprenticeship;
 - (e) if an applicant for a contractor's license:
 - (i) produce satisfactory evidence of financial responsibility, except for a construction trades instructor for whom evidence of financial responsibility is not required;
 - (ii) produce satisfactory evidence of:
 - (A) except as provided in Subsection (2)(a), and except that no employment experience is required for licensure as a specialty contractor, two years full-time paid employment experience in the construction industry, which employment experience, unless more specifically described in this section, may be related to any contracting classification and does not have to include supervisory experience; and
 - (B) knowledge of the principles of the conduct of business as a contractor, reasonably necessary for the protection of the public health, safety, and welfare;
 - (iii) except as otherwise provided by rule by the commission with the concurrence of the director, complete a 25-hour course established by rule by the commission with the concurrence of the director, which is taught by an approved prelicensure course provider, and which course may include:
 - (A) construction business practices;
 - (B) bookkeeping fundamentals;
 - (C) mechanics lien fundamentals;
 - (D) other aspects of business and construction principles considered important by the commission with the concurrence of the director; and
 - (E) for no additional fee, a provider-administered examination at the end of the 25-hour course;
 - (iv) complete a five-hour business and law course established by rule by the commission with the concurrence of the director, which is taught by an approved prelicensure course provider, if an applicant for licensure as a general building contractor, general engineering contractor, residential and small commercial contractor, general plumbing contractor,

residential plumbing contractor, general electrical contractor, or residential electrical contractor, except that if the 25-hour course described in Subsection (1)(e)(iii) was completed before July 1, 2019, the applicant does not need to take the business and law course;

(v)

- (A) be a licensed master electrician if an applicant for an electrical contractor's license or a licensed master residential electrician if an applicant for a residential electrical contractor's license;
- (B) be a licensed master plumber if an applicant for a plumbing contractor's license or a licensed master residential plumber if an applicant for a residential plumbing contractor's license; or
- (C) be a licensed elevator mechanic and produce satisfactory evidence of three years experience as an elevator mechanic if an applicant for an elevator contractor's license; and

(vi) when the applicant is an unincorporated entity, provide a list of the one or more individuals who hold an ownership interest in the applicant as of the day on which the application is filed that includes for each individual:

- (A) the individual's name, address, birth date, and social security number; and
- (B) whether the individual will engage in a construction trade; and

(f) if an applicant for a construction trades instructor license, satisfy any additional requirements established by rule.

(2)

- (a) If the applicant for a contractor's license described in Subsection (1) is a building inspector, the applicant may satisfy Subsection (1)(e)(ii)(A) by producing satisfactory evidence of two years full-time paid employment experience as a building inspector, which shall include at least one year full-time experience as a licensed combination inspector.
- (b) The applicant shall file the following with the division before the division issues the license:
 - (i) proof of workers' compensation insurance which covers employees of the applicant in accordance with applicable Utah law;
 - (ii) proof of public liability insurance in coverage amounts and form established by rule except for a construction trades instructor for whom public liability insurance is not required; and
 - (iii) proof of registration as required by applicable law with the:
 - (A) Department of Commerce;
 - (B) Division of Corporations and Commercial Code;
 - (C) Unemployment Insurance Division in the Department of Workforce Services, for purposes of Title 35A, Chapter 4, Employment Security Act;
 - (D) State Tax Commission; and
 - (E) Internal Revenue Service.

(3) In addition to the general requirements for each applicant in Subsection (1), applicants shall comply with the following requirements to be licensed in the following classifications:

(a)

- (i) A master plumber shall produce satisfactory evidence that the applicant:
 - (A) has been a licensed journeyman plumber for at least two years and had two years of supervisory experience as a licensed journeyman plumber in accordance with division rule;
 - (B) has received at least an associate of applied science degree or similar degree following the completion of a course of study approved by the division and had one year of

supervisory experience as a licensed journeyman plumber in accordance with division rule; or

(C) meets the qualifications for expedited licensure as established by rules made by the commission, with the concurrence of the director, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, that clearly demonstrate the applicant has the knowledge and skills to be a licensed master plumber.

(ii) An individual holding a valid Utah license as a journeyman plumber, based on at least four years of practical experience as a licensed apprentice under the supervision of a licensed journeyman plumber and four years as a licensed journeyman plumber, in effect immediately prior to May 5, 2008, is on and after May 5, 2008, considered to hold a current master plumber license under this chapter, and satisfies the requirements of this Subsection (3)(a) for the purpose of renewal or reinstatement of that license under Section 58-55-303.

(iii) An individual holding a valid plumbing contractor's license or residential plumbing contractor's license, in effect immediately prior to May 5, 2008, is on or after May 5, 2008:

(A) considered to hold a current master plumber license under this chapter if licensed as a plumbing contractor and a journeyman plumber, and satisfies the requirements of this Subsection (3)(a) for purposes of renewal or reinstatement of that license under Section 58-55-303; and

(B) considered to hold a current residential master plumber license under this chapter if licensed as a residential plumbing contractor and a residential journeyman plumber, and satisfies the requirements of this Subsection (3)(a) for purposes of renewal or reinstatement of that license under Section 58-55-303.

(b) A master residential plumber applicant shall produce satisfactory evidence that the applicant:

(i) has been a licensed residential journeyman plumber for at least two years and had two years of supervisory experience as a licensed residential journeyman plumber in accordance with division rule; or

(ii) meets the qualifications for expedited licensure as established by rules made by the commission, with the concurrence of the director, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, that clearly demonstrate the applicant has the knowledge and skills to be a licensed master residential plumber.

(c) A journeyman plumber applicant shall produce satisfactory evidence of:

(i) successful completion of the equivalent of at least four years of full-time training and instruction as a licensed apprentice plumber under supervision of a licensed master plumber or journeyman plumber and in accordance with a planned program of training approved by the division;

(ii) at least eight years of full-time experience approved by the division in collaboration with the Plumbers Licensing Board; or

(iii) meeting the qualifications for expedited licensure as established by rules made by the commission, with the concurrence of the director, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, that clearly demonstrate the applicant has the knowledge and skills to be a licensed journeyman plumber.

(d) A residential journeyman plumber shall produce satisfactory evidence of:

(i) completion of the equivalent of at least three years of full-time training and instruction as a licensed apprentice plumber under the supervision of a licensed residential master plumber, licensed residential journeyman plumber, or licensed journeyman plumber in accordance with a planned program of training approved by the division;

(ii) completion of at least six years of full-time experience in a maintenance or repair trade involving substantial plumbing work; or

- (iii) meeting the qualifications for expedited licensure as established by rules made by the commission, with the concurrence of the director, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, that clearly demonstrate the applicant has the knowledge and skills to be a licensed residential journeyman plumber.
- (e) The conduct of licensed apprentice plumbers and their licensed supervisors shall be in accordance with the following:
 - (i) while engaging in the trade of plumbing, a licensed apprentice plumber shall be under the immediate supervision of a licensed master plumber, licensed residential master plumber, licensed journeyman plumber, or licensed residential journeyman plumber;
 - (ii) beginning in a licensed apprentice plumber's fourth year of training, a licensed apprentice plumber may work without supervision for a period not to exceed eight hours in any 24-hour period; and
 - (iii) rules made by the commission, with the concurrence of the director, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, regarding the ratio of apprentices allowed under the immediate supervision of a licensed supervisor, including the ratio of apprentices in their fourth year of training or later that are allowed to be under the immediate supervision of a licensed supervisor.
- (f) A master electrician applicant shall produce satisfactory evidence that the applicant:
 - (i) is a graduate electrical engineer of an accredited college or university approved by the division and has one year of practical electrical experience as a licensed apprentice electrician;
 - (ii) is a graduate of an electrical trade school, having received an associate of applied sciences degree following successful completion of a course of study approved by the division, and has two years of practical experience as a licensed journeyman electrician;
 - (iii) has four years of practical experience as a journeyman electrician; or
 - (iv) meets the qualifications for expedited licensure as established by rules made by the commission, with the concurrence of the director, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, that clearly demonstrate the applicant has the knowledge and skills to be a licensed master electrician.
- (g) A master residential electrician applicant shall produce satisfactory evidence that the applicant:
 - (i) has at least two years of practical experience as a residential journeyman electrician; or
 - (ii) meets the qualifications for expedited licensure as established by rules made by the commission, with the concurrence of the director, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, that clearly demonstrate the applicant has the knowledge and skills to be a master residential electrician.
- (h) A journeyman electrician applicant shall produce satisfactory evidence that the applicant:
 - (i) has successfully completed at least four years of full-time training and instruction as a licensed apprentice electrician under the supervision of a master electrician or journeyman electrician and in accordance with a planned training program approved by the division;
 - (ii) has at least eight years of full-time experience approved by the division in collaboration with the Electricians Licensing Board; or
 - (iii) meets the qualifications for expedited licensure as established by rules made by the commission, with the concurrence of the director, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, that clearly demonstrate the applicant has the knowledge and skills to be a licensed journeyman electrician.
- (i) A residential journeyman electrician applicant shall produce satisfactory evidence that the applicant:

- (i) has successfully completed two years of training in an electrical training program approved by the division;
- (ii) has four years of practical experience in wiring, installing, and repairing electrical apparatus and equipment for light, heat, and power under the supervision of a licensed master, journeyman, residential master, or residential journeyman electrician; or
- (iii) meets the qualifications for expedited licensure as established by rules made by the commission, with the concurrence of the director, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, that clearly demonstrate the applicant has the knowledge and skills to be a licensed residential journeyman electrician.

(j) The conduct of licensed apprentice electricians and their licensed supervisors shall be in accordance with the following:

- (i) A licensed apprentice electrician shall be under the immediate supervision of a licensed master, journeyman, residential master, or residential journeyman electrician;
- (ii) beginning in a licensed apprentice electrician's fourth year of training, a licensed apprentice electrician may work without supervision for a period not to exceed eight hours in any 24-hour period;
- (iii) rules made by the commission, with the concurrence of the director, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, regarding the ratio of apprentices allowed under the immediate supervision of a licensed supervisor, including the ratio of apprentices in their fourth year of training or later that are allowed to be under the immediate supervision of a licensed supervisor; and
- (iv) a licensed supervisor may have up to three licensed apprentice electricians on a residential project, or more if established by rules made by the commission, in concurrence with the director, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(k) An alarm company applicant shall:

- (i) have a qualifying agent who is an officer, director, partner, proprietor, or manager of the applicant who:
 - (A) demonstrates 6,000 hours of experience in the alarm company business;
 - (B) demonstrates 2,000 hours of experience as a manager or administrator in the alarm company business or in a construction business; and
 - (C) passes an examination component established by rule by the commission with the concurrence of the director;
- (ii) if a corporation, provide:
 - (A) the names, addresses, dates of birth, social security numbers, and fingerprint cards of all corporate officers, directors, and those responsible management personnel employed within the state or having direct responsibility for managing operations of the applicant within the state; and
 - (B) the names, addresses, dates of birth, social security numbers, and fingerprint cards of all shareholders owning 5% or more of the outstanding shares of the corporation, except this shall not be required if the stock is publicly listed and traded;
- (iii) if a limited liability company, provide:
 - (A) the names, addresses, dates of birth, social security numbers, and fingerprint cards of all company officers, and those responsible management personnel employed within the state or having direct responsibility for managing operations of the applicant within the state; and
 - (B) the names, addresses, dates of birth, social security numbers, and fingerprint cards of all individuals owning 5% or more of the equity of the company;

- (iv) if a partnership, provide the names, addresses, dates of birth, social security numbers, and fingerprint cards of all general partners, and those responsible management personnel employed within the state or having direct responsibility for managing operations of the applicant within the state;
- (v) if a proprietorship, provide the names, addresses, dates of birth, social security numbers, and fingerprint cards of the proprietor, and those responsible management personnel employed within the state or having direct responsibility for managing operations of the applicant within the state;
- (vi) if a trust, provide the names, addresses, dates of birth, social security numbers, and fingerprint cards of the trustee, and those responsible management personnel employed within the state or having direct responsibility for managing operations of the applicant within the state;
- (vii) be of good moral character in that officers, directors, shareholders described in Subsection (3)(k)(ii)(B), partners, proprietors, trustees, and responsible management personnel have not been convicted of a felony, a misdemeanor involving moral turpitude, or any other crime that when considered with the duties and responsibilities of an alarm company is considered by the board to indicate that the best interests of the public are served by granting the applicant a license;
- (viii) document that none of the applicant's officers, directors, shareholders described in Subsection (3)(k)(ii)(B), partners, proprietors, trustees, and responsible management personnel have been declared by any court of competent jurisdiction incompetent by reason of mental defect or disease and not been restored;
- (ix) document that none of the applicant's officers, directors, shareholders described in Subsection (3)(k)(ii)(B), partners, proprietors, and responsible management personnel are currently suffering from habitual drunkenness or from drug addiction or dependence;
- (x) file and maintain with the division evidence of:
 - (A) comprehensive general liability insurance in form and in amounts to be established by rule by the commission with the concurrence of the director;
 - (B) workers' compensation insurance that covers employees of the applicant in accordance with applicable Utah law; and
 - (C) registration as is required by applicable law with the:
 - (I) Division of Corporations and Commercial Code;
 - (II) Unemployment Insurance Division in the Department of Workforce Services, for purposes of Title 35A, Chapter 4, Employment Security Act;
 - (III) State Tax Commission; and
 - (IV) Internal Revenue Service; and
- (xi) meet with the division and board.

(I) Each applicant for licensure as an alarm company agent shall:

- (i) submit an application in a form prescribed by the division accompanied by fingerprint cards;
- (ii) pay a fee determined by the department under Section 63J-1-504;
- (iii) be of good moral character in that the applicant has not been convicted of a felony, a misdemeanor involving moral turpitude, or any other crime that when considered with the duties and responsibilities of an alarm company agent is considered by the board to indicate that the best interests of the public are served by granting the applicant a license;
- (iv) not have been declared by any court of competent jurisdiction incompetent by reason of mental defect or disease and not been restored;
- (v) not be currently suffering from habitual drunkenness or from drug addiction or dependence; and

- (vi) meet with the division and board if requested by the division or the board.
- (m)
 - (i) Each applicant for licensure as an elevator mechanic shall:
 - (A) provide documentation of experience and education credits of not less than three years work experience in the elevator industry, in construction, maintenance, or service and repair; and
 - (B) satisfactorily complete a written examination administered by the division established by rule under Section 58-1-203; or
 - (C) provide certificates of completion of an apprenticeship program for elevator mechanics, having standards substantially equal to those of this chapter and registered with the United States Department of Labor Bureau Apprenticeship and Training or a state apprenticeship council.
 - (ii)
 - (A) If an elevator contractor licensed under this chapter cannot find a licensed elevator mechanic to perform the work of erecting, constructing, installing, altering, servicing, repairing, or maintaining an elevator, the contractor may:
 - (I) notify the division of the unavailability of licensed personnel; and
 - (II) request the division issue a temporary elevator mechanic license to an individual certified by the contractor as having an acceptable combination of documented experience and education to perform the work described in this Subsection (3)(m)(ii)(A).
 - (B)
 - (I) The division may issue a temporary elevator mechanic license to an individual certified under Subsection (3)(m)(ii)(A)(II) upon application by the individual, accompanied by the appropriate fee as determined by the department under Section 63J-1-504.
 - (II) The division shall specify the time period for which the license is valid and may renew the license for an additional time period upon its determination that a shortage of licensed elevator mechanics continues to exist.
- (4) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the division may make rules establishing when Federal Bureau of Investigation records shall be checked for applicants as an alarm company or alarm company agent.
- (5) To determine if an applicant meets the qualifications of Subsections (3)(k)(vii) and (3)(l)(iii), the division shall provide an appropriate number of copies of fingerprint cards to the Department of Public Safety with the division's request to:
 - (a) conduct a search of records of the Department of Public Safety for criminal history information relating to each applicant for licensure as an alarm company or alarm company agent and each applicant's officers, directors, shareholders described in Subsection (3)(k)(ii)(B), partners, proprietors, and responsible management personnel; and
 - (b) forward to the Federal Bureau of Investigation a fingerprint card of each applicant requiring a check of records of the Federal Bureau of Investigation for criminal history information under this section.
- (6) The Department of Public Safety shall send to the division:
 - (a) a written record of criminal history, or certification of no criminal history record, as contained in the records of the Department of Public Safety in a timely manner after receipt of a fingerprint card from the division and a request for review of Department of Public Safety records; and
 - (b) the results of the Federal Bureau of Investigation review concerning an applicant in a timely manner after receipt of information from the Federal Bureau of Investigation.
- (7)

- (a) The division shall charge each applicant for licensure as an alarm company or alarm company agent a fee, in accordance with Section 63J-1-504, equal to the cost of performing the records reviews under this section.
- (b) The division shall pay the Department of Public Safety the costs of all records reviews, and the Department of Public Safety shall pay the Federal Bureau of Investigation the costs of records reviews under this section.
- (8) Information obtained by the division from the reviews of criminal history records of the Department of Public Safety and the Federal Bureau of Investigation shall be used or disseminated by the division only for the purpose of determining if an applicant for licensure as an alarm company or alarm company agent is qualified for licensure.
- (9)
 - (a) An application for licensure under this chapter shall be denied if:
 - (i) the applicant has had a previous license, which was issued under this chapter, suspended or revoked within two years before the date of the applicant's application;
 - (ii) (A) the applicant is a partnership, corporation, or limited liability company; and (B) any corporate officer, director, shareholder holding 25% or more of the stock in the applicant, partner, member, agent acting as a qualifier, or any person occupying a similar status, performing similar functions, or directly or indirectly controlling the applicant has served in any similar capacity with any person or entity which has had a previous license, which was issued under this chapter, suspended or revoked within two years before the date of the applicant's application;
 - (iii) (A) the applicant is an individual or sole proprietorship; and (B) any owner or agent acting as a qualifier has served in any capacity listed in Subsection (9)(a)(ii)(B) in any entity which has had a previous license, which was issued under this chapter, suspended or revoked within two years before the date of the applicant's application; or
 - (iv) (A) the applicant includes an individual who was an owner, director, or officer of an unincorporated entity at the time the entity's license under this chapter was revoked; and (B) the application for licensure is filed within 60 months after the revocation of the unincorporated entity's license.
 - (b) An application for licensure under this chapter shall be reviewed by the appropriate licensing board prior to approval if:
 - (i) the applicant has had a previous license, which was issued under this chapter, suspended or revoked more than two years before the date of the applicant's application;
 - (ii) (A) the applicant is a partnership, corporation, or limited liability company; and (B) any corporate officer, director, shareholder holding 25% or more of the stock in the applicant, partner, member, agent acting as a qualifier, or any person occupying a similar status, performing similar functions, or directly or indirectly controlling the applicant has served in any similar capacity with any person or entity which has had a previous license, which was issued under this chapter, suspended or revoked more than two years before the date of the applicant's application; or
 - (iii) (A) the applicant is an individual or sole proprietorship; and

(B) any owner or agent acting as a qualifier has served in any capacity listed in Subsection (9)(b)(ii)(B) in any entity which has had a previous license, which was issued under this chapter, suspended or revoked more than two years before the date of the applicant's application.

(10)

(a)

(i) A licensee that is an unincorporated entity shall file an ownership status report with the division every 30 days after the day on which the license is issued if the licensee has more than five owners who are individuals who:

(A) own an interest in the contractor that is an unincorporated entity;

(B) own, directly or indirectly, less than an 8% interest, as defined by rule made by the division in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, in the unincorporated entity; and

(C) engage, or will engage, in a construction trade in the state as owners of the contractor described in Subsection (10)(a)(i)(A).

(ii) If the licensee has five or fewer owners described in Subsection (10)(a)(i), the licensee shall provide the ownership status report with an application for renewal of licensure.

(b) An ownership status report required under this Subsection (10) shall:

(i) specify each addition or deletion of an owner:

(A) for the first ownership status report, after the day on which the unincorporated entity is licensed under this chapter; and

(B) for a subsequent ownership status report, after the day on which the previous ownership status report is filed;

(ii) be in a format prescribed by the division that includes for each owner, regardless of the owner's percentage ownership in the unincorporated entity, the information described in Subsection (1)(e)(vi);

(iii) list the name of:

(A) each officer or manager of the unincorporated entity; and

(B) each other individual involved in the operation, supervision, or management of the unincorporated entity; and

(iv) be accompanied by a fee set by the division in accordance with Section 63J-1-504 if the ownership status report indicates there is a change described in Subsection (10)(b)(i).

(c) The division may, at any time, audit an ownership status report under this Subsection (10):

(i) to determine if financial responsibility has been demonstrated or maintained as required under Section 58-55-306; and

(ii) to determine compliance with Subsection 58-55-501(23), (24), or (26) or Subsection 58-55-502(8) or (9).

(11)

(a) An unincorporated entity that provides labor to an entity licensed under this chapter by providing an individual who owns an interest in the unincorporated entity to engage in a construction trade in Utah shall file with the division:

(i) before the individual who owns an interest in the unincorporated entity engages in a construction trade in Utah, a current list of the one or more individuals who hold an ownership interest in the unincorporated entity that includes for each individual:

(A) the individual's name, address, birth date, and social security number; and

(B) whether the individual will engage in a construction trade; and

- (ii) every 30 days after the day on which the unincorporated entity provides the list described in Subsection (11)(a)(i), an ownership status report containing the information that would be required under Subsection (10) if the unincorporated entity were a licensed contractor.
- (b) When filing an ownership list described in Subsection (11)(a)(i) or an ownership status report described in Subsection (11)(a)(ii), an unincorporated entity shall pay a fee set by the division in accordance with Section 63J-1-504.
- (12) This chapter may not be interpreted to create or support an express or implied independent contractor relationship between an unincorporated entity described in Subsection (10) or (11) and the owners of the unincorporated entity for any purpose, including income tax withholding.
- (13) A social security number provided under Subsection (1)(e)(vi) is a private record under Subsection 63G-2-302(1)(i).

Amended by Chapter 339, 2020 General Session

58-55-302.5 Continuing education requirements for contractor licensees -- Continuing education courses.

- (1)
 - (a) Each contractor licensee under a license issued under this chapter shall complete six hours of approved continuing education during each two-year renewal cycle established by rule under Subsection 58-55-303(1).
 - (b) Each contractor licensee who has a renewal cycle that ends on or after January 1, 2020, shall complete one hour of approved continuing education on energy conservation as part of the six required hours.
- (2)
 - (a) The commission shall, with the concurrence of the division, establish by rule a program of approved continuing education for contractor licensees.
 - (b) Except as provided in Subsection (2)(e), beginning on or after June 1, 2015, only courses offered by any of the following may be included in the program of approved continuing education for contractor licensees:
 - (i) the Associated General Contractors of Utah;
 - (ii) Associated Builders and Contractors, Utah Chapter;
 - (iii) the Home Builders Association of Utah;
 - (iv) the National Electrical Contractors Association Intermountain Chapter;
 - (v) the Utah Plumbing & Heating Contractors Association;
 - (vi) the Independent Electrical Contractors of Utah;
 - (vii) the Rocky Mountain Gas Association;
 - (viii) the Utah Mechanical Contractors Association;
 - (ix) the Sheet Metal Contractors Association;
 - (x) the Intermountain Electrical Association;
 - (xi) the Builders Bid Service of Utah; or
 - (xii) Utah Roofing Contractors Association.
 - (c) An approved continuing education program for a contractor licensee may include a course approved by an entity described in Subsections (2)(b)(i) through (2)(b)(iii).
 - (d)
 - (i) Except as provided in Subsections (2)(d)(ii) and (iii), an entity listed in Subsections (2)(b)(iv) through (2)(b)(xii) may only offer and market continuing education courses to a licensee who is a member of the entity.

- (ii) An entity described in Subsection (2)(b)(iv), (vi), or (x) may offer and market a continuing education course that the entity offers to satisfy the continuing education requirement described in Subsection 58-55-302.7(2)(a) to a contractor in the electrical trade.
- (iii) An entity described in Subsection (2)(b)(v) or (viii) may offer and market a continuing education course that the entity offers to satisfy the continuing education requirement described in Subsection 58-55-302.7(2)(b) to a contractor in the plumbing trade.
- (e) On or after June 1, 2015, an approved continuing education program for a contractor licensee may include a course offered and taught by:
 - (i) a state executive branch agency;
 - (ii) the workers' compensation insurance carrier that provides workers' compensation insurance under Section 31A-22-1001; or
 - (iii) a nationally or regionally accredited college or university that has a physical campus in the state.
- (f) On or after June 1, 2017, for a contractor licensee that is licensed in the specialty contractor classification of HVAC contractor, at least three of the six hours described in Subsection (1) shall include continuing education directly related to the installation, repair, or replacement of a heating, ventilation, or air conditioning system.

(3) The division may contract with a person to establish and maintain a continuing education registry to include:

- (a) a list of courses that the division has approved for inclusion in the program of approved continuing education; and
- (b) a list of courses that:
 - (i) a contractor licensee has completed under the program of approved continuing education; and
 - (ii) the licensee may access to monitor the licensee's compliance with the continuing education requirement established under Subsection (1).

(4) The division may charge a fee, as established by the division under Section 63J-1-504, to administer the requirements of this section.

Amended by Chapter 215, 2019 General Session

58-55-302.7 Continuing education requirements for electricians, elevator mechanics, and plumbers.

- (1) As used in this section:
 - (a) "Licensed electrician" means an individual licensed under this chapter as an apprentice electrician, journeyman electrician, master electrician, residential journeyman electrician, or residential master electrician.
 - (b) "Licensed elevator mechanic" means an individual licensed under this chapter as an elevator mechanic.
 - (c) "Licensed plumber" means an individual licensed under this chapter as an apprentice plumber, journeyman plumber, master plumber, residential journeyman plumber, or residential master plumber.
- (2) Beginning December 1, 2010, during each two-year renewal cycle established by rule under Subsection 58-55-303(1):
 - (a) a licensed electrician shall complete 16 hours of continuing education under the continuing education program established under this section;
 - (b) a licensed plumber shall complete 12 hours of continuing education under the continuing education program established under this section; and

- (c) a licensed elevator mechanic shall complete eight hours of continuing education under the continuing education program established under this section.
- (3) The commission shall, with the concurrence of the division, establish by rule:
 - (a) a continuing education program for licensed electricians;
 - (b) a continuing education program for licensed elevator mechanics; and
 - (c) a continuing education program for licensed plumbers.
- (4) The division may contract with a person to establish and maintain a continuing education registry to include:
 - (a) an online application for a continuing education course provider to apply to the division for approval of the course for inclusion in the continuing education program;
 - (b) a list of courses that the division has approved for inclusion in the continuing education program; and
 - (c) a list of courses that:
 - (i) a licensed electrician, licensed elevator mechanic, or licensed plumber has completed under the continuing education program; and
 - (ii) the licensed electrician, licensed elevator mechanic, or licensed plumber may access to monitor compliance with the continuing education requirement under Subsection (2).
- (5) The division may charge a fee, established by the division under Section 63J-1-504, to administer the requirements of this section.

Amended by Chapter 367, 2011 General Session

58-55-303 Term of license -- Expiration -- Renewal.

- (1)
 - (a) Each license issued under this chapter shall be issued in accordance with a two-year renewal cycle established by rule.
 - (b) The division may by rule extend or shorten a renewal period by as much as one year to stagger the renewal cycle it administers.
 - (c)
 - (i) Notwithstanding a renewal cycle under Subsection (1)(a) or (b), notwithstanding Title 63G, Chapter 4, Administrative Procedures Act, and subject to Subsection (1)(c)(ii), a license is automatically suspended 60 days after the licensee:
 - (A) becomes, after the time of licensing, an unincorporated entity that is subject to the ownership status report filing requirements of Subsection 58-55-302(10)(a)(i); or
 - (B) transfers its license to an unincorporated entity that is subject to the ownership status report filing requirements of Subsection 58-55-302(10)(a)(i).
 - (ii) An automatic suspension does not occur under Subsection (1)(c)(i) if, before the expiration of the 60-day period in Subsection (1)(c)(i):
 - (A) the licensee submits an application for renewal of the license; and
 - (B) the division renews the licensee's license pursuant to the licensee's application for renewal.
 - (iii) Within 30 days after the effective date of a suspension under Subsection (1)(c)(i), the commission shall, in accordance with Title 63G, Chapter 4, Administrative Procedures Act, make a final determination concerning the suspension.
 - (2) At the time of renewal, the licensee shall show satisfactory evidence of:
 - (a) continuing financial responsibility as required under Section 58-55-306;
 - (b) for a contractor licensee, completion of six hours of approved continuing education, as required in Section 58-55-302.5; and

- (c) if the licensee is an apprentice electrician or plumber, journeyman electrician or plumber, master electrician or plumber, residential journeyman electrician or plumber, or residential master electrician or plumber, completion of the number of hours of continuing education specified under Section 58-55-302.7.
- (3) Each license automatically expires on the expiration date shown on the license unless the licensee renews the license in accordance with Section 58-1-308.
- (4) The requirements of Subsection 58-55-302(9) shall also apply to applicants seeking to renew or reinstate a license.
- (5) In addition to any other requirements imposed by law, if a license has been suspended or revoked for any reason, the applicant:
 - (a) shall pay in full all fines imposed by the division;
 - (b) resolve any outstanding citations or disciplinary actions with the division;
 - (c) satisfy any Section 58-55-503 judgment and sentence or nontrial resolution;
 - (d) complete a new financial responsibility review as required under Section 58-55-306, using only titled assets; and
 - (e) pay in full any reimbursement amount as provided in Title 38, Chapter 11, Residence Lien Restriction and Lien Recovery Fund Act.

Amended by Chapter 57, 2013 General Session

58-55-304 Licensee names -- License number use -- License qualifier.

- (1) No license may be issued by the division in a name that is identical to or so resembles the name of another licensee that the division determines that it may result in confusion or mistake.
- (2) The contractor's license number shall be made a part of all permit applications, contracts, agreements, or bids when a license is required.
- (3) The division may issue a license in the name of an individual or the name of a business entity for which the individual acts as a qualifier, in accordance with the following:
 - (a) An individual shall:
 - (i) submit an application in the individual's name;
 - (ii) demonstrate the individual's own financial responsibility; and
 - (iii) pass the required examination and meet all other requirements of this chapter.
 - (b) A business entity shall:
 - (i) submit the application in the name of and on behalf of the business entity;
 - (ii) list the individual as the qualifier;
 - (iii) demonstrate financial responsibility of the business entity if applying for a contractor's license;
 - (iv) provide evidence that the individual qualifier has passed the required examination; and
 - (v) meet all other requirements of this chapter.
- (4) A person acting as a qualifier for a business entity licensee must demonstrate to the division that the individual is an owner, officer, or manager within that business entity who exercises material authority in the conduct of that business entity's contracting business by:
 - (a) making substantive technical and administrative decisions relating to the work performed for which a license is required under this chapter;
 - (b) hiring, promoting, transferring, laying off, disciplining, directing, or discharging employees of the licensee either by himself or through others; and
 - (c) not being involved in any other employment or activity which conflicts with the individual's duties and responsibilities to ensure the licensee's performance of work regulated under this chapter does not jeopardize the public health, safety, and welfare.

(5)

- (a) Except as provided in Subsections (5)(b) and (c), it is the duty and responsibility of the licensee and the qualifier to comply with the provisions of this section. Failure to comply with the requirements of this section may be considered unprofessional conduct by the licensee, the qualifier, or both.
- (b) If a licensee business entity has maintained its license and has not violated the requirements of this chapter or Sections 58-55-101 through 58-55-604 for a period of 10 consecutive years, the business entity may maintain its license under this chapter by recording an active employee name and registration/license number from the applicable trade on the renewal application in order to comply with the individual qualifier requirements of this section. However, this Subsection (5)(b) shall not apply if more than 50% of the ownership of the business entity has been transferred at any time during the ten-year period.
- (c) If a plumbing or electrical business entity has maintained its license and has not violated the requirements of this chapter or Sections 58-55-101 through 58-55-604 for a period of five consecutive years, the business entity may maintain its license under this chapter by recording an active employee name and registration/license number from the applicable trade on the renewal application in order to comply with the individual qualifier requirements of this section. However, this Subsection (5)(c) shall not apply if more than 50% of the ownership of the business entity has been transferred at any time during the five-year period.

(6) If an individual qualifying on behalf of a business entity issued a license under this chapter ceases association with that entity as required in Subsection (4), the licensee shall notify the division in writing within 10 days after cessation of association or employment. If notice is given, the license shall remain in force for 60 days after the date of cessation of association or employment. The licensee shall replace the original qualifier with another individual qualifier within the 60-day period or the license shall be automatically suspended.

(7) Failure to notify the division of cessation of association or employment of a qualifier as required in Subsection (6) may result in immediate suspension of the license upon a finding of good cause.

Amended by Chapter 14, 2004 General Session

58-55-305 Exemptions from licensure.

- (1) In addition to the exemptions from licensure in Section 58-1-307, the following persons may engage in acts or practices included within the practice of construction trades, subject to the stated circumstances and limitations, without being licensed under this chapter:
 - (a) an authorized representative of the United States government or an authorized employee of the state or any of its political subdivisions when working on construction work of the state or the subdivision, and when acting within the terms of the person's trust, office, or employment;
 - (b) a person engaged in construction or operation incidental to the construction and repair of irrigation and drainage ditches of regularly constituted irrigation districts, reclamation districts, and drainage districts or construction and repair relating to farming, dairying, agriculture, livestock or poultry raising, metal and coal mining, quarries, sand and gravel excavations, well drilling, as defined in Section 73-3-25, hauling to and from construction sites, and lumbering;
 - (c) public utilities operating under the rules of the Public Service Commission on work incidental to their own business;
 - (d) a sole owner of property engaged in building:
 - (i) no more than one residential structure per year on the sole owner's property and no more than three residential structures per five years on the sole owner's property for the sole

owner's noncommercial, nonpublic use, except that a person other than the property owner or a person described in Subsection (1)(e), who engages in building a residential structure must be licensed under this chapter if the person is otherwise required to be licensed under this chapter; or

(ii) structures on the sole owner's property for the sole owner's noncommercial, nonpublic use that are incidental to a residential structure on the property, including a shed, carport, or detached garage;

(e)

(i) a person engaged in construction or renovation of a residential building for noncommercial, nonpublic use if that person:

(A) works without compensation other than token compensation that is not considered salary or wages; and

(B) works under the direction of the property owner who engages in building the structure; and

(ii) as used in this Subsection (1)(e), "token compensation" means compensation paid by a sole owner of property exempted from licensure under Subsection (1)(d) to a person exempted from licensure under this Subsection (1)(e), that is:

(A) minimal in value when compared with the fair market value of the services provided by the person;

(B) not related to the fair market value of the services provided by the person; and

(C) is incidental to the providing of services by the person including paying for or providing meals or refreshment while services are being provided, or paying reasonable transportation costs incurred by the person in travel to the site of construction;

(f) a person engaged in the sale or merchandising of personal property that by its design or manufacture may be attached, installed, or otherwise affixed to real property who has contracted with a person, firm, or corporation licensed under this chapter to install, affix, or attach that property;

(g) a contractor submitting a bid on a federal aid highway project, if, before undertaking construction under that bid, the contractor is licensed under this chapter;

(h)

(i) subject to Subsection 58-1-401(2) and Sections 58-55-501 and 58-55-502, a person engaged in the alteration, repair, remodeling, or addition to or improvement of a building with a contracted or agreed value of less than \$3,000, including both labor and materials, and including all changes or additions to the contracted or agreed upon work; and

(ii) notwithstanding Subsection (1)(h)(i) and except as otherwise provided in this section:

(A) work in the plumbing and electrical trades on a Subsection (1)(h)(i) project within any six month period of time:

(I) must be performed by a licensed electrical or plumbing contractor, if the project involves an electrical or plumbing system; and

(II) may be performed by a licensed journeyman electrician or plumber or an individual referred to in Subsection (1)(h)(ii)(A)(I), if the project involves a component of the system such as a faucet, toilet, fixture, device, outlet, or electrical switch;

(B) installation, repair, or replacement of a residential or commercial gas appliance or a combustion system on a Subsection (1)(h)(i) project must be performed by a person who has received certification under Subsection 58-55-308(2) except as otherwise provided in Subsection 58-55-308(2)(d) or 58-55-308(3);

- (C) installation, repair, or replacement of water-based fire protection systems on a Subsection (1)(h)(i) project must be performed by a licensed fire suppression systems contractor or a licensed journeyman plumber;
- (D) work as an alarm business or company or as an alarm company agent shall be performed by a licensed alarm business or company or a licensed alarm company agent, except as otherwise provided in this chapter;
- (E) installation, repair, or replacement of an alarm system on a Subsection (1)(h)(i) project must be performed by a licensed alarm business or company or a licensed alarm company agent;
- (F) installation, repair, or replacement of a heating, ventilation, or air conditioning system (HVAC) on a Subsection (1)(h)(i) project must be performed by an HVAC contractor licensed by the division;
- (G) installation, repair, or replacement of a radon mitigation system or a soil depressurization system must be performed by a licensed contractor; and
- (H) if the total value of the project is greater than \$1,000, the person shall file with the division a one-time affirmation, subject to periodic reaffirmation as established by division rule, that the person has:
 - (I) public liability insurance in coverage amounts and form established by division rule; and
 - (II) if applicable, workers compensation insurance which would cover an employee of the person if that employee worked on the construction project;
- (i) a person practicing a specialty contractor classification or construction trade which the director does not classify by administrative rule as significantly impacting the public's health, safety, and welfare;
- (j) owners and lessees of property and persons regularly employed for wages by owners or lessees of property or their agents for the purpose of maintaining the property, are exempt from this chapter when doing work upon the property;
- (k)
 - (i) a person engaged in minor plumbing work that is incidental, as defined by the division by rule, to the replacement or repair of a fixture or an appliance in a residential or small commercial building, or structure used for agricultural use, as defined in Section 15A-1-202, provided that no modification is made to:
 - (A) existing culinary water, soil, waste, or vent piping; or
 - (B) a gas appliance or combustion system; and
 - (ii) except as provided in Subsection (1)(e), installation for the first time of a fixture or an appliance is not included in the exemption provided under Subsection (1)(k)(i);
- (l) a person who ordinarily would be subject to the plumber licensure requirements under this chapter when installing or repairing a water conditioner or other water treatment apparatus if the conditioner or apparatus:
 - (i) meets the appropriate state construction codes or local plumbing standards; and
 - (ii) is installed or repaired under the direction of a person authorized to do the work under an appropriate specialty contractor license;
- (m) a person who ordinarily would be subject to the electrician licensure requirements under this chapter when employed by:
 - (i) railroad corporations, telephone corporations or their corporate affiliates, elevator contractors or constructors, or street railway systems; or
 - (ii) public service corporations, rural electrification associations, or municipal utilities who generate, distribute, or sell electrical energy for light, heat, or power;

- (n) a person involved in minor electrical work incidental to a mechanical or service installation, including the outdoor installation of an above-ground, prebuilt hot tub;
- (o) a person who ordinarily would be subject to the electrician licensure requirements under this chapter but who during calendar years 2009, 2010, or 2011 was issued a specialty contractor license for the electrical work associated with the installation, repair, or maintenance of solar energy panels, may continue the limited electrical work for solar energy panels under a specialty contractor license;
- (p) a student participating in construction trade education and training programs approved by the commission with the concurrence of the director under the condition that:
 - (i) all work intended as a part of a finished product on which there would normally be an inspection by a building inspector is, in fact, inspected and found acceptable by a licensed building inspector; and
 - (ii) a licensed contractor obtains the necessary building permits;
- (q) a delivery person when replacing any of the following existing equipment with a new gas appliance, provided there is an existing gas shutoff valve at the appliance:
 - (i) gas range;
 - (ii) gas dryer;
 - (iii) outdoor gas barbecue; or
 - (iv) outdoor gas patio heater;
- (r) a person performing maintenance on an elevator as defined in Section 58-55-102, if the maintenance is not related to the operating integrity of the elevator; and
- (s) an apprentice or helper of an elevator mechanic licensed under this chapter when working under the general direction of the licensed elevator mechanic.

(2) A compliance agency as defined in Section 15A-1-202 that issues a building permit to a person requesting a permit as a sole owner of property referred to in Subsection (1)(d) shall notify the division, in writing or through electronic transmission, of the issuance of the permit.

Amended by Chapter 339, 2020 General Session

58-55-306 Financial responsibility.

- (1) An applicant for licensure as a contractor, and a licensee applying for renewal or reinstatement of a contractor's license shall demonstrate to the division and the commission the applicant's or licensee's financial responsibility before the issuance of or the renewal or reinstatement of a license by:
 - (a)
 - (i) completing a questionnaire developed by the division; and
 - (ii) signing the questionnaire, certifying that the information provided is true and accurate; or
 - (b) submitting a bond in an amount and form determined by the commission with the concurrence of the director.
- (2) A licensee, including an individual who holds an ownership interest in an unincorporated entity licensee, shall maintain financial responsibility throughout the period of licensure.
- (3) The division may audit the financial responsibility of an applicant or licensee on a random basis or upon finding of a reasonable need.
- (4) The burden to demonstrate financial responsibility is upon the applicant, licensee, or owner of an unincorporated entity licensee, as the case may be.
- (5) (a) In determining the financial responsibility of an applicant or licensee described in Subsection (1) that is an unincorporated entity, the division:

- (i) shall consider the personal financial information of each individual who holds an ownership interest in the unincorporated entity; and
- (ii) may, at any time:
 - (A) audit the personal financial information of any individual who holds an ownership interest in the unincorporated entity; or
 - (B) request and obtain a credit report on the individual.

(b) If, based on the personal financial information of one or more individuals who hold an ownership interest in the unincorporated entity, the division determines that the applicant or licensee lacks financial responsibility to engage successfully in business as a contractor, the division may:

- (i) prohibit the individual or individuals from engaging in a construction trade;
- (ii) prohibit the applicant or licensee from engaging in a construction trade, unless the individual or individuals dissociate from the applicant or licensee within 10 days after the division makes the determination of a lack of financial responsibility; or
- (iii) require the individual or individuals, applicant, or licensee to submit a bond that is in a form determined by the commission with the concurrence of the director and in an amount that is:
 - (A) determined by the commission with the concurrence of the director; or
 - (B) 20% of the annual gross distributions from the unincorporated entity to its owners and that includes coverage for unpaid obligations incurred by the licensee contractor and any failure of the licensee contractor owners to pay income taxes and self-employment taxes on the gross distributions from the unincorporated entity to its owners.

Amended by Chapter 57, 2013 General Session

58-55-307 Confidentiality of records and reports.

- (1) Credit reports, financial statements, and other information submitted to the division by or at the request and direction of an applicant or licensee for the purpose of supporting a representation of financial responsibility:
 - (a) constitute protected records under Title 63G, Chapter 2, Government Records Access and Management Act; and
 - (b) notwithstanding Subsection (1)(a), may be considered by the commission in a public meeting, unless the owner of the information requests that the meeting be closed to the public in accordance with Title 52, Chapter 4, Open and Public Meetings Act.
- (2) Notwithstanding the provisions of Title 63G, Chapter 2, Government Records Access and Management Act, the records described in Subsection (1) are not open for public inspection and are not subject to discovery in civil or administrative proceedings.

Amended by Chapter 238, 2016 General Session

58-55-308 Scope of practice -- Installation, repair, maintenance, or replacement of gas appliance, combustion system, or automatic fire sprinkler system -- Rules.

- (1)
 - (a) The commission, with the concurrence of the director, may adopt reasonable rules pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to define and limit the scope of practice and operating standards of the classifications and subclassifications licensed under this chapter in a manner consistent with established practice in the relevant industry.
 - (b) The commission and the director may limit the field and scope of operations of a licensee under this chapter in accordance with the rules and the public health, safety, and welfare,

based on the licensee's education, training, experience, knowledge, and financial responsibility.

(2)

- (a) The work and scope of practice covered by this Subsection (2) and Subsection (3) is the installation, repair, maintenance, cleaning, or replacement of a residential or commercial gas appliance or combustion system.
- (b) The provisions of this Subsection (2) apply to any:
 - (i) licensee under this chapter whose license authorizes the licensee to perform the work described in Subsection (2)(a); and
 - (ii) person exempt from licensure under Section 58-55-305.
- (c) Any person described in Subsection (2)(b) that performs work described in Subsection (2)(a):
 - (i) must first receive training and certification as specified in rules adopted by the commission, with the concurrence of the director, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and
 - (ii) shall ensure that any employee authorized under other provisions of this chapter to perform work described in Subsection (2)(a) has first received training and certification as specified in rules adopted by the division.
- (d) The division may exempt from the training requirements adopted under Subsection (2)(c) a person that has adequate experience, as determined by the division.

(3) The division may exempt the following individuals from the certification requirements adopted under Subsection (2)(c):

- (a) a person who has passed a test equivalent to the level of testing required by the division for certification, or has completed an apprenticeship program that teaches the installation of gas line appliances and is approved by the Federal Bureau of Apprenticeship Training; and
- (b) a person working under the immediate one-to-one supervision of a certified natural gas technician or a person exempt from certification.

(4)

- (a) The work and scope of practice covered by this Subsection (4) is the installation, repair, maintenance, or replacement of an automatic fire sprinkler system.
- (b) The provisions of this Subsection (4) apply to an individual acting as a qualifier for a business entity in accordance with Section 58-55-304, where the business entity seeks to perform the work described in Subsection (4)(a).
- (c) Before a business entity described in Subsection (4)(b) may perform the work described in Subsection (4)(a), the qualifier for the business entity shall:
 - (i) be a licensed general building contractor; or
 - (ii) obtain a certification in fire sprinkler fitting from the division by providing evidence to the division that the qualifier has met the following requirements:
 - (A) completing a Department of Labor federally approved apprentice training program or completing two-years experience under the immediate supervision of a licensee who has obtained a certification in fire sprinkler fitting; and
 - (B) passing the Star fire sprinklerfitting mastery examination offered by the National Inspection Testing and Certification Corporation or an equivalent examination approved by the division.
- (d) The division may also issue a certification in fire sprinkler fitting to a qualifier for a business entity who has received training and experience equivalent to the requirements of Subsection (4)(c), as specified in rules adopted by the commission, with the concurrence of the director, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(5) This section does not prohibit a licensed specialty contractor from accepting and entering into a contract involving the use of two or more crafts or trades if the performance of the work in the crafts or trades, other than that in which the contractor is licensed, is incidental and supplemental to the work for which the contractor is licensed.

Amended by Chapter 339, 2020 General Session

58-55-308.1 Definitions -- Installation of natural gas facilities -- Scope of practice.

(1) As used in this section:

- (a) "Gas corporation" is as defined in Section 54-2-1.
- (b) "Minimum system" means the minimum natural gas facilities necessary to serve each intended consumer, as determined by a gas corporation.
- (c)
 - (i) "Natural gas facilities" means:
 - (A) one or more natural gas mains;
 - (B) one or more natural gas service lines; or
 - (C) a combination of Subsections (1)(c)(i)(A) and (B); and
 - (ii) "Natural gas facilities" includes any necessary appurtenant facilities.
- (d)
 - (i) "Natural gas main" means a natural gas distribution pipeline that delivers natural gas to another natural gas distribution supply line or to a natural gas service line.
 - (ii) "Natural gas main" does not include a natural gas service line.
- (e) "Natural gas service line" means a natural gas pipeline that carries natural gas from a natural gas main to a meter for use by the ultimate consumer.
- (f) "Natural gas tariff specifications" means the standards and specifications:
 - (i) for the construction of natural gas facilities; and
 - (ii) that are:
 - (A) established by a gas corporation; and
 - (B) included in the gas corporation's tariff that is approved by the Public Service Commission.
- (g) "Qualifying installer" means a person who:
 - (i) a gas corporation approves to install natural gas facilities; and
 - (ii) is:
 - (A) licensed under this chapter; and
 - (B) authorized to install natural gas facilities within the person's scope of practice as established by statute or administrative rule.

(2) A qualifying installer may install natural gas facilities.

(3)

- (a) Except as provided in Subsections (3)(b) and (c), a qualifying installer shall pay the costs to install natural gas facilities.
- (b) A gas corporation shall pay the costs of the following services related to natural gas facilities installed by a qualifying installer:
 - (i) engineering;
 - (ii) inspection;
 - (iii) mapping; and
 - (iv) locating.
- (c) If a gas corporation requires a qualifying installer to install natural gas facilities that are greater than the minimum system, the gas corporation shall pay any difference in cost between the required natural gas facilities and the minimum system.

- (4) A gas corporation shall inspect and test natural gas facilities that a qualifying installer installs to verify that the natural gas facilities comply with applicable federal, state, and local law and natural gas tariff specifications.
- (5) A gas corporation is not required to supply natural gas to or accept ownership of natural gas facilities until the gas corporation completes all necessary inspections and testing to verify that the natural gas facilities have been installed and tested in compliance with applicable federal, state, and local law and natural gas tariff specifications.

Enacted by Chapter 326, 2014 General Session

58-55-310 Requirements when working for political subdivision or state agency.

Each political subdivision and agency of the state and each board of education which requires the issuance of a permit or license as a precondition to the construction, alteration, improvement, demolition, or other repairs for which a contractor's license is also required under this chapter shall:

- (1) require that each applicant for a permit or license file a signed statement that the applicant has a current contractor's license with the license number included in the application;
- (2) require that any representation of exemption from the contractor's licensing law be included in the signed statement and that if that exempt person, firm, corporation, association, or other organization intends to hire a contractor to perform any work under the permit or license, that the license number of that contractor be included in the application, but if a contractor has not been selected at the time of the application for a permit or license, the permit or license shall be issued only on the condition that a currently licensed contractor will be selected and that the license number of the contractor will be given to the issuing public body and displayed on the permit or license;
- (3) require that, upon issuance of a permit or license, the contractor affix the contractor's license number to that permit or license for public display; and
- (4) require the contractor to provide proof that the contractor provides workers' compensation insurance, pays into the unemployment insurance fund, provides health insurance as required under federal or state law, and withholds applicable taxes from worker pay.

Amended by Chapter 57, 2013 General Session

58-55-311 Evidence of licensure.

An individual licensed as an alarm company agent shall:

- (1) carry a copy of the individual's license on the individual's person at all times while acting as a licensee;
- (2) display the license upon the request of a peace officer, a representative of the division, or a representative of a customer of the alarm company.

Renumbered and Amended by Chapter 317, 2000 General Session

58-55-312 Interim and temporary permits for alarm company agents.

- (1) Upon receipt of a complete application for licensure in accordance with Section 58-55-302, an applicant for licensure as an alarm company agent may be issued:
 - (a) an interim permit; or
 - (b) subject to Subsection (3), a temporary permit.
- (2)

- (a) Each interim permit shall expire 90 days after it is issued or on the date on which the applicant is issued a license, whichever is earlier.
- (b) The division may reissue an interim permit if the delay in approving a license is beyond the control or influence of the interim permit holder.

(3)

- (a) The division may issue a temporary permit to an applicant for a license as an alarm company agent if:
 - (i) the division has received a background check on the applicant from the Bureau of Criminal Identification;
 - (ii) (A) the applicant is or will be employed at a call center, office, or administrative facility of an alarm company; and
 - (B) the applicant's only contact with a customer or potential customer of the alarm company is:
 - (I) from the call center, office, or administrative facility; and
 - (II) by telephone or other remote communication method; and
 - (iii) the alarm company by which the applicant is or will be employed affirms in writing to the division that the applicant, if issued a temporary license, will act only within the scope of the temporary license, as provided in Subsection (3)(a)(ii).
- (b) A temporary license under this section expires the earliest of:
 - (i) 90 days after it is issued;
 - (ii) the date on which the individual to whom the temporary license is issued leaves the employment of the alarm company that employs the individual at the time the temporary license is issued; and
 - (iii) the date on which the division issues a regular license to the applicant or denies the applicant's application.

(4) An interim permit holder may engage in the scope of an alarm company agent.

Amended by Chapter 387, 2010 General Session

Part 4 **License Denial and Discipline**

58-55-401 Grounds for denial of license and disciplinary proceedings.

- (1) In accordance with Section 58-1-401, the division may:
 - (a) refuse to issue a license to an applicant;
 - (b) refuse to renew the license of a licensee;
 - (c) revoke the right of a licensee to recover from the Residence Lien Recovery Fund created by Section 38-11-201;
 - (d) revoke, suspend, restrict, or place on probation the license of a licensee;
 - (e) issue a public or private reprimand to a licensee; and
 - (f) issue a cease and desist order.
- (2) In addition to an action taken under Subsection (1), the division may take an action described in Subsection 58-1-401(2) in relation to a license as a contractor, if:
 - (a) the applicant or licensee is an unincorporated entity; and

- (b) an individual who holds an ownership interest in or is the qualifier under Section 58-55-304 of the applicant or licensee engages in:
 - (i) unlawful conduct as described in Section 58-55-501; or
 - (ii) unprofessional conduct as described in Section 58-55-502.

Amended by Chapter 339, 2020 General Session

58-55-402 Investigation of regulated activity.

- (1) The division shall be responsible for the investigation of persons and activities in violation of the provisions of this chapter.
- (2)
 - (a) Investigation by the division shall include investigations of:
 - (i) licensees engaged in unlawful or unprofessional conduct; and
 - (ii) unlicensed persons engaged in the conduct of activity or work regulated under this chapter and for which a license is required.
 - (b)
 - (i) As used in this Subsection (2)(b), "sign contractor":
 - (A) means a sign installation contractor or nonelectrical outdoor advertising sign contractor, as classified and defined in division rules; and
 - (B) does not include a sign installation contractor or nonelectrical outdoor advertising sign contractor, as classified and defined in division rules, that is subject to Title 72, Chapter 7, Part 5, Utah Outdoor Advertising Act.
 - (ii) The division shall maintain a record of the number of unlicensed persons found to have engaged each year in the conduct of activity or work regulated under this chapter for which a license as a sign contractor is required, including the location where a violation occurred.
- (3) The division shall decline to proceed with investigation of the violation of any provisions of this chapter if the division finds there is no apparent material jeopardy to the public health, safety, and welfare.
- (4) The division shall have no responsibility for the inspection of construction work performed in the state to determine compliance with applicable codes, or industry and workmanship standards, except as provided in Subsections 58-1-501(2)(g), 58-55-502(2), (3), and (4), and 58-55-501(16).
- (5) Authorized representatives of the division shall be permitted to enter upon the premises or site of work regulated under this chapter for the purpose of determining compliance with the provisions of this chapter.

Amended by Chapter 195, 2011 General Session

58-55-403 Minimum time for division action.

The division has at least five working days after receiving an application for licensure to determine whether to issue a license under this chapter.

Amended by Chapter 233, 2000 General Session

Part 5
Unlawful and Unprofessional Conduct - Penalties

58-55-501 Unlawful conduct.

Unlawful conduct includes:

- (1) engaging in a construction trade, acting as a contractor, an alarm business or company, or an alarm company agent, or representing oneself to be engaged in a construction trade or to be acting as a contractor in a construction trade requiring licensure, unless the person doing any of these is appropriately licensed or exempted from licensure under this chapter;
- (2) acting in a construction trade, as an alarm business or company, or as an alarm company agent beyond the scope of the license held;
- (3) hiring or employing a person who is not licensed under this chapter to perform work on a project, unless the person:
 - (a) is an employee of a person licensed under this chapter for wages; and
 - (b) is not required to be licensed under this chapter;
- (4) applying for or obtaining a building permit either for oneself or another when not licensed or exempted from licensure as a contractor under this chapter;
- (5) issuing a building permit to any person for whom there is no evidence of a current license or exemption from licensure as a contractor under this chapter;
- (6) applying for or obtaining a building permit for the benefit of or on behalf of any other person who is required to be licensed under this chapter but who is not licensed or is otherwise not entitled to obtain or receive the benefit of the building permit;
- (7) failing to obtain a building permit when required by law or rule;
- (8) submitting a bid for any work for which a license is required under this chapter by a person not licensed or exempted from licensure as a contractor under this chapter;
- (9) willfully or deliberately misrepresenting or omitting a material fact in connection with an application to obtain or renew a license under this chapter;
- (10) allowing one's license to be used by another except as provided by statute or rule;
- (11) doing business under a name other than the name appearing on the license, except as permitted by statute or rule;
- (12) if licensed as a contractor in the electrical trade or plumbing trade, journeyman plumber, residential journeyman plumber, journeyman electrician, master electrician, or residential electrician, failing to directly supervise an apprentice under one's supervision or exceeding the number of apprentices one is allowed to have under the contractor's supervision;
- (13) if licensed as a contractor or representing oneself to be a contractor, receiving any funds in payment for a specific project from an owner or any other person, which funds are to pay for work performed or materials and services furnished for that specific project, and after receiving the funds to exercise unauthorized control over the funds by failing to pay the full amounts due and payable to persons who performed work or furnished materials or services within a reasonable period of time;
- (14) employing an unlicensed alarm business or company or an unlicensed individual as an alarm company agent, except as permitted under the exemption from licensure provisions under Section 58-1-307;
- (15) if licensed as an alarm company or alarm company agent, filing with the division fingerprint cards for an applicant which are not those of the applicant, or are in any other way false or fraudulent and intended to mislead the division in its consideration of the applicant for licensure;
- (16) if licensed under this chapter, willfully or deliberately disregarding or violating:
 - (a) the building or construction laws of this state or any political subdivision;
 - (b) the safety and labor laws applicable to a project;
 - (c) any provision of the health laws applicable to a project;

- (d) the workers' compensation insurance laws of the state applicable to a project;
- (e) the laws governing withholdings for employee state and federal income taxes, unemployment taxes, Social Security payroll taxes, or other required withholdings; or
- (f) reporting, notification, and filing laws of this state or the federal government;
- (17) engaging in the construction trade or as a contractor for the construction of residences of up to two units when not currently registered or exempt from registration as a qualified beneficiary under Title 38, Chapter 11, Residence Lien Restriction and Lien Recovery Fund Act;
- (18) failing, as an original contractor, as defined in Section 38-11-102, to include in a written contract the notification required in Section 38-11-108;
- (19) wrongfully filing a preconstruction or construction lien in violation of Section 38-1a-308;
- (20) if licensed as a contractor, not completing the approved continuing education required under Section 58-55-302.5;
- (21) an alarm company allowing an employee with a temporary license under Section 58-55-312 to engage in conduct on behalf of the company outside the scope of the temporary license, as provided in Subsection 58-55-312(3)(a)(ii);
- (22) an alarm company agent under a temporary license under Section 58-55-312 engaging in conduct outside the scope of the temporary license, as provided in Subsection 58-55-312(3)(a)(ii);
- (23)
 - (a) an unincorporated entity licensed under this chapter having an individual who owns an interest in the unincorporated entity engage in a construction trade in Utah while not lawfully present in the United States; or
 - (b) an unincorporated entity providing labor to an entity licensed under this chapter by providing an individual who owns an interest in the unincorporated entity to engage in a construction trade in Utah while not lawfully present in the United States;
- (24) an unincorporated entity failing to provide the following for an individual who engages, or will engage, in a construction trade in Utah for the unincorporated entity, or for an individual who engages, or will engage, in a construction trade in Utah for a separate entity for which the unincorporated entity provides the individual as labor:
 - (a) workers' compensation coverage:
 - (i) to the extent required by Title 34A, Chapter 2, Workers' Compensation Act, and Title 34A, Chapter 3, Utah Occupational Disease Act; or
 - (ii) that would be required under the chapters listed in Subsection (24)(a)(i) if the unincorporated entity were licensed under this chapter; and
 - (b) unemployment compensation in accordance with Title 35A, Chapter 4, Employment Security Act, for an individual who owns, directly or indirectly, less than an 8% interest in the unincorporated entity, as defined by rule made by the division in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;
- (25) the failure of a sign installation contractor or nonelectrical outdoor advertising sign contractor, as classified and defined in division rules, to:
 - (a) display the contractor's license number prominently on a vehicle that:
 - (i) the contractor uses; and
 - (ii) displays the contractor's business name; or
 - (b) carry a copy of the contractor's license in any other vehicle that the contractor uses at a job site, whether or not the vehicle is owned by the contractor;
- (26)

- (a) an unincorporated entity licensed under this chapter having an individual who owns an interest in the unincorporated entity engage in a construction trade in the state while the individual is using a Social Security number that does not belong to that individual; or
- (b) an unincorporated entity providing labor to an entity licensed under this chapter by providing an individual, who owns an interest in the unincorporated entity, to engage in a construction trade in the state while the individual is using a Social Security number that does not belong to that individual;
- (27) a contractor failing to comply with a requirement imposed by a political subdivision, state agency, or board of education under Section 58-55-310; or
- (28) failing to timely comply with the requirements described in Section 58-55-605.

Amended by Chapter 339, 2020 General Session

58-55-502 Unprofessional conduct.

Unprofessional conduct includes:

- (1) failing to establish, maintain, or demonstrate financial responsibility while licensed as a contractor under this chapter;
- (2) disregarding or violating through gross negligence or a pattern of negligence:
 - (a) the building or construction laws of this state or any political subdivision;
 - (b) the safety and labor laws applicable to a project;
 - (c) any provision of the health laws applicable to a project;
 - (d) the workers' compensation insurance laws of this state applicable to a project;
 - (e) the laws governing withholdings for employee state and federal income taxes, unemployment taxes, Social Security payroll taxes, or other required withholdings; or
 - (f) any reporting, notification, and filing laws of this state or the federal government;
- (3) any willful, fraudulent, or deceitful act by a licensee, caused by a licensee, or at a licensee's direction which causes material injury to another;
- (4) contract violations that pose a threat or potential threat to the public health, safety, and welfare including:
 - (a) willful, deliberate, or grossly negligent departure from or disregard for plans or specifications, or abandonment or failure to complete a project without the consent of the owner or the owner's duly authorized representative or the consent of any other person entitled to have the particular project completed in accordance with the plans, specifications, and contract terms;
 - (b) failure to deposit funds to the benefit of an employee as required under any written contractual obligation the licensee has to the employee;
 - (c) failure to maintain in full force and effect any health insurance benefit to an employee that was extended as a part of any written contractual obligation or representation by the licensee, unless the employee is given written notice of the licensee's intent to cancel or reduce the insurance benefit at least 45 days before the effective date of the cancellation or reduction;
 - (d) failure to reimburse the Residence Lien Recovery Fund as required by Section 38-11-207;
 - (e) failure to provide, when applicable, the information required by Section 38-11-108; and
 - (f) willfully or deliberately misrepresenting or omitting a material fact in connection with an application to claim recovery from the Residence Lien Recovery Fund under Section 38-11-204;
- (5) failing as an alarm company to notify the division of the cessation of performance of its qualifying agent, or failing to replace its qualifying agent as required under Section 58-55-304;
- (6) failing as an alarm company agent to carry or display a copy of the licensee's license as required under Section 58-55-311;

- (7) failing to comply with operating standards established by rule in accordance with Section 58-55-308;
- (8) an unincorporated entity licensed under this chapter having an individual who owns an interest in the unincorporated entity engage in a construction trade in Utah while not lawfully present in the United States;
- (9) an unincorporated entity failing to provide the following for an individual who engages, or will engage, in a construction trade in Utah for the unincorporated entity:
 - (a) workers' compensation coverage to the extent required by Title 34A, Chapter 2, Workers' Compensation Act, and Title 34A, Chapter 3, Utah Occupational Disease Act; and
 - (b) unemployment compensation in accordance with Title 35A, Chapter 4, Employment Security Act, for an individual who owns, directly or indirectly, less than an 8% interest in the unincorporated entity, as defined by rule made by the division in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; or
- (10) the failure of an alarm company or alarm company agent to inform a potential customer, before the customer's purchase of an alarm system or alarm service from the alarm company, of the policy of the county, city, or town within which the customer resides relating to priority levels for responding to an alarm signal transmitted by the alarm system that the alarm company provides the customer.

Amended by Chapter 170, 2011 General Session

Amended by Chapter 413, 2011 General Session

58-55-503 Penalty for unlawful conduct -- Citations.

- (1)
 - (a)
 - (i) A person who violates Subsection 58-55-308(2), Subsection 58-55-501(1), (2), (3), (4), (5), (6), (7), (9), (10), (12), (14), (15), (16)(e), (21), (22), (23), (24), (25), (26), (27), or (28), or Subsection 58-55-504(2), or who fails to comply with a citation issued under this section after it is final, is guilty of a class A misdemeanor.
 - (ii) As used in this section in reference to Subsection 58-55-504(2), "person" means an individual and does not include a sole proprietorship, joint venture, corporation, limited liability company, association, or organization of any type.
 - (b) A person who violates the provisions of Subsection 58-55-501(8) may not be awarded and may not accept a contract for the performance of the work.
- (2) A person who violates the provisions of Subsection 58-55-501(13) is guilty of an infraction unless the violator did so with the intent to deprive the person to whom money is to be paid of the money received, in which case the violator is guilty of theft, as classified in Section 76-6-412.
- (3) Grounds for immediate suspension of a licensee's license by the division and the commission include:
 - (a) the issuance of a citation for violation of Subsection 58-55-308(2), Section 58-55-501, or Subsection 58-55-504(2); and
 - (b) the failure by a licensee to make application to, report to, or notify the division with respect to any matter for which application, notification, or reporting is required under this chapter or rules adopted under this chapter, including:
 - (i) applying to the division for a new license to engage in a new specialty classification or to do business under a new form of organization or business structure;
 - (ii) filing a current financial statement with the division; and

(iii) notifying the division concerning loss of insurance coverage or change in qualifier.

(4)

(a)

(i) If upon inspection or investigation, the division concludes that a person has violated the provisions of Subsection 58-55-308(2), Subsection 58-55-501(1), (2), (3), (9), (10), (12), (14), (16)(e), (18), (20), (21), (22), (23), (24), (25), (26), (27), or (28), Subsection 58-55-504(2), or any rule or order issued with respect to these subsections, and that disciplinary action is appropriate, the director or the director's designee from within the division shall promptly issue a citation to the person according to this chapter and any pertinent rules, attempt to negotiate a stipulated settlement, or notify the person to appear before an adjudicative proceeding conducted under Title 63G, Chapter 4, Administrative Procedures Act.

(ii) A person who is in violation of the provisions of Subsection 58-55-308(2), Subsection 58-55-501(1), (2), (3), (9), (10), (12), (14), (16)(e), (18), (20), (21), (22), (23), (24), (25), (26), (27), or (28), or Subsection 58-55-504(2), as evidenced by an uncontested citation, a stipulated settlement, or by a finding of violation in an adjudicative proceeding, may be assessed a fine pursuant to this Subsection (4) and may, in addition to or in lieu of, be ordered to cease and desist from violating Subsection 58-55-308(2), Subsection 58-55-501(1), (2), (3), (9), (10), (12), (16)(e), (18), (20), (21), (24), (25), (26), (27), or (28), or Subsection 58-55-504(2).

(iii) Except for a cease and desist order, the licensure sanctions cited in Section 58-55-401 may not be assessed through a citation.

(b)

(i) A citation shall be in writing and describe with particularity the nature of the violation, including a reference to the provision of the chapter, rule, or order alleged to have been violated.

(ii) A citation shall clearly state that the recipient must notify the division in writing within 20 calendar days of service of the citation if the recipient wishes to contest the citation at a hearing conducted under Title 63G, Chapter 4, Administrative Procedures Act.

(iii) A citation shall clearly explain the consequences of failure to timely contest the citation or to make payment of any fines assessed by the citation within the time specified in the citation.

(c) A citation issued under this section, or a copy of a citation, may be served upon a person upon whom a summons may be served:

(i) in accordance with the Utah Rules of Civil Procedure;

(ii) personally or upon the person's agent by a division investigator or by a person specially designated by the director; or

(iii) by mail.

(d)

(i) If within 20 calendar days after the day on which a citation is served, the person to whom the citation was issued fails to request a hearing to contest the citation, the citation becomes the final order of the division and is not subject to further agency review.

(ii) The period to contest a citation may be extended by the division for cause.

(e) The division may refuse to issue or renew, suspend, revoke, or place on probation the license of a licensee who fails to comply with a citation after the citation becomes final.

(f) The failure of an applicant for licensure to comply with a citation after the citation becomes final is a ground for denial of license.

(g) A citation may not be issued under this section after the expiration of one year following the date on which the violation that is the subject of the citation is reported to the division.

(h)

- (i) Except as provided in Subsections (4)(h)(ii) and (5), the director or the director's designee shall assess a fine in accordance with the following:
 - (A) for a first offense handled pursuant to Subsection (4)(a), a fine of up to \$1,000;
 - (B) for a second offense handled pursuant to Subsection (4)(a), a fine of up to \$2,000; and
 - (C) for any subsequent offense handled pursuant to Subsection (4)(a), a fine of up to \$2,000 for each day of continued offense.
- (ii) Except as provided in Subsection (5), if a person violates Subsection 58-55-501(16)(e) or (28), the director or the director's designee shall assess a fine in accordance with the following:
 - (A) for a first offense handled pursuant to Subsection (4)(a), a fine of up to \$2,000;
 - (B) for a second offense handled pursuant to Subsection (4)(a), a fine of up to \$4,000; and
 - (C) for any subsequent offense handled pursuant to Subsection (4)(a), a fine of up to \$4,000 for each day of continued offense.

(i)

- (i) For purposes of issuing a final order under this section and assessing a fine under Subsection (4)(h), an offense constitutes a second or subsequent offense if:
 - (A) the division previously issued a final order determining that a person committed a first or second offense in violation of Subsection 58-55-308(2), Subsection 58-55-501(1), (2), (3), (9), (10), (12), (14), (16)(e), (18), (23), (24), (25), (26), (27), or (28), or Subsection 58-55-504(2); or
 - (B)
 - (I) the division initiated an action for a first or second offense;
 - (II) a final order has not been issued by the division in the action initiated under Subsection (4)(i)(i)(B)(I);
 - (III) the division determines during an investigation that occurred after the initiation of the action under Subsection (4)(i)(i)(B)(I) that the person committed a second or subsequent violation of the provisions of Subsection 58-55-308(2), Subsection 58-55-501(1), (2), (3), (9), (10), (12), (14), (16)(e), (18), (19), (23), (24), (25), (26), (27), (28), or Subsection 58-55-504(2); and
 - (IV) after determining that the person committed a second or subsequent offense under Subsection (4)(i)(i)(B)(III), the division issues a final order on the action initiated under Subsection (4)(i)(i)(B)(I).
- (ii) In issuing a final order for a second or subsequent offense under Subsection (4)(i)(i), the division shall comply with the requirements of this section.
- (j) In addition to any other licensure sanction or fine imposed under this section, the division shall revoke the license of a licensee that violates Subsection 58-55-501(23) or (24) two or more times within a 12-month period, unless, with respect to a violation of Subsection 58-55-501(23), the licensee can demonstrate that the licensee successfully verified the federal legal working status of the individual who was the subject of the violation using a status verification system, as defined in Section 13-47-102.
- (k) For purposes of this Subsection (4), a violation of Subsection 58-55-501(23) or (24) for each individual is considered a separate violation.

(5) If a person violates Section 58-55-501, the division may not treat the violation as a subsequent violation of a previous violation if the violation occurs five years or more after the day on which the person committed the previous violation.

(6) If, after an investigation, the division determines that a person has committed multiple of the same type of violation of Section 58-55-501, the division may treat each violation as a separate violation of Section 58-55-501 and apply a penalty under this section to each violation.

(7)

- (a) A penalty imposed by the director under Subsection (4)(h) shall be deposited into the Commerce Service Account created by Section 13-1-2.
- (b) A penalty that is not paid may be collected by the director by either referring the matter to a collection agency or bringing an action in the district court of the county in which the person against whom the penalty is imposed resides or in the county where the office of the director is located.
- (c) A county attorney or the attorney general of the state shall provide legal assistance and advice to the director in an action to collect a penalty.
- (d) In an action brought to collect a penalty, the court shall award reasonable attorney fees and costs to the prevailing party.

Amended by Chapter 4, 2020 Special Session 5

58-55-504 Crane operators -- Required certification -- Penalty for violation.

(1) As used in this section:

- (a) "Commercial construction projects" means construction, alteration, repair, demolition, or excavation projects that do not involve:
 - (i) single family detached housing;
 - (ii) multifamily attached housing up to and including a fourplex; or
 - (iii) commercial construction of not more than two stories above ground.
- (b)
 - (i) "Crane operator" means an individual engaged in operating a crane, which for purposes of this section is a power-operated hoisting machine used in construction, demolition, or excavation work that has a power-operated winch, load-line, and boom moving laterally by the rotation of the machine on a carrier.
 - (ii) It does not include operating a fork lift, digger derrick truck, aircraft, bucket truck, knuckle boom, side boom, mechanic's truck, or a vehicle or machine not using a power-operated winch and load-line.

(2)

- (a) In order to operate a crane on commercial construction projects, an individual shall be certified as a crane operator by the National Commission for the Certification of Crane Operators or any other organization determined by the division to offer an equivalent testing and certification program that meets the requirements of the American Society of Mechanical Engineers ASME B 30.5 and the accreditation requirements of the National Commission for Certifying Agencies.
- (b) An individual who violates Subsection (2)(a) is guilty of a class A misdemeanor.
- (3) An individual engaged in construction or operation incidental to petroleum refining or electrical utility construction or maintenance is exempt from the crane operator certification requirement of Subsection (2)(a).

Amended by Chapter 98, 2007 General Session

Part 6 **Payment Provisions**

58-55-601 Payment -- Account designated.

When making any payment to a materialman, supplier, contractor, or subcontractor with whom he has a running account, or with whom he has more than one contract, or to whom he is otherwise indebted, the contractor shall designate the contract under which the payment is made or the items of account to which it is to be applied. When a payment for materials or labor is made to a subcontractor or materialman, the subcontractor or materialman shall demand of the person making the payment a designation of the account and the items of account to which the payment is to apply. In cases where a lien is claimed for materials furnished or labor performed by a subcontractor or materialman, it is a defense to the claim that a payment was made by the owner to the contractor for the materials and was so designated and paid over to the subcontractor or materialman, if when the payment was received by the subcontractor or materialman, he did not demand a designation of the account and of the items of account to which the payment was to be applied.

Renumbered and Amended by Chapter 181, 1994 General Session

58-55-602 Payment of construction funds -- Interest.

- (1) All unpaid construction funds are payable to the contractor as provided in Section 13-8-5.
- (2) On projects involving multiple buildings, each building shall be considered individually in determining the amount to be paid the contractor.
- (3) Partial occupancy of a building requires payment in direct proportion to the value of the part of the building occupied.
- (4) If any payment is retained or withheld, it shall be retained or withheld and released as provided in Section 13-8-5.

Amended by Chapter 365, 1999 General Session

58-55-603 Payment to subcontractors and suppliers.

- (1) When a contractor receives any construction funds from an owner or another contractor for work performed and billed, he shall pay each of his subcontractors and suppliers in proportion to the percentage of the work they performed under that billing, unless otherwise agreed by contract.
- (2) If, under this section and without reasonable cause, or unless otherwise agreed by contract, the contractor fails to pay for work performed by his subcontractors or suppliers within 30 consecutive days after receiving construction funds from the owner or another contractor for work performed and billed, or after the last day payment is due under the terms of the billing, whichever is later, he shall pay to the subcontractor or supplier, in addition to the payment, interest in the amount of 1% per month of the amount due, beginning on the day after payment is due, and reasonable costs of any collection and attorney's fees.
- (3) When a subcontractor receives any construction payment under this section, Subsections (1) and (2) apply to that subcontractor.

Renumbered and Amended by Chapter 181, 1994 General Session

58-55-604 Proof of licensure to maintain or commence action.

A contractor or alarm business or company may not act as agent or commence or maintain any action in any court of the state for collection of compensation for performing any act for which a license is required by this chapter without alleging and proving that the licensed contractor or alarm business or company was appropriately licensed when the contract sued upon was entered into, and when the alleged cause of action arose.

Amended by Chapter 377, 2008 General Session

58-55-605 Pay statement required.

- (1) On the day on which a person licensed under this chapter pays an individual for work that the individual performed, the person shall give the individual a written or electronic pay statement that states:
 - (a) the individual's name;
 - (b) the individual's base rate of pay;
 - (c) the dates of the pay period for which the individual is being paid;
 - (d) if paid hourly, the number of hours the individual worked during the pay period;
 - (e) the amount of and reason for any money withheld in accordance with state or federal law, including:
 - (i) state and federal income tax;
 - (ii) Social Security tax;
 - (iii) Medicare tax; and
 - (iv) court-ordered withholdings; and
 - (f) the total amount paid to the individual for that pay period.
- (2) A person licensed under this chapter shall:
 - (a) comply with the requirements described in Subsection (1) regardless of whether the licensee pays the individual by check, cash, or other means;
 - (b) retain a copy of each pay statement described in Subsection (1) for at least three years after the day on which the person gives a copy of the pay statement to the individual; and
 - (c) upon request, make the pay statement records described in this section available to the division for inspection.

Enacted by Chapter 188, 2014 General Session

R156. Commerce, Occupational and Professional Licensing.

R156-55a. Utah Construction Trades Licensing Act Rule.

R156-55a-101. Title.

This rule shall be known as the "Utah Construction Trades Licensing Act Rule".

R156-55a-102. Definitions.

In addition to the definitions in Title 58, Chapter 1, Division of Occupational and Professional Licensing Act, and Chapter 55, Utah Construction Trades Licensing Act, as defined or used in this rule:

- (1) "Construction trades instructor", as used in Subsection 58-55-301(2)(t) means the education facility that is issued the license under Subsection R156-55a-302e. It does not mean individuals employed by the facility who may teach classes.
- (2) "Construction trades instruction facility" means the facility that is granted the license as specified in Subsection 58-55-301(2)(t) and R156-55a-302e.
- (3) "Employee", as used in Subsections 58-55-102(13) and 58-55-102(18), means a person providing labor services in the construction trades who works for a licensed contractor, or the substantial equivalent of a licensed contractor as determined by the Division, for compensation who has federal and state taxes withheld and workers' compensation and unemployment insurance provided by the person's employer.
- (4) "Incidental", as used in Subsection 58-55-102(45), means work that:
 - (a) can be safely and competently performed by a specialty contractor;
 - (b) arises from, and is directly related to, work performed in the licensed specialty classification;
 - (c) does not exceed 10 percent of the overall contract; and
 - (d) does not include performance of any electrical or plumbing work.
- (5) "Maintenance" means the repair, replacement and refinishing of any component of an existing structure; but, does not include alteration or modification to the existing weight-bearing or structural components.
- (6) "Mechanical", as used in Subsections 58-55-102(22) and 58-55-102(35), means the work that may be performed by a contractor under Subsection R156-55a-301(2)(s).
- (7) "NASCLA" means the National Association of State Contractors Licensing Agencies.
- (8) "Personal property" means, as it relates to Title 58, Chapter 56, Building Inspector and Factory Built Housing Licensing Act, a structure that is titled by the Motor Vehicles Division, state of Utah, and taxed as personal property.
- (9) "Qualifier", as used in Title 58, Chapter 55, Utah Construction Trades Licensing Act, and this rule, means the individual who demonstrates competence for a contractor license by satisfying the requirements to obtain the contractor license.
- (10) "RMGA" means the Rocky Mountain Gas Association.
- (11) "School" means a school district, technical college, or accredited college.

R156-55a-103. Authority.

This rule is adopted by the Division under the authority of Subsections 58-1-106(1)(a) and 58-55-103(1)(b)(i) to enable the Division to administer Title 58, Chapter 55.

R156-55a-104. Organization - Relationship to Rule R156-1.

The organization of this rule and its relationship to Rule R156-1 is as described in Section R156-1-107.

R156-55a-301. License Classifications - Scope of Practice.

(1) In accordance with Subsection 58-55-301(2), the classifications of licensure are listed and described in this section. The contractor classifications listed are those determined to significantly impact the public health, safety, and welfare. A person engaged in work included in Subsections R156-55a-301(7) and (8) is exempt from licensure in accordance with Subsection 58-55-305(1)(i).

(2) Licenses shall be issued in the following primary classifications and subclassifications:

- (a) E100 - General Engineering Contractor. A contractor licensed to perform work under this Subsection (2)(a) as defined in Subsection 58-55-102(24). The scope of practice of a contractor under this Subsection (2)(a) includes the scope of practice of a contractor under Subsection (2)(b).
- (b) B100 - General Building Contractor. A contractor licensed to perform work under this Subsection (2)(b) as defined in Subsection 58-55-102(22). The scope of practice of a contractor under this Subsection (2)(b) includes the scope of practice of every specialty contractor in Subsection R156-55a-301(2) and includes the scope of practice under Subsection (2)(a).
- (c) B200 - Modular Unit Installation Contractor. A contractor under this Subsection (2)(c) may set up or install a modular unit as defined in Subsection 15A-1-302(8) and constructed in accordance with Section 15A-1-304. A contractor's scope of practice under this Subsection (2)(c):
 - (i) includes construction of the permanent or temporary foundations, placement of the modular unit on a permanent or temporary foundation, securing the units together, if required, and securing the modular units to the foundations; and
 - (ii) excludes installation of factory built housing and connection of required utilities.
- (d) R100 - Residential and Small Commercial Contractor. A contractor under this Subsection (2)(d) is licensed to perform work as defined in Subsection 58-55-102(35).

(e) R101 - Residential and Small Commercial Non Structural Remodeling and Repair. A contractor under this Subsection (2)(e) includes remodeling and repairing any existing structure built for support, shelter, and enclosure of persons, animals, chattels, or movable property of any kind, with the restriction that:

(i) no change is made to the bearing portions of the existing structure, including footings, foundation, and weight bearing walls; and

(ii) the entire project is less than \$50,000 in total cost, including materials and labor.

(f) R200 - Factory Built Housing Contractor. A contractor under this Subsection (2)(f) may disconnect, setup, install, or remove manufactured housing on a temporary or permanent basis.

(i) A contractor's scope of practice under this Subsection (2)(f) includes:

(A) placing the manufactured housing on a permanent or temporary foundation;

(B) securing the units together if required;

(C) securing the manufactured housing to the foundation;

(D) connecting the utilities from the near proximity, such as a meter, to the manufactured housing unit; and

(E) construction of foundations of less than four feet six inches in height;

(ii) A contractor's scope of practice under this Subsection (2)(f) excludes:

(A) preparation or finishing;

(B) excavation of the ground in the area where a foundation is to be constructed, back filling, and grading around the foundation;

(C) construction of foundations of more than four feet six inches in height; and

(D) construction of utility services from the utility source, to and including the meter or meters if required, or if not required to the near proximity of the manufactured housing unit from which they are connected to the unit.

(g) E200 - General Electrical Contractor. A contractor under this Subsection (2)(g) is licensed to perform work as defined in Subsection 58-55-102(23).

(h) E201 - Residential Electrical Contractor. A contractor under this Subsection (2)(h) is licensed to perform work as defined in Subsection 58-55-102(37).

(i) S202 - Solar Photovoltaic Contractor. A contractor's scope of practice under this Subsection (2)(i) includes fabrication, construction, installation, and replacement of photovoltaic modules and related components, subject to the following:

(i) wiring, connections, and wire methods as governed in the National Electrical Code and Subsection R156-55b-102(1) shall only be performed by a contractor under Subsection (2)(g) or a contractor under Subsection (2)(h); and

(ii) a contractor under Subsection (2)(i) may subcontract or hire a contractor under Subsection (2)(g) or a contractor under Subsection (2)(h).

(j) P200 - General Plumbing Contractor. A contractor licensed to perform work as defined in Subsection 58-55-102(25). A contractor's scope of practice under this Subsection (2)(j) includes the furnishing of materials, fixtures, and labor to extend service from a building out to the main water, sewer, or gas pipeline.

(k) P201 - Residential Plumbing Contractor. A contractor under this Subsection (2)(k) is licensed to perform work as defined in Subsection 58-55-102(42).

(l) S220 - Carpentry and Flooring Contractor. A contractor's scope of practice under this Subsection (2)(l) includes construction, fabrication, installation, placing, tying, welding, or repair using:

(i) wood, wood products, metal, aluminum, metal products, metal studs, vinyl materials, plastic, rubber, fiberglass, polyethylene, thermoplastic polymers, countertops, cabinets, millwork, garage doors, doors, trim, tub liners, wall systems, partitions, or other wood, plastic, rubber, or metal composite or any composite that is by custom and usage accepted in the building industry as carpentry for structural, non-structural, and finish purposes;

(ii) metal or steel structures and sheet metal, including metal cornices, marquees, metal soffits, flashings, skylights, and skydomes;

(iii) metal structural studs and bearing walls, reinforcing bars, erecting shapes, plates of any profile, perimeter cross-section that are used in structures, including riveting, welding, and rigging;

(iv) incidental concrete work and footings, grading, and surface preparation related to the scope of work of a contractor under Subsection (2)(l);

(v) laminate, tile, cement, wood, synthetic wood, or similar flooring product, including prefinished and unfinished material, sanding, staining and finishing of new and existing flooring, the underlayment, and subfloors; and

(vi) mechanical insulation of pipes, ducts, or conduits.

(m) S230 - Masonry, Siding, Stucco, Glass, and Rain Gutter Contractor. A contractor's scope of practice under this Subsection (2)(m) includes construction, fabrication, and installation of:

(i) siding, stucco, stucco to lathe, plaster, glass, glass substitutes, glass-holding members, rain gutters, drains, roof flashings, gravel stops, and metal ridges;

(ii) natural or synthetic stone, onyx, ceramic, granite, onice, corian, brick, block, forms, brick substitutes, clay, concrete blocks, terra-cotta, marble, tile, gypsum tile, glass block, clay tile, copings, plastic refractories, and castables; and

(iii) shower pans.

(n) S260 - Asphalt and Concrete Contractor. A contractor's scope of practice under this Subsection (2)(n) includes fabrication, construction, mixing, batching, injecting, spraying, resurfacing, sealing, and installation of asphalt, asphalt overlay, chip seal, fog seal, slurry seal, concrete, gunnite, grouting, coatings, sealant, and related concrete products along with the placing and setting of screeds for pavement for flatwork, the construction of forms, shoring material, placing and erection of bars for

reinforcing and application of plaster and other cement-related products. A contractor's scope of practice under this Subsection (2)(n) also includes:

- (i) excavation, grading, compacting, and laying of fill or other related base;
- (ii) painting or coating the surfaces, including striping, directional, and other types of symbols or letters; and
- (iii) fabrication, construction, and installation of forms and shoring material.

(o) S270 - Drywall, Paint, and Plastering Contractor. A contractor's scope of practice under this Subsection (2)(o) includes construction, installation, fabrication, and application of:

(i) drywall, gypsum, wallboard panels and assemblies, lightweight metal and non-bearing wall partitions, ceiling tile and panels, and the grid system required for placement;

(ii) insulating media in buildings and structures for temperature control, sound control, fireproofing, mechanical insulation of pipes, ducts, or conduits;

- (iii) stucco, stucco to lathe, plaster, and other surfaces; and

- (iv) paints, varnishes, shellacs, stains, waxes and other coatings or pigments.

(p) S280 - Roofing Contractor. A contractor's scope of practice under this Subsection (2)(p) includes:

(i) application and installation of asphalt, pitch, tar, felt, flax, shakes, shingles, roof tile, slate, and any other material or materials, or any combination of these materials that use and custom has established as usable for, or that are now used as, waterproof, weatherproof, or watertight seal or membranes for roofs and surfaces;

- (ii) any material attached to the roof;

- (iii) roof conversion;

- (iv) installation of non-electrical skylights;

- (v) installation of electrical skylights, if the electrical connection is performed by a contractor under Subsection (2)(g) or (2)(h);

(vi) installation of any insulating media in buildings and structures for the sole purpose of temperature control, sound control, fireproofing, and mechanical insulation of pipes, ducts, or conduits; and

- (vii) incidental work including the installation of a roof clamp ring to the roof drain.

(q) S310 - Foundation, Excavation, and Demolition Contractor. A contractor's scope of practice under this Subsection (2)(q) includes:

(i) moving of the earth's surface and rock or placing earthen materials on the earth's surface, by use of hand or power machinery and tools, including explosives, in any operation of cut, fill, excavation, grading, trenching, backfilling, smashing, crushing, or combination thereof as they are generally practiced in the construction trade;

(ii) excavation, drilling, compacting, pumping, sealing and other work necessary to construct, alter, or repair piers, piles, footings, and foundations placed in the earth's subsurface to prevent structural settling and to provide an adequate capacity to sustain or transmit the structural load to the soil or rock below; and

(iii) raising, cribbing, underpinning, moving, and removal of a building, structure, or matter appurtenant or incidental to any building or structure.

(r) S330 - Landscape and Recreation Contractor. A contractor's scope of practice under this Subsection (2)(r) includes the following:

- (i) The grading and preparing of land for architectural, horticultural, or decorative treatment.

- (ii) The arrangement, and planting of gardens, lawns, shrubs, vines, bushes, trees, or other decorative vegetation.

- (iii) construction, fabrication, and installation of:

(A) swimming pools, prefabricated pools, spas, decorative pools, tanks, fountains, sprinkler systems, and water distribution systems for artificial watering or irrigation, for systems that are not connected to the culinary water system, or that are connected to the culinary water system but separated from the culinary water system by a backflow prevention device, the contractor may connect the system to the backflow prevention device;

(B) metal fireboxes, fireplaces, and wood or coal-burning stoves, including the installation of venting and exhaust systems if the individual performing the installation is RMGA-certified;

(C) retaining walls except retaining walls that are intended to hold vehicles, structures, equipment or other non-natural fill materials within the area located within a 45 degree angle from the base of the retaining wall to the level of where the additional weight bearing vehicles, structures, equipment or other non-natural fill materials are located;

- (D) pergolas, patios, patio areas, and decking, including the deck structure and substructure;

(E) hothouses, greenhouses, walks, and garden lighting of class two or class three power-limited circuits as defined in the National Electrical Code;

- (F) flag poles, fences, guardrails, handrails, and barriers;

(G) sports and athletic courts, ranges, and fields including football fields, tennis courts, racquetball courts, handball courts, basketball courts, bowling alleys, shooting ranges, running tracks, playgrounds, playground equipment, rock climbing walls, or any similar court, field, surface, or related components; this includes poles, standards, surface painting or coatings, floors, floor subsurface, wall surface, perimeter walls, perimeter fencing, scoreboards, or other equipment; and

- (H) incidental concrete, excavation, or asphalt work related to the scope of practice under Subsection (2)(r).

(iv) A contractor's scope of practice under Subsection (2)(r) does not include any electrical or plumbing trade work. A contractor under Subsection (2)(r) may hire or subcontract with a contractor licensed under Subsections (2)(g) or (2)(h) or (2)(j) or (2)(k) for their projects.

(v) A contractor's scope of practice under Subsection (2)(r) does not include any natural gas-related work. A contractor under Subsection (2)(r) may hire or subcontract with an RMGA-certified licensed contractor for any natural gas-related work for their projects.

(vi) A contractor's scope of practice under Subsection (2)(r) includes the installation of a backflow preventer device if during each renewal period after initial licensure, the licensee completes at least two of their six continuing education hours pursuant to Section R156-55a-303b in continuing education related to backflow installation.

(s) S350 - HVAC Contractor. A contractor's scope of practice under this Subsection (2)(s) includes the following:

(i) The fabrication and installation of complete warm air heating, air conditioning and ventilating systems. (ii) The installation of refrigeration equipment, including built-in refrigerators, refrigerated rooms, insulated refrigerated spaces and other related equipment.

(iii) A contractor under Subsection (2)(s) shall hire or subcontract with an RMGA-certified licensed contractor for any gas-related work.

(iv) A contractor's scope of practice under Subsection (2)(s) does not include electrical or plumbing trade work. A contractor under Subsection (2)(s) may hire or subcontract with a contractor licensed under Subsections (2)(g) or (2)(h) for their projects.

(t) S354 - Radon Mitigation Contractor. A contractor's scope of practice under this Subsection (2)(t) includes the layout, fabrication, and installation of a radon mitigation system. A contractor's scope of practice under this Subsection (2)(t) does not include:

(i) work on heat recovery ventilation or makeup air components that must be performed by a contractor under Subsection (2)(s); or

(ii) electrical trade work that must be performed by a contractor licensed under Subsections (2)(g) or (2)(h).

(u) S370 - Fire Suppression Systems Contractor. A contractor's scope of practice under this Subsection (2)(u) includes the layout, fabrication, and installation of fire protection systems using water, steam, gas, or chemicals. If a potable sanitary water supply system is used as the source of supply, connection to the water system shall be accomplished by a contractor under Subsections (2)(j) or (2)(k). The scope of practice does not include installation of fire suppression systems in hoods above cooking appliances.

(v) S410 - Boiler, Pipeline, Waste Water, and Water Conditioner Contractor. A contractor's scope of practice under this Subsection (2)(v) includes the following:

(i) The fabrication, construction, and installation of:

(A) pipes, conduit, or cables for the conveyance and transmission from one station to another of such products as water, steam, gases except for natural gas which requires an RMGA certificate holder to conduct the work, chemicals, slurries, other substances, data or communications, geo-thermal systems, or solar thermal systems up to where the system interfaces with any other plumbing system;

(B) installation of above and below ground storage tanks, piping, dispensing equipment, monitoring equipment, and associated temperature-control or other equipment for any petroleum, petro-chemical, water, steam, chemicals, slurries, oil, gases except for natural gas which requires an RMGA certificate holder to conduct the work, or other substances;

(C) insulation of pipes, ducts, and conduits;

(D) excavation, cabling, horizontal boring, grading, trenching, and backfilling necessary for construction of any work related to the scope of practice under Subsection (2)(v);

(E) fire-tube and water-tube power boilers and hot water heating boilers, including fittings and piping, valves, gauges, pumps, radiators, converters, fuel oil tanks, fuel lines, chimney flues, heat insulation and other devices, apparatus, and equipment related thereto, in a system not connected to the culinary water system, or connected to the culinary water system but separated from the culinary water system by a backflow prevention device;

(F) water conditioning equipment and only such pipe and fittings as are necessary for connecting the water conditioning equipment to the water supply system within the premises;

(G) sewer, sewer lines, sewage disposal, septic tank, and drainage including excavation and grading with respect thereto, and the construction of sewage disposal plants and appurtenances thereto; and

(H) incidental excavation, backfill, concrete or asphalt work related to the scope of practice under Subsection (2)(v).

(ii) A contractor under Subsection (2)(v) shall hire or subcontract with an RMGA-certified licensed contractor for any natural gas-related work.

(iii) The installation of a backflow preventer device if during each renewal period after initial licensure, the licensee completes at least two of their six continuing education hours pursuant to Section R156-55a-303b in continuing education directly related to backflow installation.

(w) S440 - Sign Installation Contractor. A contractor's scope of practice under this Subsection (2)(w) includes installation of electrical or non-electrical signs and graphic displays that require installation permits or permission as issued by state or local governmental jurisdictions, subject to the following:

(i) "Signs and graphic displays" means any type of sign, including both lighted and unlighted, a permanent highway marker sign, an illuminated awning, an electronic message center, a sculpture or a graphic representation including a logo and trademark intended to identify or advertise the user or product, building trim or lighting with neon or decorative fixtures, and any other animated, moving or stationary device used for advertising or identification purposes.

(ii) "Non-electrical signs and graphics displays" means an outdoor sign that does not have electrical lighting or other electrical requirements, and that are fabricated, installed, and erected in accordance with professionally engineered specifications.

(iii) Signs and graphic displays shall be fabricated, installed and erected in accordance with professionally engineered specifications and wiring in accordance with the National Electrical Code.

(iv) The scope of practice under Subsection (2)(w) does not include electrical trade work. A contractor under this Subsection (2)(w) may hire or subcontract with a contractor licensed under Subsection (2)(g) for their projects.

(x) S510 - Elevator Contractor. A contractor's scope of practice under this Subsection (2)(x) includes erecting, constructing, installing, altering, servicing, repairing or maintaining an elevator.

(y) S700 - Limited Scope License Contractor. A contractor's limited scope license under this Subsection (2)(y) is a license that confines the scope of the allowable contracting work to a specialized area of construction.

(i) The Division may grant a license under Subsection (2)(y) on a case-by-case basis.

(ii) When applying for a license under Subsection (2)(y), an applicant shall submit to the Division the following:

(A) a detailed statement of the type and scope of contracting work that the applicant proposes to perform and an explanation why the scope of practice is not included in any other current classification; and

(B) any brochures, catalogs, photographs, diagrams, or other material to further clarify the scope of the work that the applicant proposes to perform.

(3)(a) A specialty license contractor, as defined in Subsection 58-55-102(45), shall be confined to the field and scope of work as outlined by the Division.

(b) A specialty license contractor may hire or subcontract with a specialty license contractor that holds the same classification as the hiring contractor.

(4)(a) A licensee may hold up to three specialty license classifications, in addition to any general contractor classifications, except that a contractor under Subsection (2)(e) may not have any other specialty classifications.

(b) A licensee may change classifications at any time by surrendering a classification, and by applying for any classification for which the licensee is qualified and as permitted by law.

(c) To qualify for licensure, an applicant for renewal or reinstatement shall surrender or replace the applicant's contractor classifications as needed to comply with Subsection (4)(a).

(5) Effective July 22, 2019:

(a) A contractor license that has the following contractor classification shall be converted to the corresponding classification in Table 1:

TABLE 1

Current Classification	Converted To
P202	S410
P204	S410
P205	S410
P206	S410
P207	S410
P203	S330
E202	S202
S221, S222	S220
S231	S230
S240	S230
S250	S270
S261, S262, S263	S260
S272, S273	S270
S290, S291, S292, S293, S294	S230
S300	S270
S320, S321, S322, S323	S220
S340	S220
S351, S352, S353	S350
S360	S350
S380	S330
S390	S410
S400	S260
S420, S421	S330
S430	S330
S441	S440
S450	S410
S460	S310
S470	S410
S480	S310
S490	S220
S491	S220
S500	S330
S600	S230
I101	E100
I102	B100
I103	E200
I104	P200
I105	S350

(6) A contractor's scope of practice for the following primary classifications includes the scope of practice stated in the descriptions for the following subclassifications and a licensee with the following primary classification may hire or subcontract with a licensee with an included subclassification:

TABLE 2

Primary Classification	Included sub classifications
B100	B200, R200
E200	E201, S202
P200	P201
S350	S354
S420	S421
S440	S441
S490	S491

(7) The following activities are determined to not significantly impact the public health, safety and welfare and therefore do not require a contractors license:

- (a) sandblasting;
- (b) pumping services;
- (c) tree stump or tree removal;
- (d) installation of a satellite dish or communication device on or within a building, including for phone, internet, or television;
- (e) installation of class two or class three power-limited circuits as defined in the National Electrical Code;
- (f) construction of utility sheds, gazebos, or other similar items that are personal property and not attached to:
 - (i) a residential or commercial building; or
 - (ii) a foundation;
- (g) building cleaning, sanitizing, and window washing, including power washing;
- (h) central vacuum systems installation;
- (i) concrete cutting;
- (j) interior decorating;
- (k) wall paper hanging;
- (l) installation of drapery, blinds, shutters, or other window coverings;
- (m) welding on personal property that is not attached;
- (n) chimney sweepers other than repairing masonry;
- (o) carpet, vinyl sheet tile, or vinyl plank floor installation;
- (p) artificial turf installation;
- (q) general cleanup of a construction site that does not include demolition or excavation;
- (r) installation or removal of weather-stripping but does not include moisture vapor barriers;
- (s) fabrication, installation, or removal of mirrors;
- (t) construction, installation, or removal of awnings and canopies, including attached or detached;
- (u) pallet racking, conveyors, conveyor belts, conveyor systems, or metal shelving, whether attached or detached to the structure, excluding plumbing and electrical trade work;
- (v) seismic strapping for pipes, appliances, and water heaters;
- (w) dustless blasting;
- (x) lock-smithing, including installation or repair of door locks, door access controls, or other door or cabinetry hardware;
- (y) yurt or membrane-covered frame structures as defined in Section 15A-1-204;
- (z) installation of art and artwork, including sculpture, that is not part of the structural components or a building or structure;
 - (aa) installation of standalone solar systems that do not tie into premises wiring or into the electrical utility; and
 - (bb) lawn aeration, fertilizing, power raking, and dethatching.

(8) The following activities are determined to not significantly impact the public health, safety and welfare beyond the regulations by other agencies, and therefore do not require a contractors license:

- (a) lead removal regulated by the Department of Environmental Quality;
- (b) asbestos removal regulated by the Department of Environmental Quality; and
- (c) fire alarm installation regulated by the Fire Marshal.

R156-55a-302a. Qualifications for Licensure - Examinations.

(1) In accordance with Subsection 58-55-302(1)(c), no examination is required for the qualifier of an applicant for licensure as a contractor except for the Utah Contractor Business and Law Examination for the classifications listed in Subsection 58-55-302(1)(c)(ii).

- (2) An applicant who fails an examination may retake the failed examination as follows:
 - (a) no sooner than 30 days following any failure, up to three failures; and
 - (b) no sooner than six months following any failure thereafter.

R156-55a-302b. Qualifications for Licensure - Experience Requirements.

(1) "Experience in the construction industry" as defined in Subsection 58-55-302(1)(e)(ii) is more broad in scope than the definition of "construction trades", and includes experience obtained:

- (a) in the construction industry regardless if paid as a W-2, or as an owner, and regardless of whether licensed or exempt;
- (b) while performing construction activities in the military or for a railroad corporation; or
- (c) under the supervision of a construction trades instructor as a part of an educational program.

(2)(a) "Two years full-time paid employment", as defined in Subsection 58-55-302(1)(e)(ii)(A), shall be a total of 4,000 hours paid employment.

- (b) The following shall satisfy the experience requirement in Subsection 58-55-302(1)(e)(ii)(A):
 - (i) a passing score on the NASCLA Accredited Examination for Commercial General Building Contractors;
 - (ii) a four-year bachelor's degree or a two-year associate's degree in Construction Management; or
 - (iii) a Utah professional engineer license.

R156-55a-302d. Qualifications for Licensure - Proof of Insurance and Registrations.

In accordance with Subsection 58-55-302(2)(b), an applicant for licensure shall submit proof of liability insurance by means of a certificate of insurance naming the Division as a certificate holder, that:

- (1) provides coverage for the scope of work performed;
- (2) is in force for the entire duration of active licensure; and
- (3) coverage amounts of at least \$100,000 for each incident and \$300,000 in total.

R156-55a-302e. Requirements for Construction Trades Instructors, Schools and Colleges.

In accordance with Subsection 58-55-302(1)(f), a school that provides instruction to students by engaging in the construction trade for the public as part of the instruction shall be a Utah licensed contractor with classification in the scope of practice in which the students are being instructed.

R156-55a-302f. Pre-licensure Education - Standards.

(1) The 25-hour pre-licensure course required by Subsection 58-55-302(1)(e)(iii) and the five-hour pre-licensure course required by Subsection 58-55-302(1)(e)(iv) shall be completed by the qualifier for a contractor license applicant.

- (a) Any approved 20-hour pre-licensure course completed by the qualifier before November 30, 2017 shall be accepted by the Division as satisfaction of the 25-hour and five-hour pre-licensure course requirements in Subsection 58-55-302(1)(e)(iii) and (iv).
- (b) Any approved 25-hour pre-license course completed by the qualifier before July 1, 2019 shall be accepted by the Division as satisfaction of the 25-hour and five-hour pre-license course requirements in Subsection 58-55-302(1)(e)(iii) and (iv).

(2) The 25-hour course may include a provider-administered exam at the end of the course for no additional fee, and shall include the following topics and hours of education relevant to the practice of the construction trades consistent with the laws and rules of this state:

- (a) 15 hours of financial responsibility instruction that includes the following:
 - (i) record keeping and financial statements;
 - (ii) payroll, including:
 - (A) payroll taxes;
 - (B) worker compensation insurance requirements;
 - (C) unemployment insurance requirements;
 - (D) professional employer organization alternatives;
 - (E) prohibitions regarding paying employees on 1099 forms as independent contractors, unless licensed or exempted;
 - (F) employee benefits; and
 - (G) Fair Labor Standard Act;
- (iii) cash flow;
- (iv) insurance requirements including auto, liability, and health; and
- (v) independent contractor licensure and exemption requirements;
- (b) six hours of construction business practices that includes the following:
 - (i) estimating and bidding;
 - (ii) contracts;
 - (iii) project management;
 - (iv) subcontractors; and
 - (v) suppliers;
- (c) two hours of regulatory requirements that includes the following:
 - (i) licensing laws;
 - (ii) Occupational Safety and Health Administration (OSHA);
 - (iii) Environmental Protection Agency (EPA); and
 - (iv) consumer protection laws; and

(d) two hours of mechanic lien fundamentals that include the State Construction Registry.

(3) The five-hour course shall include five hours of education on the topics covered in the Utah Contractor Business and Law examination. The five-hour course may include a provider-administered exam at the end of the course for no additional fee.

(4) An approved pre-licensure course provider shall offer the 25-hour and five-hour course:

- (a) at least 12 times per year;
- (b) shall comply with Subsection 58-55-102(7)(b); and
- (c) is not obligated to provide a course if the provider determines enrollment is not sufficient to breakeven on cost.

(5) The pre-licensure course shall meet the following standards:

- (a) Each hour of pre-licensure course credit shall consist of 50 minutes of education in the form of live lectures or training sessions. Time allowed for lunches or breaks may not be counted as part of the course time for which course credit is issued.
- (b) The learning objectives of the pre-licensure course shall be reasonably and clearly stated.
- (c) The pre-licensure course shall be presented in a competent and well-organized manner consistent with the stated purpose and objective of the program. The student shall demonstrate knowledge of the course material.
- (d) The pre-licensure course shall be prepared and presented by individuals who are qualified by education, training or experience.
- (e) Distance learning, internet courses, and home study courses are not allowed to meet pre-licensure course requirements.
- (f) The provider shall have a competent method of registration and verification of attendance of individuals who complete the pre-licensure education.
- (g) The provider shall provide or develop a pre-licensure course curriculum and study guide for the pre-licensure course, and have them pre-approved by the Commission and the Division prior to use.
- (h) The pre-licensure education course may be taught by live broadcast if:
- (i) the student and the instructor are able to see and hear each other; and
- (ii) a representative of the provider is at any remote location to monitor registration and attendance at the course.

(6) The pre-licensure course provider shall provide individuals completing the pre-licensure course a certificate that contains the following information:

- (a) the date of the pre-licensure course;
- (b) the name of the pre-licensure course provider;
- (c) the attendee's name;
- (d) verification of completion; and
- (e) the signature of the pre-licensure course provider.

(7) A pre-licensure course provider shall, within seven calendar days, submit directly to the Division verification of attendance and completion on behalf of persons attending and completing the program. This verification shall be submitted on forms approved by the Division.

(8) On a random basis, the Division or Commission may assign monitors at no charge to attend a pre-licensure course for the purpose of evaluating the course and the instructor.

(9) Each provider shall for a period of four years maintain adequate documentation as proof of compliance with this section and shall, upon request, make such documentation available for review by the Division or the Commission. Documentation shall include:

- (a) the dates of pre-licensure courses that have been completed;
- (b) registration and attendance logs of individuals who completed the pre-licensure course;
- (c) the names of instructors for each course provided as a part of the program; and
- (d) pre-licensure course handouts and materials.

(10) In accordance with Subsections 58-55-302(1)(e)(iii) and (iv), the following persons are not required to complete the pre-licensure course program requirements:

- (a) a person holding a four-year bachelor degree or a two-year associate degree in Construction Management from an accredited program;
- (b) a person holding an active and unrestricted Utah professional engineer license;
- (c) a person who is or has been a qualifier on an active and unrestricted Utah contractor license within the past five years; and
- (d) a person who qualifies for licensure by endorsement as a contractor pursuant to Section 58-1-302.

R156-55a-303a. Renewal Cycle - Procedures.

- (1) In accordance with Subsection 58-1-308(1), the renewal date for the two year renewal cycle applicable to licensees under Title 58, Chapter 55, Utah Construction Trades Licensing Act, is established by rule in Section R156-1-308a(1).
- (2) Renewal procedures shall be in accordance with Section R156-1-308c through R156-1-308l.
- (3) In accordance with Subsections 58-55-501(21) and 58-1-308(3)(b)(i) and Section 58-55-302.5, there is established a continuing education requirement for license renewal. Each licensee, or the licensee's qualifier, or an officer, director, or supervising individual, as designated by the licensee, shall comply with the continuing education requirements set forth in Section R156-55a-303b.

(4) Contractors shall renew their license in an online form approved by the Division, except as permitted by the Division in writing.

R156-55a-303b. Continuing Education - Standards.

(1) Pursuant to Section 58-55-302.5, each licensee shall complete six hours of continuing education during each two-year license term. A minimum of three hours shall be core education; the remaining three hours may be professional education or core education. A minimum of three hours shall consist of live in-class attendance; the remaining three hours may consist of distance learning courses.

(a) Regular attendance by a Commission member on the Construction Services Commission shall satisfy the member's continuing education requirements under Section 58-55-302.5.

(b) A contractor under Subsection R156-55a-301(2)(s) shall complete at least three of their six continuing education hours in continuing education directly related to the installation, repair, or replacement of a heating, ventilation, or air conditioning system.

(c) A contractor under Subsections R156-55a-301(2)(r) or R156-55a-301(2)(v) that performs installation of a backflow preventer device shall complete at least two of their six continuing education hours in continuing education directly related to backflow installation.

(d) Contractors with a renewal cycle that ends after January 1, 2020, shall complete at least one of their six continuing education hours in energy conservation.

(e) "Core continuing education" means education related to construction codes, construction laws, job site safety, OSHA 10 or OSHA 30 safety training, governmental regulations pertaining to the construction trades and employee verification and payment practices, finance, bookkeeping, energy conservation, and construction business practices.

(f) "Professional continuing education" means education related to substantive subjects dealing with the practice of the construction trades, including land development, land use, planning and zoning, professional development, arbitration practices, estimating, marketing techniques, servicing clients, personal and property protection for the licensee and the licensee's clients and similar topics.

(g) The following course subject matter is not acceptable as core education or professional education hours:

(i) mechanical office and business skills, such as typing, speed reading, memory improvement and report writing;

(ii) physical well-being or personal development, such as personal and business motivation, stress management, time management, dress for success, or similar subjects;

(iii) presentations by a supplier or a supplier representative to promote a particular product or line of products; and

(iv) meetings held in conjunction with the general business of the licensee or employer.

(h) The Division may defer or waive the continuing education requirements as provided in Section R156-1-308d.

(2) A continuing education course shall meet the following standards:

(a) Each hour of continuing education course credit shall consist of 50 minutes of education in the form of seminars, lectures, conferences, training sessions or distance learning modules. The remaining ten minutes is to allow for breaks.

(b) The course provider shall be among those specified in Subsection 58-55-302.5(2).

(c) The content of the course shall be relevant to the practice of the construction trades and consistent with the laws and rules of this state.

(d) The learning objectives of the course shall be reasonably and clearly stated.

(e) The course shall be presented in a competent, well organized and sequential manner consistent with the stated purpose and objective of the program.

(f) The course shall be prepared and presented by individuals who are qualified by education, training and experience.

(g) A course that is provided through Internet or home study may be recognized for continuing education if the course verifies registration and participation in the course by means of a test demonstrating that the participant has learned the material presented. Test questions shall be randomized for each participant. A home study course shall include no fewer than five variations of the final examination, distributed randomly to participants. Home study courses, including the five exam variations, shall be submitted in their entirety to the Division for review. Providers shall track the following:

(i) the amount of time each student has spent in the course;

(ii) what activities the student did or did not access; and

(iii) student's test scores.

(h) The course provider shall:

(i) have a competent method of registration of individuals who actually completed the course;

(ii) maintain records of attendance that are available for review by the Division; and

(iii) provide individuals completing the course a certificate that contains the following information:

(A) date of the course;

(B) name of the course provider;

(C) name of the instructor;

(D) course title;

(E) hours of continuing education credit and type of credit (core or professional);

(F) attendee's name; and

(G) signature of the course provider.

(i) A course provided through live broadcast may be recognized for live in-class continuing education credit if the student and the instructor are able to see and hear each other.

(3) The Division may assign monitors at no charge to attend a course for the purpose of evaluating the course and the instructor.

(4)(a) Each licensee shall maintain adequate documentation as proof of compliance with this section, such as certificates of completion, course handouts and materials. The licensee shall retain this proof for a period of three years from the end of the renewal period for which the continuing education is due.

(b) Each licensee shall assure that the course provider has submitted the verification of attendance to the continuing education registry on behalf of the licensee as specified in Subsection (8). Alternatively, the licensee may submit the course to the continuing education registry for approval and pay any course approval fees and attendance recording fees.

(5) Licensees who lecture in continuing education courses meeting the requirements of Section R156-55a-303b shall receive two hours of continuing education for each hour spent lecturing. However, no lecturing or teaching credit is available for participation in a panel discussion.

(6)(a) The continuing education requirements established for electricians, plumbers, and elevator mechanics in Section 58-55-302.7, if offered by a provider specified in Subsection 58-55-302.5(2), shall satisfy the contractor continuing education requirements of Section 58-55-302.5 and this section.

(b) The contractor licensee shall assure that the course provider has submitted the verification of the electrician's, plumber's or elevator mechanic's attendance on behalf of the licensee to the continuing education registry as specified in Subsection (8).

(7) A course provider shall submit continuing education courses to the continuing education registry and shall submit verification of attendance and completion on behalf of licensees attending and completing the program directly to the continuing education registry in the format required by the continuing education registry.

(8) The Division shall review continuing education courses that have been submitted through the continuing education registry and shall approve only those courses that meet the standards of this section.

(9) As provided in Section 58-1-401 and Subsections 58-55-302.5(2) and 58-55-302.7(4)(a), the Division may refuse to renew or may revoke, suspend, restrict, place on probation, issue a public reprimand to, or otherwise act upon the approval of any course or provider, if the course or provider fails to meet any of the requirements of this section or the provider has engaged in unlawful or unprofessional conduct.

(10) The Division shall designate an entity to act as the Continuing Education Registry and the Continuing Education Registry, in consultation with the Division and the Commission, shall:

(a) through its internet site electronically receive applications from continuing education course providers, and submit to the Division for review and approval only those applications from programs that meet the standards of this section;

(b) publish on their website listings of continuing education programs that have been approved by the Division, and that meet the standards for continuing education credit under this rule;

(c) maintain accurate records of approved qualified continuing education;

(d) maintain accurate records of verification of attendance and completion, by individual licensee, that the licensee may review for compliance with this rule; and

(e) make records of approved continuing education programs and attendance and completion available for audit by representatives of the Division.

(11) The Continuing Education Registry may charge a reasonable fee to continuing education providers or licensees for services provided for review and approval of continuing education programs.

R156-55a-304. Contractor License Qualifiers.

(1) The capacity and material authority specified in Subsection 58-55-304(4) includes the following:

(a) Except as allowed in Subsection (1)(b), the qualifier shall receive remuneration for work performed for the contractor licensee for not less than 12 hours of work per week.

(i) If the qualifier is an owner of the business, the remuneration may be in the form of owner's profit distributions or dividends with a minimum ownership of 20 percent of the contractor licensee.

(ii) If the qualifier is an officer or manager of the contractor licensee, the remuneration shall be in the form of W-2 wages.

(b) The 12 hour minimum in Subsection (1)(a) may be reduced if the total hours worked by the owners and employees is less than 50 hours per week, in which case the minimum may not be less than 20 percent of the total hours of work performed by all owners and employees of the contractor.

(2)(a) A qualifier may hold up to three specialty classifications, in addition to any classification under Subsection 58-55-301(2)(a) through (c) and Subsection 58-55-301(2)(e) through (h), except that a qualifier under Subsection R156-55a-301(2)(e) may not have any other specialty classifications.

(b) A qualifier may change classifications at any time by surrendering a classification, and by applying for any classification for which the qualifier is permitted by law.

(c) A current qualifier shall surrender or replace the qualifier's classifications as needed to comply with Subsection (2)(a) at the time of any renewal or reinstatement involving the qualifier.

(3) A qualifier may not act as the qualifier for more than three licensees at any one time, unless:

- (a) the qualifier demonstrates by sufficient evidence satisfactory to the Commission and the Division that the qualifier exercises material authority over the businesses; and
- (b) the Commission and the Division grant written approval.

R156-55a-305. Compliance Agency Reporting of Sole Owner Building Permits Issued.

In accordance with Subsection 58-55-305(2), a compliance agency that issues building permits to sole owners of property shall submit, within 30 days of issuance, the following information concerning each building permit issued in its jurisdiction, to a Division-designated fax number, email address, or written mailing address:

- (1) building permit number;
- (2) date issued;
- (3) issuing compliance agency's name, address, and phone number;
- (4) sole owner's full name, home address, and phone number;
- (5) building site subdivision and lot number.

R156-55a-305a. Exempt Contractors Filing Affirmation of Liability and Workers Compensation Insurance.

(1) In accordance with Subsection 58-55-305(1)(h)(ii)(H), a person claiming exemption under Subsection 58-55-305(1)(h) for projects with a value greater than \$1,000 but less than \$3,000 shall file a registration of exemption with the Division that includes:

- (a) the identity and address of the person claiming the exemption;
- (b) answers to qualifying questions; and
- (c) a statement signed by the registrant verifying:
 - (i) that the person has liability insurance in force that includes the Division being named as a certificate holder, the policy number, the expiration date of the policy, the insurance company name and contact information, and coverage amounts of at least \$100,000 for each incident and \$300,000 in total; and
 - (ii)(A) that the person has workers compensation insurance in force that names the Division as a certificate holder, includes the policy number, the expiration date of the policy, the insurance company name and contact information; or
 - (B) that the person does not hire employees and is therefore exempt from the requirement to have workers compensation insurance.
- (2) The affirmation required under Subsection (1) shall be reaffirmed on or before November 30 of each odd numbered year.

R156-55a-306. Contractor Financial Responsibility - Division Audit.

In accordance with Subsections 58-55-302(10)(c), 58-55-306, and 58-55-102(20), the Division may consider various relevant factors in conducting a financial responsibility audit of an applicant, licensee, qualifier, or any owner, including:

- (1) judgments, child support obligations, restitution orders, tax liens, collection actions, bankruptcy schedules and a history of late payments to creditors, including documentation showing the resolution of any factor under this Subsection (1);
- (2) financial statements and tax returns, including the ability to prepare or have prepared competent and current financial statements and tax returns;
- (3) a current credit report acceptable to the Division;
- (4) an explanation of the reasons for any financial difficulties and how the financial difficulties were resolved;
- (5) any of the factors listed in Section R156-1-302 that may relate to failure to maintain financial responsibility;
- (6) each of the factors listed in this Subsection (1) regarding the financial history of the owners of the applicant or licensee;
- (7) any guaranty agreements provided for the applicant or licensee and any owners; and
- (8) any history of prior entities owned or operated by the applicant, licensee, qualifier, or any owner that have failed to maintain financial responsibility.

R156-55a-308b. Natural Gas Technician Certification.

(1) In accordance with Subsection 58-55-308(1), the scope of practice defined in Subsection 58-55-308(2)(a) requiring certification is further defined as the installation, modification, maintenance, cleaning, repair or replacement of the gas piping, combustion air vents, exhaust venting system or derating of gas input for altitude of a residential or commercial gas appliance.

- (2) An approved training program shall include the following course content:
 - (a) general gas appliance installation codes;
 - (b) venting requirements;
 - (c) combustion air requirements;
 - (d) gas line sizing codes;
 - (e) gas line approved materials requirements;
 - (f) gas line installation codes; and
 - (g) methods of derating gas appliances for elevation.
- (3) In accordance with Subsection 58-55-308(2)(c)(i), the following programs are approved to provide natural gas technician training, and to issue certificates or documentation of exemption from certification:
 - (a) Federal Bureau of Apprenticeship Training;

- (b) Utah college apprenticeship program;
- (c) trade union apprenticeship program;
- (d) Rocky Mountain Gas Association; and
- (e) Home Builders Association of Utah.

(4) In accordance with Subsection 58-55-308(3), the approved programs in paragraphs (3)(b) through (3) (e) shall require program participants to pass the RMGA Gas Appliance Installers Certification Exam, or equivalent exams approved by the Commission established or adopted by a training program, with a minimum passing score of 80%.

(5) In accordance with Subsection 58-55-308(3), a person who has not completed an approved training program, but has passed the RMGA Gas Exam or approved equivalent exam established or adopted by an approved training program, with a minimum passing score of 80%, or the Utah licensed Journeyman or Residential Journeyman Plumber Exam, with a minimum passing score of 70%, shall be exempt from the certification requirement in Subsection 58-55-308(2)(c)(i).

(6) An approved program shall issue a certificate, including a wallet certificate, to persons who successfully complete their training program containing the following information:

- (a) name of the program provider;
- (b) name of the approved program;
- (c) name of the certificate holder;
- (d) date the certification was completed; and
- (e) signature of an authorized representative of the program provider.

(7) The following shall constitute documentation of exemption from certification:

- (a) certification of completion of training issued by the Federal Bureau of Apprenticeship Training;
- (b) current Utah licensed Journeyman or Residential Journeyman plumber license; or
- (c) certification from the RMGA or approved equivalent exam which shall include the following:
 - (i) name of the association, school, union, or other organization who administered the exam;
 - (ii) name of the person who passed the exam;
 - (iii) name of the exam;
 - (iv) date the exam was passed; and
 - (v) signature of an authorized representative of the test administrator.

(8) Each person engaged in the scope of practice defined in Subsection 58-55-308(2)(a) and as further defined in Subsection (1) herein, shall carry in their possession documentation of certification or exemption.

R156-55a-311. Reorganization - Conversion of Contractor Business Entity.

- (1) A conversion from one form of entity to another form where "Articles of Conversion" are filed with and approved by the Utah Division of Corporations and Commercial Code shall not require a new contractor application.
- (2) Except as provided in Subsection (1), a reorganization of the business entity under which a licensed contractor is licensed shall require application for a new license under the new form of organization or business structure. The creation of a new legal entity constitutes a reorganization, and includes:
 - (a) a change to a new entity under the same form of business entity; or
 - (b) a change of the form of business entity between proprietorship, partnership, whether limited or general, joint venture, corporation, or any other business form.

R156-55a-312. Inactive License.

- (1) The requirements for inactive licensure specified in Subsection R156-1-305(3) shall also include certification that the licensee will not engage in the construction trades for which the license was issued while on inactive status except to identify that licensee as an inactive licensee.
- (2) A license on inactive status will not be required to meet the requirements of licensure in Subsections 58-55-302(1)(e)(i), 58-55-302.5 and 58-55-302(2)(b).
- (3) The requirements for reactivation of an inactive license specified in Subsection R156-1-305(6) shall also include:
 - (a) documentation that the licensee meets the requirements of Section 58-55-302.5 and Subsections 58-55-302(1)(e)(i) and 58-55-302(2)(b); and
 - (b) prior to a license being activated, a licensee shall complete the continuing education required under Section 58-55-302.5 unless the continuing education required was completed for the last renewal cycle.

R156-55a-501. Unprofessional Conduct.

"Unprofessional conduct" includes:

- (1) failing to notify the Division with respect to any matter for which notification is required under this rule or Title 58, Chapter 55, the Construction Trades Licensing Act, including a change in qualifier which failure shall be considered by the Division and the Commission as grounds for immediate suspension of the contractor's license;
- (2) failing to notify the Division within 10 days of any change of the name, address, phone number, or email address of the qualifier or owners of a licensee;
- (3) failing to continuously maintain insurance and registration as required by Subsection 58-55-302(2) and Section R156-55a-302d;

(4) failing to provide within 30 days of a request from the Division or from any person that has a reasonable basis to make a claim on the licensee's insurance policy:

- (a) proof of licensee's insurance coverage;
- (b) the name of the licensee's insurance company, policy number, date of expiration, and insurance coverage limits;
- (c) a copy of the licensee's insurance policy;
- (d) a copy of the licensee's worker compensation policy, if required to maintain worker compensation insurance under Utah law; or
- (e) any exclusions included in the licensee's insurance policy;

(5) failing to provide the Division, within 30 days of a request, documents, an interview, or other requested information to determine compliance with Title 58, Chapter 55, Utah Construction Trades Licensing Act, or Title 58, Chapter 1, Division of Occupational and Professional Licensing Act;

- (6) refusing, as an electrical or plumbing contractor, to timely and accurately certify the hours of work experience when requested by an electrician or plumber who is or has been an employee;
- (7) refusing, as a contractor, to timely and accurately certify the work experience for a contractor application when requested by a current or former employee;
- (8) failure of a qualifier, owner, applicant, or licensee to be knowledgeable of the laws and rules applicable to their profession;
- (9) failing to timely provide, upon request by any person, a copy of a current license or license number when performing construction trades work;
- (10) an owner, qualifier, or licensee advising or instructing any person or applicant, for a fee, concerning an examination required under Title 58, Chapter 55, Utah Construction Trades Licensing Act, for which that owner, qualifier, or licensee was a subject-matter expert of the examination, unless: the Division approves in writing of the owner, qualifier, or licensee providing that instruction;
- (11) using, hiring, or contracting with a professional employer organization that is not licensed with the Utah Insurance Department;
- (12) failure of an employee of a licensee to properly identify the name of their employer when requested by the Division; and
- (13) reproducing, communicating, or transmitting any Division-required test content in any form to any person without written permission from the Division.

R156-55a-502. Penalty for Unlawful Conduct.

The penalty for violating Subsection 58-55-501(1) while suspended from licensure shall include the maximum fine allowed by Subsection 58-55-503(4)(i).

R156-55a-503. Administrative Penalties.

- (1) If multiple offenses are cited on the same citation, the fine shall be determined by evaluating the most serious offense.
- (2) If multiple offenses are cited on separate citations, the fine shall be the maximum fine for each offense.
- (3) The presiding officer for a contested citation shall have the discretion, after a review of the aggravating and mitigating circumstances, to increase or decrease the fine amount imposed by an investigator based upon the evidence presented.

R156-55a-504. Crane Operator Certifications.

In accordance with Subsection 58-55-504(2)(a), one of the following certifications is required to operate a crane on commercial construction projects:

- (1) a certification issued by the National Commission for the Certification of Crane Operators;
- (2) a certification issued by the Operating Engineers Certification Program; or
- (3) a certification issued by the Crane Institute of America.

R156-55a-602. Contractor License Bonds.

Pursuant to Subsections 58-55-306(1)(b) and 58-55-306(5)(b)(iii), a contractor shall provide a license bond issued by a surety acceptable to the Division in the amount, form, and coverage as follows:

- (1) An acceptable surety is one that is listed in the Department of Treasury, Fiscal Service, Circular 570, entitled "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" at the date of the bond.
- (2) The coverage of the license bond shall include losses that may occur as the result of the contractor's violation of the unprofessional or unlawful provisions contained in Title 58, Chapters 1, Division of Occupational and Professional Licensing Act, and Title 58, Chapter 55, Utah Construction Trades Licensing Act and Rules R156-1 and R156-55a, including:
 - (a) failure to maintain financial responsibility;
 - (b) failure of the licensee to pay its obligations; and
 - (c) failure of the owners or a licensed unincorporated entity to pay income taxes or self-employment taxes on the gross distributions from the unincorporated entity to its owners.

(3) The Division may review the financial history of the applicant, licensee, qualifier, or any owner, as outlined in Section R156-55a-306, in determining the bond amount required under this section.

(4) If the licensee is submitting a bond under Subsection 58-55-306(5)(b)(iii)(B), the amount of the bond shall be 20% of the annual gross distributions from the unincorporated entity to its owners. As provided in Subsection 58-55-302(10)(c), the Division, in determining if financial responsibility has been demonstrated, may consider the total number of owners, including new owners added as reported under Subsection 58-55-302(10)(a)(i), in setting the amount of the bond required under this subsection.

(5) If the licensee is submitting a bond for any reason other than Subsection 58-55-306(5)(b)(iii)(B), the minimum amount of the bond shall be the greater of:

(a) if a bankruptcy petition has been filed, is pending, or discharged by any owner or qualifier, by the licensee entity, or by any prior entities of the owners or qualifiers within the last three years from the date of application or renewal or request for financial review of the licensee, 30% of the total liabilities listed on all Forms 106 filed with the bankruptcy court for the owners, qualifiers, the licensee entity, and any prior entities of the owners or qualifiers; or

(b) if the total amount of the cumulative outstanding debts, judgments, child support obligations, liens, and obligations owing by the owners, qualifiers, the licensee entity, and any prior entities of the owners and qualifiers, is \$1,000 or more, the greater of:

- (i) 30% of that total amount; or
- (ii)(A) \$50,000 for any general contractor classification except the R100 classification;
- (B) \$25,000 for the R100 classification; or
- (C) \$15,000 for other classifications.

(6) A higher or lower amount of the bond referenced in Subsection R156-55a-602(5) may be determined by the Division and the Commission as provided in this section.

(7) The bond shall be maintained for the duration of licensure until the licensee receives written permission from the Division to discontinue maintaining the bond.

(8) The amount of the bond specified under Subsection R156-55a-602(5) may be increased by an amount determined by the Commission and Division if the financial, criminal, or disciplinary history of the applicant, licensee, qualifier, or any owner indicates the bond amount is insufficient to reasonably cover risks to the public health, safety and welfare. The Division and Commission may review the financial, criminal, and disciplinary history of the applicant, qualifier, licensee or any owner, as outlined in Section R156-55a-306, in determining the bond amount required.

(9) A contractor may provide a license bond issued by a surety acceptable to the Division in an amount less than the bond amount specified in Subsection R156-55a-602(5) if:

- (a) the contractor demonstrates by clear and convincing evidence that:
 - (i) the financial history of the applicant, licensee, qualifier, or any owner indicates the bond amount specified is in excess of what is reasonably necessary to cover risks to the public health, safety and welfare;
 - (ii) the contractor's lack of financial responsibility is due to extraordinary circumstances that the contractor could not control as opposed to general financial challenges that contractors experience; and
 - (iii) the contractor's scope of practice will be restricted commensurate with the degree of risk the contract presents to the public health, safety, and welfare; and
- (b) the Commission and Division approve the amount.

R156-55a-700. Emergency Contractor Licensing.

Pursuant to Subsection 58-1-307(4)(g), the Division may issue emergency contractor licenses as follows:

(1) The Division may issue an emergency contractor's license for any classification to any person or entity, including an apprentice, journeyman, or master plumber or electrician license.

(2) The Division may issue an emergency contractor's license in any form approved by the Division.

(3) An emergency contractor license shall expire on the earlier of:

- (a) 30 days after the expiration of the emergency declaration;
- (b) 10 days after the Division provides notice to the licensee that the license shall expire; or
- (c) as specified by the Division in a notice to the licensee, at any time and for any reason.

(4) The Division may institute or waive any contractor licensing requirement under Title 58, Chapter 1, Division of Occupational and Professional Licensing Act, and Chapter 55, Utah Construction Trades Licensing Act, and Rules R156-1 and R156-55a in determining eligibility for an emergency contractor license.

KEY: contractors, occupational licensing, licensing

Date of Enactment or Last Substantive Amendment: September 22, 2020

Notice of Continuation: August 4, 2016

Authorizing, and Implemented or Interpreted Law: 58-1-106(1)(a); 58-1-202(1)(a); 58-55-101; 58-55-308(1)(a); 58-55-102(39)(a)

Black's Law Dictionary (11th ed. 2019), agent

AGENT

Bryan A. Garner, Editor in Chief

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agent (15c) 1. Something that produces an effect <an intervening agent>. See [CAUSE \(1\)](#); [ELECTRONIC AGENT](#). 2. Someone who is authorized to act for or in place of another; a representative <a professional athlete's agent>. — Also termed *commissionnaire*. See [AGENCY](#). Cf. [PRINCIPAL](#), *n.* (1); [EMPLOYEE](#).

“Generally speaking, anyone can be an agent who is *in fact* capable of performing the functions involved. The agent normally binds not himself but his principal by the contracts he makes; it is therefore not essential that he be legally capable to contract (although his duties and liabilities to his principal might be affected by his status). Thus an infant or a lunatic may be an agent, though doubtless the court would disregard either's attempt to act if he were so young or so hopelessly devoid of reason as to be completely incapable of grasping the function he was attempting to perform.” Floyd R. Mechem, *Outlines of the Law of Agency* 8–9 (Philip Mechem ed., 4th ed. 1952).

“The etymology of the word agent or agency tells us much. The words are derived from the Latin verb, *ago, agere*; the noun *agens, agentis*. The word agent denotes one who acts, a doer, force or power that accomplishes things.” Harold Gill Reuschlein & William A. Gregory, *The Law of Agency and Partnership* § 1, at 2–3 (2d ed. 1990).

- **agent not recognized.** *Patents.* A patent applicant's appointed agent who is not registered to practice before the U.S. Patent and Trademark Office. • A power of attorney appointing an unregistered agent is void. See *patent agent*.

- **agent of necessity.** (1857) An agent that the law empowers to act for the benefit of another in an emergency. — Also termed *agent by necessity*.

- **apparent agent.** (1823) Someone who reasonably appears to have authority to act for another, regardless of whether actual authority has been conferred. — Also termed *ostensible agent; implied agent*.

- **associate agent.** *Patents.* An agent who is registered to practice before the U.S. Patent and Trademark Office, has been appointed by a primary agent, and is authorized to prosecute a patent

application through the filing of a power of attorney. • An associate agent is often used by outside counsel to assist in-house counsel. See *patent agent*.

- **bail-enforcement agent.** See [BOUNTY HUNTER](#).
- **bargaining agent.** (1935) A labor union in its capacity of representing employees in collective bargaining.
- **broker-agent.** See [BROKER](#).
- **business agent.** See [BUSINESS AGENT](#).
- **case agent.** See [CASE AGENT](#).
- **clearing agent.** (1937) *Securities*. A person or company acting as an intermediary in a securities transaction or providing facilities for comparing data regarding securities transactions. • The term includes a custodian of securities in connection with the central handling of securities. Securities Exchange Act § 3(a)(23)(A) ( [15 USCA § 78c\(a\)\(23\)\(A\)](#)). — Also termed *clearing agency*.
- **closing agent.** (1922) An agent who represents the purchaser or buyer in the negotiation and closing of a real-property transaction by handling financial calculations and transfers of documents. — Also termed *settlement agent*. See also *settlement attorney* under ATTORNEY.
- **co-agent.** (16c) Someone who shares with another agent the authority to act for the principal. — Also termed *dual agent*. Cf. *common agent*.
- **commercial agent.** (18c) 1. [BROKER](#). 2. A consular officer responsible for the commercial interests of his or her country at a foreign port. 3. See *mercantile agent*. 4. See *commission agent*.
- **commission agent.** (1812) An agent whose remuneration is based at least in part on commissions, or percentages of actual sales. • Commission agents typically work as middlemen between sellers and buyers. — Also termed *commercial agent*.
- **common agent.** (17c) An agent who acts on behalf of more than one principal in a transaction. Cf. *co-agent*.
- **corporate agent.** (1819) An agent authorized to act on behalf of a corporation; broadly, all employees and officers who have the power to bind the corporation.
- **county agent.** See [juvenile officer](#) under OFFICER (1).
- **del credere agent** (del kred-ə-ray or kray-də-ray) (1822) An agent who guarantees the solvency of the third party with whom the agent makes a contract for the principal. • A *del credere* agent receives possession of the principal's goods for purposes of sale and guarantees that anyone to whom the agent sells the goods on credit will pay promptly for them. For this guaranty, the agent receives a higher commission for sales. The promise of such an agent is almost universally held not to be within the statute of frauds. — Also termed *del credere factor*.
- **diplomatic agent.** (18c) A national representative in one of four categories: (1) ambassadors, (2) envoys and ministers plenipotentiary, (3) ministers resident accredited to the sovereign, or (4) chargés d'affaires accredited to the minister of foreign affairs.
- **double agent.** (1935) 1. A spy who finds out an enemy's secrets for his or her principal but who also gives secrets to the enemy. 2. See *dual agent* (2).
- **dual agent.** (1881) 1. See *co-agent*. 2. An agent who represents both parties in a single transaction, esp. a buyer and a seller. — Also termed (in sense 2) *double agent*.

- **emigrant agent.** (1874) One engaged in the business of hiring laborers for work outside the country or state.
- **enrolled agent.** See [ENROLLED AGENT](#).
- **escrow agent.** See [ESCROW AGENT](#).
- **estate agent.** See *real-estate agent*.
- **fiscal agent.** (18c) A bank or other financial institution that collects and disburses money and services as a depository of private and public funds on another's behalf.
- **foreign agent.** (1938) Someone who registers with the federal government as a lobbyist representing the interests of a foreign country or corporation.
- **forwarding agent.** (1837) **1.** [FREIGHT FORWARDER](#). **2.** A freight-forwarder who assembles less-than-carload shipments (small shipments) into carload shipments, thus taking advantage of lower freight rates.
- **general agent.** (17c) An agent authorized to transact all the principal's business of a particular kind or in a particular place. • Among the common types of general agents are factors, brokers, and partners. Cf. *special agent*.
- **government agent.** (1805) **1.** An employee or representative of a governmental body. **2.** A law-enforcement official, such as a police officer or an FBI agent. **3.** An informant, esp. an inmate, used by law enforcement to obtain incriminating statements from another inmate.
- **gratuitous agent.** (1822) An agent who acts without a right to compensation.
- **high-managerial agent.** (1957) **1.** An agent of a corporation or other business who has authority to formulate corporate policy or supervise employees. — Also termed *superior agent*. **2.** See *superior agent* (1).
- **implied agent.** See *apparent agent*.
- **independent agent.** (17c) An agent who exercises personal judgment and is subject to the principal only for the results of the work performed. Cf. *nonservant agent*.
- **innocent agent.** (1805) *Criminal law* A person whose action on behalf of a principal is unlawful but does not merit prosecution because the agent had no knowledge of the principal's illegal purpose; a person who lacks the mens rea for an offense but who is tricked or coerced by the principal into committing a crime. • Although the agent's conduct was unlawful, the agent might not be prosecuted if the agent had no knowledge of the principal's illegal purpose. The principal is legally accountable for the innocent agent's actions. See [Model Penal Code § 2.06\(2\)\(a\)](#).
- **insurance agent.** See [INSURANCE AGENT](#).
- **jural agent.** See [JURAL AGENT](#).
- **land agent.** See [LAND AGENT](#).
- **listing agent.** (1927) The real-estate broker's representative who obtains a listing agreement with the owner. Cf. *selling agent*; *showing agent*.
- **local agent.** (1804) **1.** An agent appointed to act as another's (esp. a company's) representative and to transact business within a specified district. **2.** See *special agent*.

- **managing agent.** (1812) A person with general power involving the exercise of judgment and discretion, as opposed to an ordinary agent who acts under the direction and control of the principal. — Also termed *business agent*.
- **mercantile agent.** (18c) An agent employed to sell goods or merchandise on behalf of the principal. — Also termed *commercial agent*.
- **nonservant agent.** (1920) An agent who agrees to act on the principal's behalf but is not subject to the principal's control over how the task is performed. • A principal is not liable for the physical torts of a nonservant agent. See [INDEPENDENT CONTRACTOR](#). Cf. *independent agent*; [SERVANT](#).
- **ostensible agent.** See *apparent agent*.
- **patent agent.** (1859) A specialized legal professional — not necessarily a lawyer — who has fulfilled the U.S. Patent and Trademark Office requirements as a representative and is registered to prepare and prosecute patent applications before the PTO. • To be registered to practice before the PTO, a candidate must establish mastery of the relevant technology (by holding a specified technical degree or equivalent training) in order to advise and assist patent applicants. The candidate must also pass a written examination (the “Patent Bar”) that tests knowledge of patent law and PTO procedure. — Often shortened to *agent*. — Also termed *registered patent agent*; *patent solicitor*. Cf. [PATENT ATTORNEY](#).
- **primary agent.** (18c) An agent who is directly authorized by a principal. • A primary agent generally may hire a subagent to perform all or part of the agency. Cf. *subagent* (1).
- **private agent.** (17c) An agent acting for an individual in that person's private affairs.
- **process agent.** (1886) A person authorized to accept service of process on behalf of another. See *registered agent*.
- **procuring agent.** (1954) Someone who obtains drugs on behalf of another person and delivers the drugs to that person. • In criminal-defense theory, the procuring agent does not sell, barter, exchange, or make a gift of the drugs to the other person because the drugs already belong to that person, who merely employs the agent to pick up and deliver them.
- **public agent.** (17c) A person appointed to act for the public in matters relating to governmental administration or public business.
- **real-estate agent.** (1844) An agent who represents a buyer or seller (or both, with proper disclosures) in the sale or lease of real property. • A real-estate agent can be either a broker (whose principal is a buyer or seller) or a salesperson (whose principal is a broker). — Also termed *estate agent*. Cf. [REALTOR](#).
- **record agent.** See [INSURANCE AGENT](#).
- **registered agent.** (1809) A person authorized to accept service of process for another person, esp. a foreign corporation, in a particular jurisdiction. — Also termed *resident agent*. See *process agent*.
- **registered patent agent.** See *patent agent*.
- **resident agent.** See *registered agent*.
- **secret agent.** See [SECRET AGENT](#).

- **selling agent.** (1839) **1.** The real-estate broker's representative who sells the property, as opposed to the agent who lists the property for sale. **2.** See *showing agent*. Cf. *listing agent*.
- **settlement agent.** (1952) See *closing agent*.
- **showing agent.** (1901) A real-estate broker's representative who markets property to a prospective purchaser. • A showing agent may be characterized as a subagent of the listing broker, as an agent who represents the purchaser, or as an intermediary who owes an agent's duties to neither seller nor buyer. — Also termed *selling agent*. Cf. *listing agent*.
- **soliciting agent.** (1855) **1.** *Insurance.* An agent with authority relating to the solicitation or submission of applications to an insurance company but usu. without authority to bind the insurer, as by accepting the applications on behalf of the company. **2.** An agent who solicits orders for goods or services for a principal. **3.** A managing agent of a corporation for purposes of service of process.
- **special agent.** (17c) **1.** An agent employed to conduct a particular transaction or to perform a specified act. Cf. *general agent*. **2.** See **INSURANCE AGENT**.
- **specially accredited agent.** (1888) An agent that the principal has specially invited a third party to deal with, in an implication that the third party will be notified if the agent's authority is altered or revoked.
- **statutory agent.** (1844) An agent designated by law to receive litigation documents and other legal notices for a nonresident corporation. • In most states, the secretary of state is the statutory agent for such corporations. Cf. *agency by operation of law* (1) under **AGENCY** (1).
- **stock-transfer agent.** (1873) See *transfer agent*.
- **subagent.** (18c) **1.** A person to whom an agent has delegated the performance of an act for the principal; a person designated by an agent to perform some duty relating to the agency. • If the principal consents to a primary agent's employment of a subagent, the subagent owes fiduciary duties to the principal, and the principal is liable for the subagent's acts. — Also termed *subservant*. Cf. *primary agent*; *subordinate agent*.

“By delegation ... the agent is permitted to use agents of his own in performing the function he is employed to perform for his principal, delegating to them the discretion which normally he would be expected to exercise personally. These agents are known as subagents to indicate that they are the agent's agents and not the agents of the principal. Normally (though of course not necessarily) they are paid by the agent. The agent is liable to the principal for any injury done him by the misbehavior of the agent's subagents.” Floyd R. Mechem, *Outlines of the Law of Agency* § 79, at 51 (Philip Mechem ed., 4th ed. 1952).

- 2. See *buyer's broker* under **BROKER**.

- **subordinate agent.** (17c) An agent who acts subject to the direction of a superior agent. • Subordinate and superior agents are co-agents of a common principal. See *superior agent*. Cf. *subagent* (1).
- **successor agent.** (1934) An agent who is appointed by a principal to act in a primary agent's stead if the primary agent is unable or unwilling to perform.
- **superior agent.** (17c) 1. An agent on whom a principal confers the right to direct a subordinate agent. See *subordinate agent*. 2. See *high-managerial agent* (1).
- **transfer agent.** (1850) An organization (such as a bank or trust company) that handles transfers of shares for a publicly held corporation by issuing new certificates and overseeing the cancellation of old ones and that usu. also maintains the record of shareholders for the corporation and mails dividend checks. • Generally, a transfer agent ensures that certificates submitted for transfer are properly indorsed and that the transfer right is appropriately documented. — Also termed *stock-transfer agent*.
- **trustee-agent.** A trustee who is subject to the control of the settlor or one or more beneficiaries of a trust. See [TRUSTEE](#) (1).
- **undercover agent.** (1930) 1. An agent who does not disclose his or her role as an agent. 2. A police officer who gathers evidence of criminal activity without disclosing his or her identity to the suspect.
- **undisclosed agent.** (1863) An agent who deals with a third party who has no knowledge that the agent is acting on a principal's behalf. Cf. [undisclosed principal](#) under [PRINCIPAL](#) (1).
- **universal agent.** (18c) An agent authorized to perform all acts that the principal could personally perform.
- **vice-commercial agent.** (1800) *Hist.* In the consular service of the United States, a consular officer who was substituted temporarily to fill the place of a commercial agent who was absent or had been relieved from duty.

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\ 'ā-jĕnt \
plural agents

Definition of *agent*

1 : one that acts or exerts power

2a : something that produces or is capable of producing an effect : an active or efficient cause Education proved to be an agent of change in the community.

b : a chemically, physically, or biologically active principle an oxidizing agent

3 : a means or instrument by which a guiding intelligence achieves a result

4 : one who is authorized to act for or in the place of another: such as

a : a representative, emissary, or official of a government crown agent federal agent

b : one engaged in undercover activities (such as espionage) : [spy](#) a secret agent

c : a business representative (as of an athlete or entertainer) a theatrical agent

5 : a computer application designed to automate certain tasks (such as gathering information online)

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- [medium](#),
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First Known Use of *agent*

15th century, in the meaning defined at [sense 1](#)

History and Etymology for *agent*

Middle English, "force capable of acting on matter," borrowed from Medieval Latin *agent-*, *agens* "something capable of producing an effect, person authorized to act for another," going back to Latin, present participle of *agere* "to drive (cattle), ride (a horse), be in motion, do, perform, transact," going back to Indo-European **h₂eǵ-* "drive," whence Sanskrit *ajati* "(s/he) drives," Greek *ágein* "to lead, carry off," Armenian *acem* "(I) lead," Old Irish *ad-aig* "drives, impels," Old Norse *aka* "to travel in a vehicle"

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“Agent.” *Merriam-Webster.com Dictionary*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/agent>. Accessed 12 May. 2021.

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English Language Learners Definition of *agent*

- : a person who does business for another person : a person who acts on behalf of another
- : a person who tries to get secret information about another country, government, etc.
- : a person or thing that causes something to happen

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agent

[noun](#)\ 'ā-jənt  \

Kids Definition of *agent*

- 1 : something that produces an effect cleansing *agents*
- 2 : a person who acts or does business for another a travel *agent*

agent

[noun](#)\ 'ā-jənt  \

Medical Definition of *agent*

- 1 : something that produces or is capable of producing an effect
- 2 : a chemically, physically, or biologically active principle — see [oxidizing agent](#), [reducing agent](#)

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[noun](#)

Legal Definition of *agent*

- 1 : someone or something that acts or exerts power : a moving force in achieving some result
- 2 : a person guided or instigated by another in some action where the heads of departments are the political... agents of the executive, merely to execute the will of the president — *Marbury v. Madison*, 5 U.S. 137 (1803) — see also [innocent agent](#)

3a : a person or entity (as an employee or independent contractor) authorized to act on behalf of and under the control of another in dealing with third parties — see also [agency sense 2](#), [fiduciary relationship](#), [subagent](#) — compare [fiduciary](#), [principal](#), [servant](#)

— **apparent agent**

: an agent acting under an agency by estoppel

— **bargaining agent**

: a labor union that represents the employees in a bargaining unit in negotiating with their employer through collective bargaining

— **business agent**

: an agent that handles business affairs for another person or organization especially : a paid official of a union who carries on union business between the employees and the employer

— **collective bargaining agent**

: bargaining agent in this entry

— **del credere agent**

: an agent that guarantees to his or her principal that third parties involved in the transaction will pay or perform

— **enrolled agent**

: a person qualified through expertise and good reputation to represent taxpayers before the Internal Revenue Service

— **exclusive agent**

: an agent acting under an exclusive agency

— **general agent**

: an agent acting under a general agency

— **legislative agent**

: an agent (as for an interest group) that lobbies a legislature especially professionally

— **managing agent**

: an agent or employee of a corporation or other business entity who has a position that involves the use of judgment and discretion and who is considered under the law as capable of accepting service of process and answering questions under cross-examination on behalf of the business entity

— **ostensible agent**

: an agent acting under an agency by estoppel

— **special agent**

: an agent authorized to do one or more specific acts under particular instructions or within restrictions implied by the nature of the authorized acts : an agent acting under a special agency — compare general agent in this entry

— **transfer agent**

: an officer, bank, or trust company that acts on behalf of a publicly held corporation in handling the transfer of stock and other securities and keeping records of the owners

— **universal agent**

: an agent acting under a general agency

b : a representative (as of a corporation or nonresident administrator of an estate) designated to accept service of process on behalf of the represented party usually as required by statute

c : a person or organization that finds buyers or tenants for real estate owners usually for a commission

d : an independent sales or service representative of an insurance company — compare [broker](#)

4a : a representative, emissary, or official of a government a diplomatic agent

b : an employee of a government agency usually that is involved in law enforcement

More from Merriam-Webster on *agent*

Thesaurus: [All synonyms and antonyms for agent](#)

English: [Translation of agent for Spanish Speakers](#)

Britannica English: [Translation of agent for Arabic Speakers](#)

Britannica.com: [Encyclopedia article about agent](#)

2002 UT 116

STATE of Utah, Plaintiff
and Respondent,

v.

Larry G. BOHNE, Defendant
and Petitioner.

No. 20010116.

Supreme Court of Utah.

Nov. 26, 2002.

State filed an information against defendant alleging multiple counts of contracting without a license. Following a bench trial, the Fifth District Court, Iron County, Braithwaite, J., entered a judgment of guilty. Defendant appealed. The Court of Appeals, 18 P.3d 514, affirmed. On defendant's petition for writ of certiorari, the Supreme Court, Durham, C.J., held that: (1) modular homes constructed off-site that are sold commercially come within the plain meaning of the term "building" for purposes of Construction Trade Licensing Act, and (2) defendant was required to obtain a license to construct and sell modular homes.

Affirmed.

1. Criminal Law \Leftrightarrow 1134(3)

The Supreme Court reviews the appellate court's statutory interpretation for correctness.

2. Licenses \Leftrightarrow 11(5)

Modular homes constructed off-site that are sold commercially come within the plain meaning of the term "building" for purposes of Construction Trade Licensing Act and fall within the reach of the Act, and thus, individuals engaged in such construction must obtain a license despite definition of modular homes as "goods" under the Uniform Commercial Code (UCC). U.C.A.1953, 58-55-301, 70A-2-105(1).

3. Licenses \Leftrightarrow 11(5)

Modular homes constructed by defendant off-site to sell commercially came within plain meaning of the term "building" for purposes of Construction Trade Licensing

Act and, thus, defendant was required to obtain a contracting license, where units were completed on defendant's property, meant for human occupancy, and only thing left to do with the homes was to install them. U.C.A.1953, 58-55-102(8), 58-55-301.

4. Sales \Leftrightarrow 10

Modular homes are "goods" under the Uniform Commercial Code (UCC) until affixed to real property; the UCC defines goods to include all things which are movable at the time of identification to the contract for sale. U.C.A.1953, 70A-2-105(1).

5. Statutes \Leftrightarrow 188, 205

The Supreme Court will ascertain the legislature's intent by looking to a statute's plain meaning, and to its various provisions viewed as a whole.

6. Licenses \Leftrightarrow 19(3)

Exemptions built into the Construction Trade Licensing Act are narrowly tailored to ensure that any individuals constructing buildings that members of the public will enter must be licensed in order to engage in their construction trade. U.C.A.1953, 58-55-301, 58-55-305(4).

7. Licenses \Leftrightarrow 8(1)

Public safety is the primary objective of the Construction Trade Licensing Act. U.C.A.1953, 58-55-301.

Mark L. Shurtleff, Att'y Gen., Jeanne B. Inouye, Asst. Att'y Gen., Salt Lake City, Scott M. Burns, Cedar City, for plaintiff.

J. Bryan Jackson, Cedar City, for defendant.

Weston J. White, St. George, for amicus curiae.

On Certiorari to the Utah Court of Appeals

DURHAM, Chief Justice:

INTRODUCTION

¶ 1 Defendant, Larry Bohne, was convicted of the misdemeanor of contracting without a license in violation of Utah Code Ann. section 58-55-301 (1998). The court of appeals af-

firmed his conviction. *State v. Bohne*, 2001 UT App 11, 18 P.3d 514. We accepted defendant's petition for a writ of certiorari. We now affirm.

BACKGROUND

¶ 2 Defendant constructs and sells modular homes to prospective homeowners without a license. He has been engaged in the business of building and selling modular homes since 1973. He assembles the homes on his property and then transports them to the purchaser's property. He does not perform any excavation, foundation, or utilities work, nor does he bear any responsibility for the installation of the homes. Defendant is not a licensed contractor, nor does he utilize the work of licensed subcontractors in his construction business.

¶ 3 Defendant was charged with four counts of violating Utah Code Ann. section 58-55-301 for sales occurring during 1996 and 1998. He contends that the statute does not require that he be licensed to engage in his business. He notes that all of his modular homes must meet the requirements of the general uniform building codes of construction before they can be transported to the purchasers, thereby ensuring their quality. Also, since construction takes place on his property and the homes are later transported to another locale, defendant argues that the homes should not be considered "buildings," but rather, his personal property. Thus, defendant contends, section 58-55-301 does not apply to him and he is relieved of the requirement of obtaining a license in order to conduct his business of constructing and selling modular homes.¹

STANDARD OF REVIEW

[1] ¶ 4 We review the appellate court's statutory interpretation for correctness. *Hous. Auth. of County of Salt Lake v. Snyder*, 2002 UT 28, ¶ 10, 44 P.3d 724.

1. Defendant additionally challenges his conviction based on the ground that the trial court erred in placing upon him the burden of proof regarding his qualification for the statutory exemption. Since we have affirmed defendant's conviction based upon our holding that modular

ANALYSIS

¶ 5 To determine whether the Construction Trade Licensing Act (the "Act") requires defendant to obtain a license to construct and sell modular homes, we must analyze the definition of the term "construction trade" and the exemption provided in the Act, as well as the language of the Uniform Commercial Code ("UCC").

[2] ¶ 6 The crux of this case is whether the modular homes at issue are "buildings" or "personal property." The Act requires:

Any person engaged in the construction trades licensed under this chapter, or as a contractor regulated under this chapter, shall become licensed under this chapter before engaging in that trade or contracting activity in this state unless specifically exempted from licensure under Section 58-55-305.

Utah Code Ann. § 58-55-301(1)(a) (1998).

¶ 7 We must ascertain what is meant by "construction trade" to determine if defendant is engaged in a construction trade relevant to this statute. The Act defines the term as:

any trade or occupation involving construction, alteration, remodeling, repairing, wrecking or demolition, addition to, or improvement of any building . . . other than personal property.

Utah Code Ann. § 58-55-102(8) (Supp.2001).

¶ 8 The Act does, however, provide certain exemptions. The construction trade licensing requirements do not apply to:

a person engaged in the sale or merchandising of personal property that by its design or manufacture may be attached, installed, or otherwise affixed to real property who has contracted with a person, firm, or corporation licensed under this

homes are not "personal property," whether or not defendant sold "personal property" to a licensed contractor for installation is inapplicable, since he sold "buildings." Thus, we need not reach the issue of who bears the burden of proving qualification for the exemption.

chapter to install, affix, or attach that property[.]

Utah Code Ann. § 58-55-305(6) (Supp.2001).

¶ 9 The defendant, in constructing these modular homes, clearly engages in “construction” as it is traditionally understood. The issue is whether defendant was engaged in the construction of buildings, in which case he would need to be licensed, or in the construction of “personal property” only. If the modular homes are indeed “personal property,” and not “buildings,” then he has not violated the Act in failing to obtain a license.

¶ 10 Defendant relies on the UCC in asserting that constructing modular homes does not fall within the construction trade, since the UCC treats modular homes as “goods.” The UCC states that “ ‘Goods’ means all things (including specially manufactured goods) which are movable at the time of identification to the contract for sale....” U.C.C. § 2-105(1) (1998); *see also* Utah Code Ann. § 70A-2-105(1)(2001). Defendant argues that because the modular homes were transferable at the time of sale, being constructed off-site and later transported to the sale site, the modular homes are “goods.”

¶ 11 The majority of the court of appeals rejected defendant’s argument and held that the modular homes are not “personal property,” but “buildings.” It did so without resolving the conflict posed by the UCC definition. We agree, but add the following clarification.

[3, 4] ¶ 12 The majority opinion issued by the court of appeals is correct in asserting that the modular homes at issue come within the plain meaning of the term “building.” The homes fit a common-sense definition of “building.” The units are completed homes and are meant for human occupancy. They include assembled floor decking, exterior and interior walls, trusses, roof decking, rough electrical wiring, rough plumbing, rough mechanical systems, shingles, insulation, sheet rock, cabinets, interior and exterior painting, interior doors, finishing electrical, finishing plumbing, finishing mechanical equipment, and finishing exterior siding. The only thing

left to do with the homes is to install them. The fact that the homes were not installed at the time of sale does not mean they were not “buildings” under the licensing Act. We recognize the general principle that modular homes are “goods” under the UCC until affixed to real property, because the UCC defines goods to include all things which are “movable at the time of identification to the contract for sale....” U.C.C. § 2-105(1); *see also* Utah Code Ann. § 70A-2-105(1). Indeed, many courts have traditionally held modular homes to be “goods” under the UCC. *See Cates v. Morgan Portable Bldg. Corp.*, 591 F.2d 17, 20 (7th Cir.1979); *Stephenson v. Frazier*, 399 N.E.2d 794, 797 (Ind. Ct.App.1980); *Joswick v. Chesapeake Mobile Homes, Inc.*, 362 Md. 261, 765 A.2d 90, 92 (2001).

¶ 13 Nevertheless, we decline to apply the UCC definition of modular homes as “goods” for purposes of this statute. The UCC governs contracts and contractual transactions. The Act at issue here is not a contract and does not concern a contract. Rather, it is a licensing requirement, the purpose of which is to ensure the safe construction of buildings for the benefit of the consumer. The UCC approach has little relevance and, we determine, no applicability to its interpretation.

¶ 14 Our holding is consistent with Utah precedent. In *John Wagner Assoc. v. Hercules, Inc.*, 797 P.2d 1123 (Utah Ct.App. 1990), the court held that “for purposes of the Payment Bond Statute, the modular buildings are to be regarded as realty as a matter of law” despite the UCC definition including modular homes as goods. *Id.* at 1126. The court so held in that case in order to “give full effect to the purpose of the Payment Bond Statute,” and thus the legislature’s intent in passing that statute. *Id.* at 1130. We join other courts in acknowledging that “pre-built [buildings], mobile or otherwise, . . . are a part of our changing society, and give recognition to the fact that the law must be responsive to the best interests of those whom it is designed to serve.” *Yeager v. Cassidy*, 20 Ohio Misc. 251, 256, 253 N.E.2d 320, 323 (1969). Consequently, we extend the definition of “buildings” to include modular homes for purposes of this Act.

[5] ¶ 15 We do so to give full force to the legislature's intent in drafting the Act: public safety. We ascertain the legislature's intent by looking to the statute's plain meaning, and to its various provisions viewed as a whole. A reading of other provisions within the Act demonstrates the legislature's intent. Section 58-55-102(7)(i) includes a provision requiring licensing for "a person who builds any structure on his own property for the purpose of sale or who builds any structure intended for public use on his own property." *See Utah Code Ann. § 58-55-102(7)(i) (1998).* Thus, an unlicensed person may not build a structure upon his own property that will either be used or sold to others. Defendant qualifies as such an individual since the structures are intended for human occupancy and he sells them to individual consumers as part of a commercial enterprise.

[6] ¶ 16 Additionally, the exemptions built into the statute are narrowly tailored to ensure that any individuals constructing buildings that members of the public will enter must be licensed in order to engage in their construction trade. For example, the exemption excludes from licensing requirements sole owners of property only if they are "engaged in building no more than two residential structures per year on their property for their own noncommercial, nonpublic use...." Utah Code Ann. § 58-55-305(4)(1998). If private individuals cannot construct multiple buildings on their own property for their own use without obtaining a license, then contractors engaged in the commercial construction of buildings designed for the sale and the human habitation of others certainly are within the reach of the licensing Act.

[7] ¶ 17 That the legislature intended to exempt those engaged in construction in only the most narrow of circumstances reinforces the principle that public safety is the primary objective of the licensing statute. Exempting a modular home builder engaged in commercial enterprise from such licensing under section 58-55-305(6) would contravene the legislature's intent.

¶ 18 The plain meaning of the language of the statute is clear. The UCC does not govern the definition of "building" in this

regulatory context. The public policy reasons behind the licensing requirements are compelling. The only way to give full force to the legislature's intent is to include modular homes in the definition of the term "building" found in the Act. We therefore hold that modular homes constructed off-site that are sold commercially fall within the reach of the Act. Thus, individuals engaged in such construction must obtain a license. Defendant is required by law to obtain a license, which he failed to do.

CONCLUSION

¶ 19 We affirm defendant's conviction.

¶ 20 Associate Chief Justice DURRANT, Justice HOWE, Justice RUSSON, and Justice WILKINS concur in Chief Justice DURHAM's opinion.



2002 UT 117

STATE of Utah, Plaintiff and Appellee,

v.

Daniel Lamont HODGES, Defendant and Appellant.

No. 20010668.

Supreme Court of Utah.

Dec. 3, 2002.

Defendant moved to dismiss charges for six degree felony crimes involving sexual abuse of a child against him, contending that district court lacked jurisdiction to try him for crimes he allegedly committed as juvenile. The Third District Court, Salt Lake County, Randall N. Skanchy, J., denied the motion. Defendant petitioned for interlocutory appeal, which was granted. The Supreme Court, Howe, J., held that: (1) Supreme Court declined to address defendant's claims that statutes were unconstitutional if

Chapter 3

Utah Administrative Rulemaking Act

Part 1

General Provisions

63G-3-101 Title.

This chapter is known as the "Utah Administrative Rulemaking Act."

Renumbered and Amended by Chapter 382, 2008 General Session

Superseded 7/1/2021

63G-3-102 Definitions.

As used in this chapter:

- (1) "Administrative record" means information an agency relies upon when making a rule under this chapter including:
 - (a) the proposed rule, change in the proposed rule, and the rule analysis form;
 - (b) the public comment received and recorded by the agency during the public comment period;
 - (c) the agency's response to the public comment;
 - (d) the agency's analysis of the public comment; and
 - (e) the agency's report of its decision-making process.
- (2) "Agency" means each state board, authority, commission, institution, department, division, officer, or other state government entity other than the Legislature, its committees, the political subdivisions of the state, or the courts, which is authorized or required by law to make rules, adjudicate, grant or withhold licenses, grant or withhold relief from legal obligations, or perform other similar actions or duties delegated by law.
- (3) "Bulletin" means the Utah State Bulletin.
- (4) "Catchline" means a short summary of each section, part, rule, or title of the code that follows the section, part, rule, or title reference placed before the text of the rule and serves the same function as boldface in legislation as described in Section 68-3-13.
- (5) "Code" means the body of all effective rules as compiled and organized by the office and entitled "Utah Administrative Code."
- (6) "Department" means the Department of Administrative Services created in Section 63A-1-104.
- (7) "Director" means the director of the office.
- (8) "Effective" means operative and enforceable.
- (9) "Executive director" means the executive director of the department.
- (10) "File" means to submit a document to the office as prescribed by the office.
- (11) "Filing date" means the day and time the document is recorded as received by the office.
- (12) "Interested person" means any person affected by or interested in a proposed rule, amendment to an existing rule, or a nonsubstantive change made under Section 63G-3-402.
- (13) "Office" means the Office of Administrative Rules created in Section 63G-3-401.
- (14) "Order" means an agency action that determines the legal rights, duties, privileges, immunities, or other interests of one or more specific persons, but not a class of persons.
- (15) "Person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an agency.
- (16) "Publication" or "publish" means making a rule available to the public by including the rule or a summary of the rule in the bulletin.

- (17) "Publication date" means the inscribed date of the bulletin.
- (18) "Register" may include an electronic database.
- (19)
 - (a) "Rule" means an agency's written statement that:
 - (i) is explicitly or implicitly required by state or federal statute or other applicable law;
 - (ii) implements or interprets a state or federal legal mandate; and
 - (iii) applies to a class of persons or another agency.
 - (b) "Rule" includes the amendment or repeal of an existing rule.
 - (c) "Rule" does not mean:
 - (i) orders;
 - (ii) an agency's written statement that applies only to internal management and that does not restrict the legal rights of a public class of persons or another agency;
 - (iii) the governor's executive orders or proclamations;
 - (iv) opinions issued by the attorney general's office;
 - (v) declaratory rulings issued by the agency according to Section 63G-4-503 except as required by Section 63G-3-201;
 - (vi) rulings by an agency in adjudicative proceedings, except as required by Subsection 63G-3-201(6); or
 - (vii) an agency written statement that is in violation of any state or federal law.
- (20) "Rule analysis" means the format prescribed by the office to summarize and analyze rules.
- (21) "Small business" means a business employing fewer than 50 persons.
- (22) "Substantive change" means a change in a rule that affects the application or results of agency actions.

Amended by Chapter 408, 2020 General Session

Effective 7/1/2021

63G-3-102 Definitions.

As used in this chapter:

- (1) "Administrative record" means information an agency relies upon when making a rule under this chapter including:
 - (a) the proposed rule, change in the proposed rule, and the rule analysis form;
 - (b) the public comment received and recorded by the agency during the public comment period;
 - (c) the agency's response to the public comment;
 - (d) the agency's analysis of the public comment; and
 - (e) the agency's report of its decision-making process.
- (2) "Agency" means each state board, authority, commission, institution, department, division, officer, or other state government entity other than the Legislature, its committees, the political subdivisions of the state, or the courts, which is authorized or required by law to make rules, adjudicate, grant or withhold licenses, grant or withhold relief from legal obligations, or perform other similar actions or duties delegated by law.
- (3) "Bulletin" means the Utah State Bulletin.
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- (13) "Office" means the Office of Administrative Rules created in Section 63G-3-401.
- (14) "Order" means an agency action that determines the legal rights, duties, privileges, immunities, or other interests of one or more specific persons, but not a class of persons.
- (15) "Person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an agency.
- (16) "Publication" or "publish" means making a rule available to the public by including the rule or a summary of the rule in the bulletin.
- (17) "Publication date" means the inscribed date of the bulletin.
- (18) "Register" may include an electronic database.
- (19)
 - (a) "Rule" means an agency's written statement that:
 - (i) is explicitly or implicitly required by state or federal statute or other applicable law;
 - (ii) implements or interprets a state or federal legal mandate; and
 - (iii) applies to a class of persons or another agency.
 - (b) "Rule" includes the amendment or repeal of an existing rule.
 - (c) "Rule" does not mean:
 - (i) orders;
 - (ii) an agency's written statement that applies only to internal management and that does not restrict the legal rights of a public class of persons or another agency;
 - (iii) the governor's executive orders or proclamations;
 - (iv) opinions issued by the attorney general's office;
 - (v) declaratory rulings issued by the agency according to Section 63G-4-503 except as required by Section 63G-3-201;
 - (vi) rulings by an agency in adjudicative proceedings, except as required by Subsection 63G-3-201(6); or
 - (vii) an agency written statement that is in violation of any state or federal law.
- (20) "Rule analysis" means the format prescribed by the office to summarize and analyze rules.
- (21) "Small business" means a business employing fewer than 50 persons.
- (22) "Substantive change" means a change in a rule that affects the application or results of agency actions.

Amended by Chapter 344, 2021 General Session

Part 2 **Circumstances Requiring Rulemaking - Status of Administrative Rules**

63G-3-201 When rulemaking is required.

- (1) Each agency shall:
 - (a) maintain a current version of its rules; and

- (b) make it available to the public for inspection during its regular business hours.
- (2) In addition to other rulemaking required by law, each agency shall make rules when agency action:
 - (a) authorizes, requires, or prohibits an action;
 - (b) provides or prohibits a material benefit;
 - (c) applies to a class of persons or another agency; and
 - (d) is explicitly or implicitly authorized by statute.
- (3) Rulemaking is also required when an agency issues a written interpretation of a state or federal legal mandate.
- (4) Rulemaking is not required when:
 - (a) agency action applies only to internal agency management, inmates or residents of a state correctional, diagnostic, or detention facility, persons under state legal custody, patients admitted to a state hospital, members of the state retirement system, or , except as provided in Title 53B, Chapter 27, Part 3, Student Civil Liberties Protection Act, students enrolled in a state education institution;
 - (b) a standardized agency manual applies only to internal fiscal or administrative details of governmental entities supervised under statute;
 - (c) an agency issues policy or other statements that are advisory, informative, or descriptive, and do not conform to the requirements of Subsections (2) and (3); or
 - (d) an agency makes nonsubstantive changes in a rule, except that the agency shall file all nonsubstantive changes in a rule with the office.
- (5)
 - (a) A rule shall enumerate any penalty authorized by statute that may result from its violation, subject to Subsections (5)(b) and (c).
 - (b) A violation of a rule may not be subject to the criminal penalty of a class C misdemeanor or greater offense, except as provided under Subsection (5)(c).
 - (c) A violation of a rule may be subject to a class C misdemeanor or greater criminal penalty under Subsection (5)(a) when:
 - (i) authorized by a specific state statute;
 - (ii) a state law and programs under that law are established in order for the state to obtain or maintain primacy over a federal program; or
 - (iii) state civil or criminal penalties established by state statute regarding the program are equivalent to or less than corresponding federal civil or criminal penalties.
- (6) Each agency shall enact rules incorporating the principles of law not already in its rules that are established by final adjudicative decisions within 120 days after the decision is announced in its cases.
- (7)
 - (a) Each agency may enact a rule that incorporates by reference:
 - (i) all or any part of another code, rule, or regulation that has been adopted by a federal agency, an agency or political subdivision of this state, an agency of another state, or by a nationally recognized organization or association;
 - (ii) state agency implementation plans mandated by the federal government for participation in the federal program;
 - (iii) lists, tables, illustrations, or similar materials that are subject to frequent change, fully described in the rule, and are available for public inspection; or
 - (iv) lists, tables, illustrations, or similar materials that the director determines are too expensive to reproduce in the administrative code.
 - (b) Rules incorporating materials by reference shall:

- (i) be enacted according to the procedures outlined in this chapter;
- (ii) state that the referenced material is incorporated by reference;
- (iii) state the date, issue, or version of the material being incorporated; and
- (iv) define specifically what material is incorporated by reference and identify any agency deviations from it.

- (c) The agency shall identify any substantive changes in the material incorporated by reference by following the rulemaking procedures of this chapter.
- (d) The agency shall maintain a complete and current copy of the referenced material available for public review at the agency and at the office.

(8)

- (a) This chapter is not intended to inhibit the exercise of agency discretion within the limits prescribed by statute or agency rule.
- (b) An agency may enact a rule creating a justified exception to a rule.

(9) An agency may obtain assistance from the attorney general to ensure that its rules meet legal and constitutional requirements.

Amended by Chapter 408, 2020 General Session

63G-3-202 Rules having the effect of law.

- (1) An agency's written statement is a rule if it conforms to the definition of a rule under Section 63G-3-102, but the written statement is not enforceable unless it is made as a rule in accordance with the requirements of this chapter.
- (2) An agency's written statement that is made as a rule in accordance with the requirements of this chapter is enforceable and has the effect of law.

Renumbered and Amended by Chapter 382, 2008 General Session

Part 3
Rulemaking Procedures

Superseded 7/1/2021

63G-3-301 Rulemaking procedure.

- (1) An agency authorized to make rules is also authorized to amend or repeal those rules.
- (2) Except as provided in Sections 63G-3-303 and 63G-3-304, when making, amending, or repealing a rule agencies shall comply with:
 - (a) the requirements of this section;
 - (b) consistent procedures required by other statutes;
 - (c) applicable federal mandates; and
 - (d) rules made by the office to implement this chapter.
- (3) Subject to the requirements of this chapter, each agency shall develop and use flexible approaches in drafting rules that meet the needs of the agency and that involve persons affected by the agency's rules.
- (4)
 - (a) Each agency shall file the agency's proposed rule and rule analysis with the office.
 - (b) Rule amendments shall be marked with new language underlined and deleted language struck out.

- (c)
 - (i) The office shall publish the information required under Subsection (8) on the rule analysis and the text of the proposed rule in the next issue of the bulletin.
 - (ii) For rule amendments, only the section or subsection of the rule being amended need be printed.
 - (iii) If the director determines that the rule is too long to publish, the office shall publish the rule analysis and shall publish the rule by reference to a copy on file with the office.
- (5) Before filing a rule with the office, the agency shall conduct a thorough analysis, consistent with the criteria established by the Governor's Office of Management and Budget, of the fiscal impact a rule may have on businesses, which criteria may include:
 - (a) the type of industries that will be impacted by the rule, and for each identified industry, an estimate of the total number of businesses within the industry, and an estimate of the number of those businesses that are small businesses;
 - (b) the individual fiscal impact that would incur to a typical business for a one-year period;
 - (c) the aggregated total fiscal impact that would incur to all businesses within the state for a one-year period;
 - (d) the total cost that would incur to all impacted entities over a five-year period; and
 - (e) the department head's comments on the analysis.
- (6) If the agency reasonably expects that a proposed rule will have a measurable negative fiscal impact on small businesses, the agency shall consider, as allowed by federal law, each of the following methods of reducing the impact of the rule on small businesses:
 - (a) establishing less stringent compliance or reporting requirements for small businesses;
 - (b) establishing less stringent schedules or deadlines for compliance or reporting requirements for small businesses;
 - (c) consolidating or simplifying compliance or reporting requirements for small businesses;
 - (d) establishing performance standards for small businesses to replace design or operational standards required in the proposed rule; and
 - (e) exempting small businesses from all or any part of the requirements contained in the proposed rule.
- (7) If during the public comment period an agency receives comment that the proposed rule will cost small business more than one day's annual average gross receipts, and the agency had not previously performed the analysis in Subsection (6), the agency shall perform the analysis described in Subsection (6).
- (8) The rule analysis shall contain:
 - (a) a summary of the rule or change;
 - (b) the purpose of the rule or reason for the change;
 - (c) the statutory authority or federal requirement for the rule;
 - (d) the anticipated cost or savings to:
 - (i) the state budget;
 - (ii) local governments;
 - (iii) small businesses; and
 - (iv) persons other than small businesses, businesses, or local governmental entities;
 - (e) the compliance cost for affected persons;
 - (f) how interested persons may review the full text of the rule;
 - (g) how interested persons may present their views on the rule;
 - (h) the time and place of any scheduled public hearing;
 - (i) the name and telephone number of an agency employee who may be contacted about the rule;

- (j) the name of the agency head or designee who authorized the rule;
- (k) the date on which the rule may become effective following the public comment period;
- (l) the agency's analysis on the fiscal impact of the rule as required under Subsection (5);
- (m) any additional comments the department head may choose to submit regarding the fiscal impact the rule may have on businesses; and
- (n) if applicable, a summary of the agency's efforts to comply with the requirements of Subsection (6).

(9)

- (a) For a rule being repealed and reenacted, the rule analysis shall contain a summary that generally includes the following:
 - (i) a summary of substantive provisions in the repealed rule which are eliminated from the enacted rule; and
 - (ii) a summary of new substantive provisions appearing only in the enacted rule.
- (b) The summary required under this Subsection (9) is to aid in review and may not be used to contest any rule on the ground of noncompliance with the procedural requirements of this chapter.

(10) A copy of the rule analysis shall be mailed to all persons who have made timely request of the agency for advance notice of the agency's rulemaking proceedings and to any other person who, by statutory or federal mandate or in the judgment of the agency, should also receive notice.

(11)

- (a) Following the publication date, the agency shall allow at least 30 days for public comment on the rule.
- (b) The agency shall review and evaluate all public comments submitted in writing within the time period under Subsection (11)(a) or presented at public hearings conducted by the agency within the time period under Subsection (11)(a).

(12)

- (a) Except as provided in Sections 63G-3-303 and 63G-3-304, a proposed rule becomes effective on any date specified by the agency that is:
 - (i) no fewer than seven calendar days after the day on which the public comment period closes under Subsection (11); and
 - (ii) no more than 120 days after the day on which the rule is published.
- (b) The agency shall provide notice of the rule's effective date to the office in the form required by the office.
- (c) The notice of effective date may not provide for an effective date before the day on which the office receives the notice.
- (d) The office shall publish notice of the effective date of the rule in the next issue of the bulletin.
- (e) A proposed rule lapses if a notice of effective date or a change to a proposed rule is not filed with the office within 120 days after the day on which the rule is published.

(13)

- (a) Except as provided in Subsection (13)(d), before an agency enacts a rule, the agency shall submit to the appropriations subcommittee and interim committee with jurisdiction over the agency the agency's proposed rule for review, if the proposed rule, over a three-year period, has a fiscal impact of more than:
 - (i) \$250,000 to a single person; or
 - (ii) \$7,500,000 to a group of persons.
- (b) An appropriations subcommittee or interim committee that reviews a rule submitted under Subsection (13)(a) shall:

- (i) before the review, directly inform the chairs of the Administrative Rules Review Committee of the coming review, including the date, time, and place of the review; and
- (ii) after the review, directly inform the chairs of the Administrative Rules Review Committee of the outcome of the review, including any recommendation.
- (c) An appropriations subcommittee or interim committee that reviews a rule submitted under Subsection (13)(a) may recommend to the Administrative Rules Review Committee that the Administrative Rules Review Committee not recommend reauthorization of the rule in the omnibus legislation described in Section 63G-3-502.
- (d) The requirement described in Subsection (13)(a) does not apply to:
 - (i) the State Tax Commission; or
 - (ii) the State Board of Education.

(14)

- (a) As used in this Subsection (14), "initiate rulemaking proceedings" means the filing, for the purposes of publication in accordance with Subsection (4), of an agency's proposed rule that is required by state statute.
- (b) A state agency shall initiate rulemaking proceedings no later than 180 days after the day on which the statutory provision that specifically requires the rulemaking takes effect, except under Subsection (14)(c).
- (c) When a statute is enacted that requires agency rulemaking and the affected agency already has rules in place that meet the statutory requirement, the agency shall submit the rules to the Administrative Rules Review Committee for review within 60 days after the day on which the statute requiring the rulemaking takes effect.
- (d) If a state agency does not initiate rulemaking proceedings in accordance with the time requirements in Subsection (14)(b), the state agency shall appear before the legislative Administrative Rules Review Committee and provide the reasons for the delay.

Amended by Chapter 408, 2020 General Session

Effective 7/1/2021

63G-3-301 Rulemaking procedure.

- (1) An agency authorized to make rules is also authorized to amend or repeal those rules.
- (2) Except as provided in Sections 63G-3-303 and 63G-3-304, when making, amending, or repealing a rule agencies shall comply with:
 - (a) the requirements of this section;
 - (b) consistent procedures required by other statutes;
 - (c) applicable federal mandates; and
 - (d) rules made by the office to implement this chapter.
- (3) Subject to the requirements of this chapter, each agency shall develop and use flexible approaches in drafting rules that meet the needs of the agency and that involve persons affected by the agency's rules.
- (4)
 - (a) Each agency shall file the agency's proposed rule and rule analysis with the office.
 - (b) Rule amendments shall be marked with new language underlined and deleted language struck out.
 - (c)
 - (i) The office shall publish the information required under Subsection (8) on the rule analysis and the text of the proposed rule in the next issue of the bulletin.

- (ii) For rule amendments, only the section or subsection of the rule being amended need be printed.
- (iii) If the director determines that the rule is too long to publish, the office shall publish the rule analysis and shall publish the rule by reference to a copy on file with the office.

(5) Before filing a rule with the office, the agency shall conduct a thorough analysis, consistent with the criteria established by the Governor's Office of Planning and Budget, of the fiscal impact a rule may have on businesses, which criteria may include:

- (a) the type of industries that will be impacted by the rule, and for each identified industry, an estimate of the total number of businesses within the industry, and an estimate of the number of those businesses that are small businesses;
- (b) the individual fiscal impact that would incur to a typical business for a one-year period;
- (c) the aggregated total fiscal impact that would incur to all businesses within the state for a one-year period;
- (d) the total cost that would incur to all impacted entities over a five-year period; and
- (e) the department head's comments on the analysis.

(6) If the agency reasonably expects that a proposed rule will have a measurable negative fiscal impact on small businesses, the agency shall consider, as allowed by federal law, each of the following methods of reducing the impact of the rule on small businesses:

- (a) establishing less stringent compliance or reporting requirements for small businesses;
- (b) establishing less stringent schedules or deadlines for compliance or reporting requirements for small businesses;
- (c) consolidating or simplifying compliance or reporting requirements for small businesses;
- (d) establishing performance standards for small businesses to replace design or operational standards required in the proposed rule; and
- (e) exempting small businesses from all or any part of the requirements contained in the proposed rule.

(7) If during the public comment period an agency receives comment that the proposed rule will cost small business more than one day's annual average gross receipts, and the agency had not previously performed the analysis in Subsection (6), the agency shall perform the analysis described in Subsection (6).

(8) The rule analysis shall contain:

- (a) a summary of the rule or change;
- (b) the purpose of the rule or reason for the change;
- (c) the statutory authority or federal requirement for the rule;
- (d) the anticipated cost or savings to:
 - (i) the state budget;
 - (ii) local governments;
 - (iii) small businesses; and
 - (iv) persons other than small businesses, businesses, or local governmental entities;
- (e) the compliance cost for affected persons;
- (f) how interested persons may review the full text of the rule;
- (g) how interested persons may present their views on the rule;
- (h) the time and place of any scheduled public hearing;
- (i) the name and telephone number of an agency employee who may be contacted about the rule;
- (j) the name of the agency head or designee who authorized the rule;
- (k) the date on which the rule may become effective following the public comment period;
- (l) the agency's analysis on the fiscal impact of the rule as required under Subsection (5);

- (m) any additional comments the department head may choose to submit regarding the fiscal impact the rule may have on businesses; and
- (n) if applicable, a summary of the agency's efforts to comply with the requirements of Subsection (6).

(9)

- (a) For a rule being repealed and reenacted, the rule analysis shall contain a summary that generally includes the following:
 - (i) a summary of substantive provisions in the repealed rule which are eliminated from the enacted rule; and
 - (ii) a summary of new substantive provisions appearing only in the enacted rule.
- (b) The summary required under this Subsection (9) is to aid in review and may not be used to contest any rule on the ground of noncompliance with the procedural requirements of this chapter.

(10) A copy of the rule analysis shall be mailed to all persons who have made timely request of the agency for advance notice of the agency's rulemaking proceedings and to any other person who, by statutory or federal mandate or in the judgment of the agency, should also receive notice.

(11)

- (a) Following the publication date, the agency shall allow at least 30 days for public comment on the rule.
- (b) The agency shall review and evaluate all public comments submitted in writing within the time period under Subsection (11)(a) or presented at public hearings conducted by the agency within the time period under Subsection (11)(a).

(12)

- (a) Except as provided in Sections 63G-3-303 and 63G-3-304, a proposed rule becomes effective on any date specified by the agency that is:
 - (i) no fewer than seven calendar days after the day on which the public comment period closes under Subsection (11); and
 - (ii) no more than 120 days after the day on which the rule is published.
- (b) The agency shall provide notice of the rule's effective date to the office in the form required by the office.
- (c) The notice of effective date may not provide for an effective date before the day on which the office receives the notice.
- (d) The office shall publish notice of the effective date of the rule in the next issue of the bulletin.
- (e) A proposed rule lapses if a notice of effective date or a change to a proposed rule is not filed with the office within 120 days after the day on which the rule is published.

(13)

- (a) Except as provided in Subsection (13)(d), before an agency enacts a rule, the agency shall submit to the appropriations subcommittee and interim committee with jurisdiction over the agency the agency's proposed rule for review, if the proposed rule, over a three-year period, has a fiscal impact of more than:
 - (i) \$250,000 to a single person; or
 - (ii) \$7,500,000 to a group of persons.
- (b) An appropriations subcommittee or interim committee that reviews a rule submitted under Subsection (13)(a) shall:
 - (i) before the review, directly inform the chairs of the Administrative Rules Review Committee of the coming review, including the date, time, and place of the review; and

- (ii) after the review, directly inform the chairs of the Administrative Rules Review Committee of the outcome of the review, including any recommendation.
- (c) An appropriations subcommittee or interim committee that reviews a rule submitted under Subsection (13)(a) may recommend to the Administrative Rules Review Committee that the Administrative Rules Review Committee not recommend reauthorization of the rule in the omnibus legislation described in Section 63G-3-502.
- (d) The requirement described in Subsection (13)(a) does not apply to:
 - (i) the State Tax Commission; or
 - (ii) the State Board of Education.

(14)

- (a) As used in this Subsection (14), "initiate rulemaking proceedings" means the filing, for the purposes of publication in accordance with Subsection (4), of an agency's proposed rule that is required by state statute.
- (b) A state agency shall initiate rulemaking proceedings no later than 180 days after the day on which the statutory provision that specifically requires the rulemaking takes effect, except under Subsection (14)(c).
- (c) When a statute is enacted that requires agency rulemaking and the affected agency already has rules in place that meet the statutory requirement, the agency shall submit the rules to the Administrative Rules Review Committee for review within 60 days after the day on which the statute requiring the rulemaking takes effect.
- (d) If a state agency does not initiate rulemaking proceedings in accordance with the time requirements in Subsection (14)(b), the state agency shall appear before the legislative Administrative Rules Review Committee and provide the reasons for the delay.

Amended by Chapter 382, 2021 General Session

63G-3-302 Public hearings.

- (1) Each agency may hold a public hearing on a proposed rule, amendment to a rule, or repeal of a rule during the public comment period.
- (2) Each agency shall hold a public hearing on a proposed rule, amendment to a rule, or repeal of a rule if:
 - (a) a public hearing is required by state or federal mandate;
 - (b)
 - (i) another state agency, 10 interested persons, or an interested association having not fewer than 10 members request a public hearing; and
 - (ii) the agency receives the request in writing not more than 15 days after the publication date of the proposed rule.
- (3) The agency shall hold the hearing:
 - (a) before the rule becomes effective; and
 - (b) no less than seven days nor more than 30 days after receipt of the request for hearing.

Renumbered and Amended by Chapter 382, 2008 General Session

63G-3-303 Changes in rules.

(1)

- (a) To change a proposed rule already published in the bulletin, an agency shall file with the office:
 - (i) the text of the changed rule; and

- (ii) a rule analysis containing a description of the change and the information required by Section 63G-3-301.
- (b) A change to a proposed rule may not be filed more than 120 days after publication of the rule being changed.
- (c) The office shall publish the rule analysis for the changed rule in the bulletin.
- (d) The changed proposed rule and its associated proposed rule will become effective on a date specified by the agency, not less than 30 days or more than 120 days after publication of the last change in proposed rule.
- (e) A changed proposed rule and its associated proposed rule lapse if a notice of effective date or another change to a proposed rule is not filed with the office within 120 days of publication of the last change in proposed rule.

(2) If the rule change is nonsubstantive:

- (a) the agency need not comply with the requirements of Subsection (1); and
- (b) the agency shall notify the office of the change in writing.

(3) If the rule is effective, the agency shall amend the rule according to the procedures specified in Section 63G-3-301.

Amended by Chapter 193, 2016 General Session

63G-3-304 Emergency rulemaking procedure.

- (1) All agencies shall comply with the rulemaking procedures of Section 63G-3-301 unless an agency finds that these procedures would:
 - (a) cause an imminent peril to the public health, safety, or welfare;
 - (b) cause an imminent budget reduction because of budget restraints or federal requirements; or
 - (c) place the agency in violation of federal or state law.
- (2) When finding that its rule is excepted from regular rulemaking procedures by this section, the agency shall file with the office and the members of the Administrative Rules Review Committee:
 - (i) the text of the rule; and
 - (ii) a rule analysis that includes the specific reasons and justifications for its findings.
 - (b) The office shall publish the rule in the bulletin as provided in Subsection 63G-3-301(4).
 - (c) The agency shall notify interested persons as provided in Subsection 63G-3-301(10).
 - (d) Subject to Subsection 63G-3-502(4), the rule becomes effective for a period not exceeding 120 days on the date of filing or any later date designated in the rule.
- (3) If the agency intends the rule to be effective beyond 120 days, the agency shall also comply with the procedures of Section 63G-3-301.

Amended by Chapter 437, 2021 General Session

63G-3-305 Agency review of rules -- Schedule of filings -- Limited exemption for certain rules.

- (1) Each agency shall review each of its rules within five years after the rule's original effective date or within five years after the filing of the last five-year review, whichever is later.
- (2) An agency may consider any substantial review of a rule to be a five-year review if the agency also meets the requirements described in Subsection (3).

- (3) At the conclusion of its review, and no later than the deadline described in Subsection (1), the agency shall decide whether to continue, repeal, or amend and continue the rule and comply with Subsections (3)(a) through (c), as applicable.
 - (a) If the agency continues the rule, the agency shall file with the office a five-year notice of review and statement of continuation that includes:
 - (i) a concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require the rule;
 - (ii) a summary of written comments received during and since the last five-year review of the rule from interested persons supporting or opposing the rule; and
 - (iii) a reasoned justification for continuation of the rule, including reasons why the agency disagrees with comments in opposition to the rule, if any.
 - (b) If the agency repeals the rule, the agency shall:
 - (i) comply with Section 63G-3-301; and
 - (ii) in the rule analysis described in Section 63G-3-301, state that the repeal is the result of the agency's five-year review under this section.
 - (c) If the agency amends and continues the rule, the agency shall comply with the requirements described in Section 63G-3-301 and file with the office the five-year notice of review and statement of continuation required in Subsection (3)(a).
- (4) The office shall publish a five-year notice of review and statement of continuation in the bulletin no later than one year after the deadline described in Subsection (1).
- (5)
 - (a) The office shall make a reasonable effort to notify an agency that a rule is due for review at least 180 days before the deadline described in Subsection (1).
 - (b) The office's failure to comply with the requirement described in Subsection (5)(a) does not exempt an agency from complying with any provision of this section.
- (6) If an agency finds that it will not meet the deadline established in Subsection (1):
 - (a) before the deadline described in Subsection (1), the agency may file one extension with the office indicating the reason for the extension; and
 - (b) the office shall publish notice of the extension in the bulletin in accordance with the office's publication schedule established by rule under Section 63G-3-402.
- (7) An extension permits the agency to comply with the requirements described in Subsections (1) and (3) up to 120 days after the deadline described in Subsection (1).
- (8)
 - (a) If an agency does not comply with the requirements described in Subsection (3), and does not file an extension under Subsection (6), the rule expires automatically on the day immediately after the date of the missed deadline.
 - (b) If an agency files an extension under Subsection (6) and does not comply with the requirements described in Subsection (3) within 120 days after the day on which the deadline described in Subsection (1) expires, the rule expires automatically on the day immediately after the date of the missed deadline.
- (9) After a rule expires under Subsection (8), the office shall:
 - (a) publish a notice in the next issue of the bulletin that the rule has expired and is no longer enforceable;
 - (b) remove the rule from the code; and
 - (c) notify the agency that the rule has expired.
- (10) After a rule expires, an agency must comply with the requirements of Section 63G-3-301 to reenact the rule.

Amended by Chapter 193, 2016 General Session

Part 4
Office of Administrative Rules

Superseded 7/1/2021

63G-3-401 Office of Administrative Rules created -- Director.

- (1) There is created within the Department of Administrative Services the Office of Administrative Rules, to be administered by a director.
- (2)
 - (a) The executive director shall appoint the director.
 - (b) The director shall hire, train, and supervise staff necessary for the office to carry out the provisions of this chapter.

Amended by Chapter 408, 2020 General Session

Effective 7/1/2021

63G-3-401 Office of Administrative Rules created -- Director.

- (1) There is created within the Department of Government Operations the Office of Administrative Rules, to be administered by a director.
- (2)
 - (a) The executive director shall appoint the director.
 - (b) The director shall hire, train, and supervise staff necessary for the office to carry out the provisions of this chapter.

Amended by Chapter 344, 2021 General Session

63G-3-402 Office of Administrative Rules -- Duties generally.

- (1) The office shall:
 - (a) record in a register the receipt of all agency rules, rule analysis forms, and notices of effective dates;
 - (b) make the register, copies of all proposed rules, and rulemaking documents available for public inspection;
 - (c) publish all proposed rules, rule analyses, notices of effective dates, and review notices in the bulletin at least monthly, except that the office may publish the complete text of any proposed rule that the director determines is too long to print or too expensive to publish by reference to the text maintained by the office;
 - (d) compile, format, number, and index all effective rules in an administrative code, and periodically publish that code and supplements or revisions to it;
 - (e) publish a digest of all rules and notices contained in the most recent bulletin;
 - (f) publish at least annually an index of all changes to the administrative code and the effective date of each change;
 - (g) print, or contract to print, all rulemaking publications the director determines necessary to implement this chapter;

- (h) distribute without charge the bulletin and administrative code to state-designated repositories, the Administrative Rules Review Committee, the Office of Legislative Research and General Counsel, and the two houses of the Legislature;
- (i) distribute without charge the digest and index to state legislators, agencies, political subdivisions on request, and the Office of Legislative Research and General Counsel;
- (j) distribute, at prices covering publication costs, all paper rulemaking publications to all other requesting persons and agencies;
- (k) provide agencies assistance in rulemaking;
- (l) if the department operates the office as an internal service fund agency in accordance with Section 63A-1-109.5, submit to the Rate Committee established in Section 63A-1-114:
 - (i) the proposed rate and fee schedule as required by Section 63A-1-114; and
 - (ii) other information or analysis requested by the Rate Committee;
- (m) administer this chapter and require state agencies to comply with filing, publication, and hearing procedures; and
- (n) make technological improvements to the rulemaking process, including improvements to automation and digital accessibility.

(2) The office shall establish by rule in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, all filing, publication, and hearing procedures necessary to make rules under this chapter.

(3) The office may after notifying the agency make nonsubstantive changes to rules filed with the office or published in the bulletin or code by:

- (a) implementing a uniform system of formatting, punctuation, capitalization, organization, numbering, and wording;
- (b) correcting obvious errors and inconsistencies in punctuation, capitalization, numbering, referencing, and wording;
- (c) changing a catchline to more accurately reflect the substance of each section, part, rule, or title;
- (d) updating or correcting annotations associated with a section, part, rule, or title; and
- (e) merging or determining priority of any amendment, enactment, or repeal to the same rule or section made effective by an agency.

(4) In addition, the office may make the following nonsubstantive changes with the concurrence of the agency:

- (a) eliminate duplication within rules;
- (b) eliminate obsolete and redundant words; and
- (c) correct defective or inconsistent section and paragraph structure in arrangement of the subject matter of rules.

(5) For nonsubstantive changes made in accordance with Subsection (3) or (4) after publication of the rule in the bulletin, the office shall publish a list of nonsubstantive changes in the bulletin. For each nonsubstantive change, the list shall include:

- (a) the affected code citation;
- (b) a brief description of the change; and
- (c) the date the change was made.

(6) All funds appropriated or collected for publishing the office's publications shall be nonlapsing.

Amended by Chapter 408, 2020 General Session

63G-3-403 Repeal and reenactment of Utah Administrative Code.

- (1) When the director determines that the Utah Administrative Code requires extensive revision and reorganization, the office may repeal the code and reenact a new code according to the requirements of this section.
- (2) The office may:
 - (a) reorganize, reformat, and renumber the code;
 - (b) require each agency to review its rules and make any organizational or substantive changes according to the requirements of Section 63G-3-303; and
 - (c) require each agency to prepare a brief summary of all substantive changes made by the agency.
- (3) The office may make nonsubstantive changes in the code by:
 - (a) adopting a uniform system of punctuation, capitalization, numbering, and wording;
 - (b) eliminating duplication;
 - (c) correcting defective or inconsistent section and paragraph structure in arrangement of the subject matter of rules;
 - (d) eliminating all obsolete or redundant words;
 - (e) correcting obvious errors and inconsistencies in punctuation, capitalization, numbering, referencing, and wording;
 - (f) changing a catchline to more accurately reflect the substance of each section, part, rule, or title;
 - (g) updating or correcting annotations associated with a section, part, rule, or title; and
 - (h) merging or determining priority of any amendment, enactment, or repeal to the same rule or section made effective by an agency.
- (4)
 - (a) To inform the public about the proposed code reenactment, the office shall publish in the bulletin:
 - (i) notice of the code reenactment;
 - (ii) the date, time, and place of a public hearing where members of the public may comment on the proposed reenactment of the code;
 - (iii) locations where the proposed reenactment of the code may be reviewed; and
 - (iv) agency summaries of substantive changes in the reenacted code.
 - (b) To inform the public about substantive changes in agency rules contained in the proposed reenactment, each agency shall:
 - (i) make the text of their reenacted rules available:
 - (A) for public review during regular business hours; and
 - (B) in an electronic version; and
 - (ii) comply with the requirements of Subsection 63G-3-301(10).
- (5) The office shall hold a public hearing on the proposed code reenactment no fewer than 30 days nor more than 45 days after the publication required by Subsection (4)(a).
- (6) The office shall distribute complete text of the proposed code reenactment without charge to:
 - (a) state-designated repositories in Utah;
 - (b) the Administrative Rules Review Committee; and
 - (c) the Office of Legislative Research and General Counsel.
- (7) The former code is repealed and the reenacted code is effective at noon on a date designated by the office that is not fewer than 45 days nor more than 90 days after the publication date required by this section.
- (8) Repeal and reenactment of the code meets the requirements of Section 63G-3-305 for a review of all agency rules.

Part 5 **Legislative Oversight**

63G-3-501 Administrative Rules Review Committee.

- (1)
 - (a) There is created an Administrative Rules Review Committee of the following 10 permanent members:
 - (i) five members of the Senate appointed by the president of the Senate, no more than three of whom may be from the same political party; and
 - (ii) five members of the House of Representatives appointed by the speaker of the House of Representatives, no more than three of whom may be from the same political party.
 - (b) Each permanent member shall serve:
 - (i) for a two-year term; or
 - (ii) until the permanent member's successor is appointed.
 - (c)
 - (i) A vacancy exists when a permanent member ceases to be a member of the Legislature, or when a permanent member resigns from the committee.
 - (ii) When a vacancy exists:
 - (A) if the departing member is a member of the Senate, the president of the Senate shall appoint a member of the Senate to fill the vacancy; or
 - (B) if the departing member is a member of the House of Representatives, the speaker of the House of Representatives shall appoint a member of the House of Representatives to fill the vacancy.
 - (iii) The newly appointed member shall serve the remainder of the departing member's unexpired term.
 - (d)
 - (i) The president of the Senate shall designate a member of the Senate appointed under Subsection (1)(a)(i) as a cochair of the committee.
 - (ii) The speaker of the House of Representatives shall designate a member of the House of Representatives appointed under Subsection (1)(a)(ii) as a cochair of the committee.
 - (e) Three representatives and three senators from the permanent members are a quorum for the transaction of business at any meeting.
 - (f)
 - (i) Subject to Subsection (1)(f)(ii), the committee shall meet at least once each month to review new agency rules, amendments to existing agency rules, and repeals of existing agency rules.
 - (ii) The committee chairs may suspend the meeting requirement described in Subsection (1)(f)(i) at the committee chairs' discretion.
- (2) The office shall submit a copy of each issue of the bulletin to the committee.
- (3)
 - (a) The committee shall exercise continuous oversight of the rulemaking process.
 - (b) The committee shall examine each rule, including any rule made according to the emergency rulemaking procedure described in Section 63G-3-304, submitted by an agency to determine:
 - (i) whether the rule is authorized by statute;

- (ii) whether the rule complies with legislative intent;
- (iii) the rule's impact on the economy and the government operations of the state and local political subdivisions;
- (iv) the rule's impact on affected persons;
- (v) the rule's total cost to entities regulated by the state;
- (vi) the rule's benefit to the citizens of the state; and
- (vii) whether adoption of the rule requires legislative review or approval.

(c) The committee may examine and review:

- (i) any executive order issued pursuant to Title 53, Chapter 2a, Part 2, Disaster Response and Recovery Act; or
- (ii) any public health order issued during a public health emergency declared in accordance with Title 26, Utah Health Code, or Title 26A, Local Health Authorities.

(d)

- (i) To carry out these duties, the committee may examine any other issues that the committee considers necessary.
- (ii) The committee may also notify and refer rules to the chairs of the interim committee that has jurisdiction over a particular agency when the committee determines that an issue involved in an agency's rules may be more appropriately addressed by that committee.

(e) In reviewing a rule, the committee shall follow generally accepted principles of statutory construction.

(4) When the committee reviews an existing rule, the committee chairs shall invite the Senate and House chairs of the standing committee and of the appropriation subcommittee that have jurisdiction over the agency whose existing rule is being reviewed to participate as nonvoting, ex officio members with the committee.

(5) The committee may request that the Office of the Legislative Fiscal Analyst prepare a fiscal note on any rule.

(6) In order to accomplish the committee's functions described in this chapter, the committee has all the powers granted to legislative interim committees under Section 36-12-11.

(7)

- (a) The committee may prepare written findings of the committee's review of a rule or policy and may include any recommendation, including legislative action.
- (b) When the committee reviews a rule, the committee shall provide to the agency that enacted the rule:
 - (i) the committee's findings, if any; and
 - (ii) a request that the agency notify the committee of any changes the agency makes to the rule.
- (c) The committee shall provide a copy of the committee's findings, if any, to:
 - (i) any member of the Legislature, upon request;
 - (ii) any person affected by the rule, upon request;
 - (iii) the president of the Senate;
 - (iv) the speaker of the House of Representatives;
 - (v) the Senate and House chairs of the standing committee that has jurisdiction over the agency that made the rule; and
 - (vi) the Senate and House chairs of the appropriation subcommittee that has jurisdiction over the agency that made the rule.

(8)

(a)

- (i) The committee may submit a report on the committee's review of state agency rules to each member of the Legislature at each regular session.
- (ii) The report shall include:
 - (A) any finding or recommendation the committee made under Subsection (7);
 - (B) any action an agency took in response to a committee recommendation; and
 - (C) any recommendation by the committee for legislation.
- (b) If the committee receives a recommendation not to reauthorize a rule, as described in Subsection 63G-3-301(13)(b), and the committee recommends to the Legislature reauthorization of the rule, the committee shall submit a report to each member of the Legislature detailing the committee's decision.

Amended by Chapter 437, 2021 General Session

63G-3-502 Legislative reauthorization of agency rules -- Extension of rules by governor.

- (1) All grants of rulemaking power from the Legislature to a state agency in any statute are made subject to the provisions of this section.
- (2)
 - (a) Except as provided in Subsection (2)(b), every agency rule that is in effect on February 28 of any calendar year expires on May 1 of that year unless it has been reauthorized by the Legislature.
 - (b) Notwithstanding the provisions of Subsection (2)(a), an agency's rules do not expire if:
 - (i) the rule is explicitly mandated by a federal law or regulation; or
 - (ii) a provision of Utah's constitution vests the agency with specific constitutional authority to regulate.
- (3)
 - (a) The Administrative Rules Review Committee shall have omnibus legislation prepared for consideration by the Legislature during its annual general session.
 - (b) The omnibus legislation shall be substantially in the following form: "All rules of Utah state agencies are reauthorized except for the following:".
 - (c) Before sending the legislation to the governor for the governor's action, the Administrative Rules Review Committee may send a letter to the governor and to the agency explaining specifically why the committee believes any rule should not be reauthorized.
 - (d) For the purpose of this section, the entire rule, a single section, or any complete paragraph of a rule may be excepted for reauthorization in the omnibus legislation considered by the Legislature.
- (4)
 - (a) The Administrative Rules Review Committee may have legislation prepared for consideration by the Legislature in the annual general session or a special session regarding any rule made according to emergency rulemaking procedures described in Section 63G-3-304.
- (5) The Legislature's reauthorization of a rule by legislation does not constitute legislative approval of the rule, nor is it admissible in any proceeding as evidence of legislative intent.
- (6)
 - (a) If an agency believes that a rule that has not been reauthorized by the Legislature or that will be allowed to expire should continue in full force and effect and is a rule within their authorized rulemaking power, the agency may seek the governor's declaration extending the rule beyond the expiration date.
 - (b) In seeking the extension, the agency shall submit a petition to the governor that affirmatively states:

- (i) that the rule is necessary; and
- (ii) a citation to the source of its authority to make the rule.

(c)

- (i) If the governor finds that the necessity does exist, and that the agency has the authority to make the rule, the governor may declare the rule to be extended by publishing that declaration in the Administrative Rules Bulletin on or before April 15 of that year.
- (ii) The declaration shall set forth the rule to be extended, the reasons the extension is necessary, and a citation to the source of the agency's authority to make the rule.

(d) If the omnibus bill required by Subsection (3) fails to pass both houses of the Legislature or is found to have a technical legal defect preventing reauthorization of administrative rules intended to be reauthorized by the Legislature, the governor may declare all rules to be extended by publishing a single declaration in the Administrative Rules Bulletin on or before June 15 without meeting requirements of Subsections (6)(b) and (c).

Amended by Chapter 437, 2021 General Session

Part 6 **Judicial Review**

63G-3-601 Interested parties -- Petition for agency action.

- (1) As used in this section, "initiate rulemaking proceedings" means the filing, for the purposes of publication in accordance with Subsection 63G-3-301(4), of an agency's proposed rule to implement a petition for the making, amendment, or repeal of a rule as provided in this section.
- (2) An interested person may petition an agency to request the making, amendment, or repeal of a rule.
- (3) The office shall prescribe by rule the form for petitions and the procedure for their submission, consideration, and disposition.
- (4) A statement shall accompany the proposed rule, or proposed amendment or repeal of a rule, demonstrating that the proposed action is within the jurisdiction of the agency and appropriate to the powers of the agency.
- (5) Within 60 days after submission of a petition, the agency shall either deny the petition in writing, stating its reasons for the denial, or initiate rulemaking proceedings.
- (6)
 - (a) If the petition is submitted to a board that has been granted rulemaking authority by the Legislature, the board shall, within 45 days of the submission of the petition, place the petition on its agenda for review.
 - (b) Within 80 days of the submission of the petition, the board shall either:
 - (i) deny the petition in writing stating its reasons for denial; or
 - (ii) initiate rulemaking proceedings.
- (7) If the agency or board has not provided the petitioner written notice that the agency has denied the petition or initiated rulemaking proceedings within the time limitations specified in Subsection (5) or (6) respectively, the petitioner may seek a writ of mandamus in state district court.

Amended by Chapter 408, 2020 General Session

63G-3-602 Judicial challenge to administrative rules.

- (1)
 - (a) Any person aggrieved by a rule may obtain judicial review of the rule by filing a complaint with the county clerk in the district court where the person resides or in the district court in Salt Lake County.
 - (b) Any person aggrieved by an agency's failure to comply with Section 63G-3-201 may obtain judicial review of the agency's failure to comply by filing a complaint with the clerk of the district court where the person resides or in the district court in Salt Lake County.
- (2)
 - (a) Except as provided in Subsection (2)(b), a person seeking judicial review under this section shall exhaust that person's administrative remedies by complying with the requirements of Section 63G-3-601 before filing the complaint.
 - (b) When seeking judicial review of a rule, the person need not exhaust that person's administrative remedies if:
 - (i) less than six months has passed since the date that the rule became effective and the person had submitted verbal or written comments on the rule to the agency during the public comment period;
 - (ii) a statute granting rulemaking authority expressly exempts rules made under authority of that statute from compliance with Section 63G-3-601; or
 - (iii) compliance with Section 63G-3-601 would cause the person irreparable harm.
- (3)
 - (a) In addition to the information required by the Utah Rules of Civil Procedure, a complaint filed under this section shall contain:
 - (i) the name and mailing address of the plaintiff;
 - (ii) the name and mailing address of the defendant agency;
 - (iii) the name and mailing address of any other party joined in the action as a defendant;
 - (iv) the text of the rule or proposed rule, if any;
 - (v) an allegation that the person filing the complaint has either exhausted the administrative remedies by complying with Section 63G-3-601 or met the requirements for waiver of exhaustion of administrative remedies established by Subsection (2)(b);
 - (vi) the relief sought; and
 - (vii) factual and legal allegations supporting the relief sought.
 - (b)
 - (i) The plaintiff shall serve a summons and a copy of the complaint as required by the Utah Rules of Civil Procedure.
 - (ii) The defendants shall file a responsive pleading as required by the Utah Rules of Civil Procedures.
 - (iii) The agency shall file the administrative record of the rule, if any, with its responsive pleading.
- (4) The district court may grant relief to the petitioner by:
 - (a) declaring the rule invalid, if the court finds that:
 - (i) the rule violates constitutional or statutory law or the agency does not have legal authority to make the rule;
 - (ii) the rule is not supported by substantial evidence when viewed in light of the whole administrative record; or
 - (iii) the agency did not follow proper rulemaking procedure;
 - (b) declaring the rule nonapplicable to the petitioner;

- (c) remanding the matter to the agency for compliance with proper rulemaking procedures or further fact-finding;
- (d) ordering the agency to comply with Section 63G-3-201;
- (e) issuing a judicial stay or injunction to enjoin the agency from illegal action or action that would cause irreparable harm to the petitioner; or
- (f) any combination of Subsections (4)(a) through (e).

(5) If the plaintiff meets the requirements of Subsection (2)(b), the district court may review and act on a complaint under this section whether or not the plaintiff has requested the agency review under Section 63G-3-601.

Renumbered and Amended by Chapter 382, 2008 General Session

63G-3-603 Time for contesting a rule -- Statute of limitations.

- (1) A proceeding to contest any rule on the ground of noncompliance with the procedural requirements of this chapter shall commence within two years of the effective date of the rule.
- (2) A proceeding to contest any rule on the ground of not being supported by substantial evidence when viewed in light of the whole administrative record shall commence within four years of the effective date of the challenged action.
- (3) A proceeding to contest any rule on the basis that a change to the rule made under Subsection 63G-3-402(2) or (3) substantively changed the rule shall be commenced within two years of the date the change was made.

Renumbered and Amended by Chapter 382, 2008 General Session

Part 7
Official Compilation of Administrative Rules

63G-3-701 Utah Administrative Code as official compilation of rules -- Judicial notice.

The code shall be received by all the judges, public officers, commissions, and departments of the state government as evidence of the administrative law of the state of Utah and as an authorized compilation of the administrative law of Utah. All courts shall take judicial notice of the code and its provisions.

Renumbered and Amended by Chapter 382, 2008 General Session

63G-3-702 Utah Administrative Code -- Organization -- Official compilation.

- (1) The Utah Administrative Code shall be divided into three parts:
 - (a) titles, whose number shall begin with "R";
 - (b) rules; and
 - (c) sections.
- (2) All sections contained in the code are referenced by a three-part number indicating its location in the code.
- (3) The office shall maintain the official compilation of the code and is the state-designated repository for administrative rules. If a dispute arises in which there is more than one version of a rule, the latest effective version on file with the office is considered the correct, current version.

Amended by Chapter 193, 2016 General Session

428 P.3d 1096
Supreme Court of Utah.

Zachary BRYNER, Nenita R. Ezar, Michelle Gallagher, and Christopher Furr, Appellants,
v.
CARDON OUTREACH, LLC, IHC Health Services, Inc., St. Mark's Hospital, University of Utah Health Care, and State of Utah, Appellees.

No. 20160818

|

Filed September 24, 2018

Synopsis

Background: Patients who obtained treatment from hospitals for injuries sustained in car accidents, and who reached settlements with third parties at fault, brought class action, contending that the hospitals, which had hospital liens on the settlements obtained by patients, should have paid a proportional share of the attorney fees incurred by patients in generating the settlement proceeds. The Third District Court, Salt Lake, **Barry G. Lawrence**, J., granted summary judgment for hospitals. Patients appealed.

Holdings: The Supreme Court, **Himonas**, J., held that:

- [1] plain language of hospital lien statute did not allow for proportional sharing of attorney fees;
- [2] even if statute was ambiguous, proportional sharing violated substantive terms canon of statutory interpretation; and
- [3] common fund doctrine was not ground for proportional sharing.

Affirmed.

Procedural Posture(s): On Appeal; Motion for Summary Judgment.

West Headnotes (18)

[1] **Appeal and Error**  Statutory or legislative law

A trial court's interpretation of a statute is a question of law, which the Supreme Court reviews for correctness.

[3 Cases that cite this headnote](#)

[2] **Appeal and Error**  Review for correctness or error

Supreme Court reviews a trial court's grant of summary judgment for correctness.

[2 Cases that cite this headnote](#)

[3] **Appeal and Error**  Summary Judgment

Supreme Court affirms a grant of summary judgment when the record shows there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. [Utah R. Civ. P. 56\(c\)](#).

[4] **Statutes**  Purpose and intent

A court's goal when confronted with questions of statutory interpretation is to evince the true intent and purpose of the legislature.

[1 Cases that cite this headnote](#)

[5] **Statutes**  Plain Language; Plain, Ordinary, or Common Meaning

The best evidence of legislative intent is the plain language of the statute itself.

[3 Cases that cite this headnote](#)

[6] **Statutes**  Plain language; plain, ordinary, common, or literal meaning

The first step of statutory interpretation is to look to the plain language, and where statutory language is plain and unambiguous, a court will

not look beyond the same to divine legislative intent.

[5 Cases that cite this headnote](#)

[7] **Statutes** Statute as a Whole; Relation of Parts to Whole and to One Another

Statutes Construing together; harmony

Courts read the plain language of a statute as a whole and interpret its provisions in harmony with other statutes in the same chapter and related chapters.

[4 Cases that cite this headnote](#)

[8] **Statutes** What constitutes ambiguity; how determined

If, after conducting plain language review, a court is left with competing reasonable interpretations, there is statutory ambiguity.

[1 Cases that cite this headnote](#)

[9] **Statutes** What constitutes ambiguity; how determined

A statute susceptible to competing interpretations may nevertheless be unambiguous if the text of the act as a whole, in light of related statutory provisions, makes all but one of those meanings implausible.

[3 Cases that cite this headnote](#)

[10] **Health** Hospitals

Plain language of hospital lien statute did not allow for proportional reduction of hospital's share of attorney fees from a judgment obtained by a patient against a third party for personal injuries for which patient received treatment; read as a whole, the statute created a priority for the distribution of a "judgment, settlement, or compromise going or belonging to the patient," utilizing the total amount of the judgment to pay the patient's attorney fees, with the net judgment becoming available to cover the entirety of the hospital lien. [Utah Code Ann. § 38-7-1](#).

[1 Cases that cite this headnote](#)

[11] **Health** Hospitals

Even if hospital lien statute was ambiguous, proportional sharing of attorney fees, as basis for reducing amount of hospital's lien on a judgment obtained by a patient against a third party for personal injuries for which patient received treatment, violated the substantive terms canon of statutory interpretation; nothing in the language of the statute allowed for assessing hospitals with a proportional share of the attorney fees, but instead substantive terms had to be added to read the statute as requiring hospitals to share in attorney fees. [Utah Code Ann. § 38-7-1](#).

[12] **Statutes** Language

Under the substantive terms canon of statutory construction, when construing the language of a statutory provision, courts presume that the legislature used each word advisedly.

[13] **Constitutional Law** Making, Interpretation, and Application of Statutes

Constitutional Law Judicial rewriting or revision

Statutes Language

Under the substantive terms canon of statutory construction, courts will not infer substantive terms into the text of a statute that are not already there; rather, the interpretation must be based on the language used, and courts have no power to rewrite the statute to conform to an intention not expressed.

[2 Cases that cite this headnote](#)

[14] **Constitutional Law** Making, Interpretation, and Application of Statutes

Statutes Language

Where the legislature has not indicated an intention to enact an unprecedented legal

requirement, courts will not alter the statutory terms to surmise one.

[15] **Health** Hospitals

Common fund doctrine was not ground for proportional sharing of attorney fees, as basis for reducing amount of hospital's statutory lien on a judgment obtained by a patient against a third party for personal injuries for which patient received treatment; the doctrine was not incorporated into the statute by the legislature, the relationship between hospital and patient was generally contractual, precluding any claim of unjust enrichment, and a hospital's provision of medical services to a patient established a debtor-creditor relationship, pursuant to which hospital was not required to recoup costs of patient's litigation expenses. [Utah Code Ann. § 38-7-1](#).

[1](#) Cases that cite this headnote

[16] **Attorneys and Legal**

Services Compensation from Funds in Court; Common Fund

Under the common fund doctrine, a litigant who creates, increases, or preserves a fund to which others may have a claim is entitled to attorney fees and costs from that fund.

[17] **Attorneys and Legal**

Services Compensation from Funds in Court; Common Fund

The common fund doctrine allows courts to award attorney fees in common fund cases to avoid the unjust enrichment of those who benefit from the fund that is created by the litigation and who otherwise would bear none of the litigation costs.

[18] **Creditors' Remedies** Debtor-Creditor Relationship

The existence of a claim, or right to payment, is at the heart of the debtor-creditor relationship.

***1097** Third District, Salt Lake, The Honorable [Barry G. Lawrence](#), No. 150903753

Attorneys and Law Firms

[Robert B. Sykes](#), [Alyson Carter McAllister](#), [Daniel Oswald](#), Salt Lake City, for appellants

[Gregory John Wilder](#), Provo, for appellant Nenita R. Ezar [Sean D. Reyes](#), Att'y Gen., [Peggy Stone](#), Asst. Sol. Gen., Salt Lake City, for appellees University of Utah Health Care and State of Utah [Derek J. Williams](#), [P. Matthew Cox](#), [Nathaniel J. Mitchell](#), Salt Lake City, for appellee Cardon Outreach, LLC [Alan C. Bradshaw](#), [Steven C. Bednar](#), Salt Lake City, for appellee IHC Health Services, Inc.

[Andrew G. Deiss](#), [Billie Jean Siddoway](#), Salt Lake City, [Sean Gallagher](#), Denver, CO, for appellee St. Mark's Hospital

Justice [Himonas](#) authored the opinion of the Court, in which Chief Justice [Durrant](#), Associate Chief Justice [Lee](#), Justice [Pearce](#), and Justice [Petersen](#) joined.

On Direct Appeal

Justice [Himonas](#), opinion of the Court:

***1098 INTRODUCTION**

¶1 The question before us is not a particularly thorny one: what is the correct interpretation of Utah's Hospital Lien Statute? See [UTAH CODE § 38-7-1](#). Recognizing that this question is purely one of law, the parties sensibly agreed to stay discovery and filed cross-motions for summary judgment at the outset of the case.

¶2 The plaintiffs¹ argued that the Hospital Lien Statute "requires a hospital to pay its proportional share of an injured person's attorney fees and costs when a hospital lien is paid due to the efforts of the injured person or his or her attorney."

The defendants² countered that the statute contains no such language, and that the statute operates instead "to establish a priority system as to entitlement to settlement funds to allow hospitals to get paid."

¶3 The district court concluded that the hospitals' interpretation was correct, as it was "the only reasonable

[interpretation] that ma[de] sense given the context of the statute read as a whole.” More specifically, the district court granted summary judgment to the hospitals, finding that “even giving [the] [patients] the benefit of the doubt concerning … [their] tortured (albeit possible) interpretation of Subsection (1)(a), … [o]nly [the hospitals’] interpretation reconciles the [Hospital Lien] [S]tatute *as a whole*.” The patients appealed. We are in full agreement with the district court’s conclusions and therefore affirm the grant of summary judgment.

BACKGROUND

¶4 Because the parties have stipulated that the focal issue in this case is the interpretation of the Hospital Lien Statute, the facts in this matter are not at issue. This proposed class action involves persons injured in car accidents who filed personal injury claims against the third parties at fault. All had hospital liens placed on any potential recovery from those claims, and all reached settlement agreements, paying their attorney fees by way of a contingent fee on the recovery. In each case, the patient used the settlement proceeds to pay attorney fees and associated costs and then the entirety of the asserted hospital lien, retaining the remaining balance, if any.

¶5 The patients contend that the hospitals failed to pay their “fair share” of the attorney fees (including court costs and other necessary expenses) the patients incurred in generating the settlement proceeds. And they further contend that, under the Hospital Lien Statute, the hospitals should be required to reimburse them for the proportion of those attorney fees that the hospitals should have been required to pay in order to equitably share the costs of obtaining the settlement proceeds.³ The district court disagreed with the patients’ interpretation of the statute and granted summary judgment to *1099 the hospitals. We agree with the district court that the reading of the plain language of the statute as a whole yields the hospitals’ interpretation and find that the language is not ambiguous. But even if the language were ambiguous, the substantive terms canon would negate the patients’ interpretation. We also conclude that the common fund doctrine offers the patients no relief.

¶6 We have jurisdiction under Utah Code section 78A-3-102(3)(j).

STANDARD OF REVIEW

[1] [2] [3] ¶7 “A district court’s interpretation of a statute is a question of law, which we … review for correctness.” *Harvey v. Cedar Hills City*, 2010 UT 12, ¶ 10, 227 P.3d 256. “We review a district court’s grant of summary judgment for correctness. We affirm a grant of summary judgment when the record shows ‘there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.’ ” *Id.* (footnote omitted) (quoting UTAH R. CIV. P. 56(c)).

ANALYSIS

¶8 The Hospital Lien Statute authorizes hospitals that treat persons injured in accidents to file liens on the personal injury claims arising out of those accidents. See UTAH CODE § 38-7-1. The parties disagree about the effect of the Hospital Lien Statute in allocating the attorney fees and costs of the personal injury litigation. In particular, the parties disagree about the meaning of subsections 1(a) and 1(b) of the statute. These subsections state

- (1) (a) Except as provided in Subsection (3), a hospital located within the state that furnishes emergency, medical, or other service to a patient injured by reason of an accident is entitled to assert a lien upon that portion of the judgment, settlement, or compromise going or belonging to the patient, or, in the case of death, to the patient’s heirs or personal representatives, less the amount paid by the patient, or on behalf of the patient by heirs or personal representatives, for attorney fees, court costs, and other necessary expenses incidental to obtaining the judgment, settlement, or compromise.
- (b) No reduction of the asserted lien amount is allowed other than the amount paid by the patient, or the patient’s heirs, or personal representatives for attorney fees, court costs, and other necessary expenses incidental to litigation, unless otherwise agreed to in writing by the lien claimant.

Id. § 38-7-1(1).

I. STATUTORY INTERPRETATION

[4] [5] [6] ¶9 “Our goal when confronted with questions of statutory interpretation is to evince the true intent and purpose of the Legislature. It is axiomatic that the best evidence of legislative intent is the plain language of the statute itself.”  *Anderson v. Bell*, 2010 UT 47, ¶9, 234 P.3d 1147 (citations omitted) (internal quotation marks omitted), *superseded on other grounds by statute UTAH CODE § 20A-9-502*. The first step of statutory interpretation is to look to the plain language, and “[w]here statutory language is plain and unambiguous, this Court will not look beyond the same to divine legislative intent. Rather, we are guided by the rule that a statute should generally be construed according to its plain language” *Garrard v. Gateway Fin. Servs., Inc.*, 2009 UT 22, ¶11, 207 P.3d 1227 (citation omitted).

[7] [8] [9] ¶10 Additionally, “we read the plain language of the statute as a whole, and interpret its provisions in harmony with other statutes in the same chapter and related chapters.” *State v. Barrett*, 2005 UT 88, ¶29, 127 P.3d 682 (citation omitted) (internal quotation marks omitted). If, after conducting this plain language review we are left with competing reasonable interpretations, there is statutory ambiguity.  *Marion Energy, Inc. v. KFJ Ranch P'ship*, 2011 UT 50, ¶15, 267 P.3d 863 (Noting that statutory language is ambiguous if “its terms remain susceptible to two or more reasonable interpretations after we have conducted a plain language analysis”). However, “a statute susceptible to competing interpretations may nevertheless be unambiguous if the text of the act as a whole, *1100 in light of related statutory provisions, makes all but one of those meanings implausible.” *Utah Pub. Emps. Ass'n v. State*, 2006 UT 9, ¶60, 131 P.3d 208 (Parrish, J., concurring).

¶11 In this statute, there is no ambiguity. The district court correctly decided that although each party offers a different *possible* interpretation of the Hospital Lien Statute, only one interpretation is *plausible* given the text of the act as a whole. Only the hospitals’ interpretation makes sense on its face under the ordinary meaning of the words as used in the statute and harmonizes the language in subsections 1(a) and 1(b) of the statute. Thus, finding no ambiguity, we determine the statute’s meaning by its plain language.

A. The Whole-Text Canon and the Grammatical Structure of Subsection (1)

¶12 “[T]he whole-text canon … calls on the judicial interpreter to consider the entire text, in view of its structure and of the physical and logical relation of its many parts.” ANTONIN SCALIA & BRYAN A. GARNER, *READING LAW: THE INTERPRETATION OF LEGAL TEXTS* 167 (2012). “Often, statutory text may not be plain when read in isolation, but may become so in light of its linguistic, structural, and statutory context. The reverse is equally true: words or phrases may appear unambiguous when read in isolation, but become ambiguous when read in context.” *State v. Rushton*, 2017 UT 21, ¶11, 395 P.3d 92 (citation omitted) (internal quotation marks omitted).

[10] ¶13 Read as a whole, *Utah Code section 38-7-1(1)* creates a priority for the distribution of the “judgment, settlement, or compromise going or belonging to the patient.” *Id. § 38-7-1(1)(a)*.⁴ The judgment is first used to pay “attorney fees, court costs, and other necessary expenses”⁵ accrued in obtaining the judgment. *Id.* Subsection 1(a) allows a hospital to assert a lien on the remaining amount of the judgment to obtain payment for medical expenses incurred in treating the patient as a result of the action being litigated (provided that the amount is greater than \$100). *Id. § 38-7-1(1)(a), (c)*. Subsection 1(b) establishes that the hospital has priority over any other creditor or the patient to the entirety of the net judgment (total judgment less attorney fees) up to its asserted lien unless expressly agreed to by the hospital. *Id. § 38-7-1(1)(b)* (“No reduction of the asserted lien amount is allowed other than the amount paid … for attorney fees … unless otherwise agreed to in writing by the lien claimant.”). In other words, the total amount of the judgment “going or belonging to the patient”⁶ is first used to pay or reimburse attorney fees, with the net judgment becoming available to cover the entirety of the hospital lien. Any remaining funds go to other lien holders, if they exist, and then the patient receives the final amount.

¶14 The relevant portion for purposes of a grammatical analysis of the syntax of subsection 1(a) is as follows: “a hospital … is entitled to assert a lien upon that portion of the judgment … going or belonging to the patient … less the amount paid by the patient for attorney fees … incidental to obtaining the judgment.”⁷ Although this sentence is complex, each modifying phrase can be traced to its nearest reasonable referent. *1101 “[A] prepositive or postpositive modifier normally applies only to the nearest reasonable referent.” SCALIA & GARNER, *supra*, at 152.

¶15 The basic elements of the sentence in subsection 1(a) are the subject (“a hospital”), the verb (“is entitled”), and the direct object—an infinitive phrase (“to assert a lien”) with its postmodifier.⁸ This postmodifier is a prepositional phrase (“upon that portion of the judgment … going or belonging to the patient … less the amount paid by the patient … for attorney fees … incidental to obtaining the judgment”).

¶16 The preposition⁹ “upon”¹⁰ indicates that the object of the preposition, a clause beginning with a relative pronoun and a noun, “that portion,” will be the source *on* which the lien may be asserted—some portion yet to be defined. In order for the sentence to make sense, “that portion” must be defined, so the sentence requires a complement to “that portion.” The complement clarifies what is meant by “that portion.” In this sentence, the complement is “of the judgment going or belonging to the patient.”¹¹ The complement is also followed by a postmodifier, “less the amount paid by the patient … for attorney fees … incidental to obtaining the judgment.”¹² Postmodifiers usually come after a complement in a noun clause, and refer back to the head noun (“portion”) in the clause. So both the complement and the postmodifier refer back to the noun “portion.”

¶17 The prepositional phrase, “less attorney fees,”¹³ acts, along with its postmodifiers, as a postmodifier in this sentence. As used here, “less” is a preposition meaning minus or without. It also modifies its nearest reasonable referent (the noun the complement finishes defining), “portion.” Its function is to specify or clarify that the funds available on which the hospital may assert its lien do not include the portion of the judgment used to pay attorney fees. In other words, the complement and the postmodifier clarify that the lien can be asserted on the entirety of the judgment that belongs to the patient after subtracting the attorney fees. So, the lien may be asserted on the patient’s entire judgment after attorney fees are subtracted.

*1102 ¶18 When read in conjunction with subsection 1(a), subsection 1(b) is a clear legislative statement that “[n]o reduction of the asserted lien amount [defined in subsection 1(a)] is allowed” except for the attorney fees reduction as described in subsection 1(a). UTAH CODE § 38-7-1(b). In other words, the hospital’s lien has priority over any other lien holder and the patient once the attorney fees have been paid. These two subsections work in harmony to create a priority for the enforcement of liens on the judgment. First, the attorney’s lien¹⁴ is enforceable (and any paid attorney

fees are reimbursed), next the hospital’s lien is enforceable up to the remaining amount of the judgment, and then any proceeds remaining are subject to other liens (such as insurance subrogation) and may be used as compensation to the victim. Section 1(b) makes clear that *no other* reduction from the judgment is allowed with the exception of attorney fees until the hospital is able to enforce its asserted lien. This interpretation is the only one *plausible* under the text of the act as a whole, rendering the statute unambiguous. See *Utah Pub. Emps. Ass’n*, 2006 UT 9, ¶ 60, 131 P.3d 208 (Parrish, J., concurring).

B. The Substantive Terms Canon

[11] ¶19 But even if this statute were ambiguous, the patients’ argument would falter for an additional reason; the patients’ interpretation would violate our substantive terms canon.¹⁵

[12] ¶20 The patients’ argument that we adopt proportional sharing as other states have done¹⁶ does not survive the substantive terms canon. Under that canon of construction, “[w]hen construing the language of a statutory provision, [w]e presume that the legislature used each word advisedly.” *Associated Gen. Contractors v. Bd. of Oil, Gas & Mining*, 2001 UT 112, ¶ 30, 38 P.3d 291 (second alteration in original) (citation omitted) (internal quotation marks omitted).

[13] [14] ¶21 Nothing in the language of the Hospital Lien Statute allows for assessing the hospitals with a “proportional share” of the attorney fees. The patients’ reading of the statute to incorporate proportional sharing does not comport with the language in the statute; in fact, substantive terms must be added to read it as assessing hospitals for a portion of the attorney fees. This goes four square against our case law. “We will not infer substantive terms into the text that are not already there. Rather the interpretation must be based on the language used, and [we have] no power to rewrite the statute to conform to an intention not expressed.”

Arredondo v. Avis Rent A Car Sys., Inc., 2001 UT 29, ¶ 12, 24 P.3d 928 (alteration in original) (citation omitted) (internal quotation marks omitted); *see also Trittipo v. O’Brien*, 204 Ill.App.3d 662, 149 Ill.Dec. 505, 561 N.E.2d 1201, 1203 (1990) (“The statute should be interpreted on the basis of what was written, and courts should not search for any subtle or not readily apparent intention of the legislature.”). In short, where the legislature has not indicated an intention to enact an unprecedented legal requirement, we will not alter the

statutory terms to surmise one. Accordingly, we reject the patients' notion of proportional fee sharing.

C. Common Fund Doctrine

[15] [16] [17] ¶22 Perhaps, recognizing that support for their position cannot be found in the language of the statute, the patients have *1103 presented us with a reading of the statute that would incorporate a proportional sharing requirement. They have also tried to invoke a public policy argument in the form of the common fund doctrine¹⁷ as support to bolster their request for a remedy where hospitals pay a proportional share of attorney fees in personal injury litigation cases "when a hospital lien is paid due to the efforts of [an] injured person's attorney." However, in the present case, the common fund doctrine is not appropriate. We have not held that the common fund doctrine applies to cases with enforceable liens of a creditor on a judgment awarded to the debtor and the legislature has not incorporated this doctrine into the statute.

¶23 Likewise, the patients' argument that the doctrine would avoid unjust enrichment because the hospitals "otherwise would bear none of the litigation costs" is inapposite. The relationship between a hospital and a patient is generally a contractual one—either expressed through signing the forms upon admission and consenting to treatment or implied through receiving emergency treatment even without signing the forms. See  *Emergency Physicians Integrated Care v. Salt Lake Cty.*, 2007 UT 72, ¶ 28, 167 P.3d 1080, 1086 (holding that *quantum meruit* is an equitable tool that allows hospitals to recover for the services it rendered to patients as a result of being statutorily obligated to treat them under the Emergency Medical Treatment and Active Labor Act, 42 U.S.C. § 1395dd (2000)).

[18] ¶24 "The existence of a claim, or right to payment, is at the heart of the debtor-creditor relationship."  *Porenta*

v. *Porenta*, 2017 UT 78, ¶ 12, 416 P.3d 487. When hospitals have provided medical services to patients in accordance with the law, they are entitled to payment from the patients. This establishes a debtor-creditor relationship between the patients and the hospitals. The Hospital Lien Statute is just one mechanism that hospitals may use to recover the debt owed for treatment—an amount that would be owed regardless of whether a lawsuit against a tortfeasor ensued. To expect a creditor to help pay attorney fees for a lawsuit when they are entitled to collect on the debt owed them—regardless of whether a suit is filed or the outcome—is unrealistic and illogical. Since the relationship between the hospital and the patient is one of creditor and debtor, the hospital is not responsible for recouping the costs of litigating a personal injury claim. The hospital is owed the full amount of its bill regardless of the outcome of the litigation.¹⁸

CONCLUSION

¶25 The plain language of the Hospital Lien Statute creates a priority for the distribution of the proceeds in third-party liability cases. The hospitals' interpretation is the only plausible interpretation of the statute when read as a whole. Furthermore, even if the statute were ambiguous, we are not persuaded by the patients' proportional sharing arguments and reject them because we *1104 would have to incorporate substantive terms that are not present in the language of the statute. Also, we reject the patients' assertion that the common fund doctrine is a public policy consideration that justifies their rationalization for adopting proportional sharing. We affirm the district court in its grant of summary judgment to the hospitals.

All Citations

428 P.3d 1096, 874 Utah Adv. Rep. 5, 2018 UT 52

Footnotes

¹ The named plaintiffs in this proposed class action are all persons who were involved in car accidents, received medical care at one or more of the healthcare institutions named in this suit, and filed personal injury claims

against the third parties at fault for the accidents. We refer to the plaintiffs as the patients throughout the remainder of this opinion.

2 We refer to the defendants as the hospitals. We recognize, however, that the Cardon defendants are not healthcare providers. We further recognize that although the patients named MountainStar Healthcare as a defendant in this appeal, the district court dismissed it as a party for lack of jurisdiction, and that dismissal has not been challenged in this appeal.

3 The patients also contend that the statute is unconstitutional because the supreme court has the exclusive authority to regulate attorney fees. However, “[b]y waiting until the reply brief to raise the constitutional question, [the patients] failed to carry [their] burden of identifying grounds for challenging the decision before us on review.” *State v. Garcia*, 2018 UT 3, ¶ 24, 416 P.3d 1118. Waiting until the reply brief to bring an argument also “deprive[s] the [other party] of the opportunity to address this question in its briefing on appeal.” *Id.* “That [is] fatal to [their] attempt to raise this issue for our consideration.” *Id.*

4 For simplicity, we refer to “judgment, settlement, or compromise” as “judgment” through the remainder of this opinion.

5 We will refer to “attorney fees, court costs, and other necessary expenses” collectively as “attorney fees.”

6 If there is more than one injured party and only one judgment (e.g., a settlement up to the liable party’s policy limits), the total amount of the judgment “going to or belonging to the patient” is the actual amount awarded to the individual patient, not the entire settlement awarded to all patients.

7 In its entirety, this section reads

Except as provided in Subsection (3), a hospital located within the state that furnishes emergency, medical, or other service to a patient injured by reason of an accident is entitled to assert a lien upon that portion of the judgment, settlement, or compromise going or belonging to the patient, or, in the case of death, to the patient’s heirs or personal representatives, less the amount paid by the patient, or on behalf of the patient by heirs or personal representatives, for attorney fees, court costs, and other necessary expenses incidental to obtaining the judgment, settlement, or compromise.

UTAH CODE § 38-7-1(1)(a).

8 Postmodifiers give specific information about the noun they follow: in this case “lien.”

9 Prepositions are syntactically complex.

Prepositions belong to the functional and closed-class categories of words, as opposed to the lexical and open-class, and their basic grammatical role is to introduce nouns. Flexible in where they can position and versatile in how they function, they also express the relationship between words and phrases, and they can do so either obligatorily or freely. Because of their flexibility and versatility, prepositions exhibit ‘diverse grammatical behavior,’ which can be problematic at times.

Justin Bruce Petersen, Syntactic Cartography as a Forensic Linguistics Tool: A Retrospective Analysis of Prepositional Phrases in Two Appellate Court Cases (May 2017) (unpublished M.A. thesis, Arizona State University), https://repository.asu.edu/attachments/186518/content/Petersen_asu_0010N_17032.pdf (citations omitted).

10 As used here, “upon” is simply a euphonic version of the preposition “on.”

11 The patients incorrectly argue that because an attorney fee lien attaches to the judgment before the judgment is reached, the patient does not “own” the portion of the judgment that pays the attorney fees. This is mistaken. Initially, the entire judgment belongs to the patient. “While a lien creates a security interest in property, a lien right alone does not give the lienholder right and title to property; instead, ... the legal right to control and dispose of property, remains with the property owner until the lien is enforced.” *51 AM. JUR. 2D Liens § 2 (2018)*; see also  *Comm'r v. Banks*, 543 U.S. 426, 436, 125 S.Ct. 826, 160 L.Ed.2d 859 (2005) (“The attorney is an agent who is dutybound to act only in the interests of the principal, and so it is appropriate to treat the full amount of the recovery as income to the principal.”);  *id.* at 435, 125 S.Ct. 826 (“In the case of a litigation recovery the income-generating asset is the cause of action derived from the plaintiff’s legal injury. The plaintiff retains dominion over this asset throughout the litigation.”).

12 The patients' argument that *less* modifies "lien" and not "portion" not only defies common sense, but also the rules of syntax. The prepositional phrase beginning with "less" is used here to explain what portion the lien may be placed on.

13 The clause "the amount paid by the patient ... for attorney fees" is also simplified to "attorney fees" for brevity and clarity, since we have established that the attorney fees come from the full amount of the judgment and are therefore paid by the patient.

14 An attorney has "a lien for the balance of compensation due from a client" that "commences at the time of employment of the attorney by the client." [UTAH CODE § 38-2-7\(2\), \(3\)](#).

15 Scalia and Gardner refer to this canon as the Omitted-Case Canon: "Nothing is to be added to what the text states or reasonably implies That is, a matter not covered is to be treated as not covered." ANTONIN SCALIA & BRYAN A GARNER, *READING LAW: THE INTERPRETATION OF LEGAL TEXTS* 93 (2012). ("Whatever temptations the statesmanship of policymaking might wisely suggest, construction must eschew interpolation and evisceration. [The judge] must not read in by way of creation." (*quoting* Felix Frankfurter, *Some Reflections on the Reading of Statutes*, 47 COLUM. L. REV. 527, 533 (1947))).

16 See, e.g.,  [In re Bloomquist](#), 246 Neb. 711, 523 N.W.2d 352, 361 (1994) (Holding "that hospitals are liable for their pro rata portion of the legal expenses and costs where they seek payment out of a judgment or settlement for the amount of a lien filed pursuant to [the Nebraska hospital lien statute]").

17 Under the common fund doctrine, a litigant who creates, increases, or preserves a fund to which others may have a claim is entitled to attorney fees and costs from that fund. The common fund doctrine allows courts to "award attorney fees in common fund cases to avoid the unjust enrichment of those who benefit from the fund that is created ... by the litigation and who otherwise would bear none of the litigation costs." [Barker v. Utah Pub. Serv. Comm'n](#), 970 P.2d 702, 708 (Utah 1998) (alteration in original) (citation omitted) (internal quotation marks omitted).

18 Hospital lien statutes serve important public policy roles. Hospital lien laws can balance the competing interests of injured patients, hospitals, attorneys, and other parties who may have an interest in proceeds arising out of personal injury claims. First, by affording hospitals direct and prioritized interest in funds collected by personal injury patients, the statute encourages the treatment of accident victims who may have no other means to pay. Second, because the statute grants hospitals a secured interest in those funds, it reduces the amount of litigation that may otherwise have to occur to obtain collection of the healthcare debt. Third, because legal services are often required to resolve personal injury claims and make the victim financially whole, prioritizing attorney fees incentivizes attorneys to provide legal services under a contingency fee agreement to clients that may otherwise not be able to retain attorneys. See generally Carol A. Crocca, Annotation, *Construction, Operation, and Effect of Statute Giving Hospital Lien Against Recovery From Tortfeasor Causing Patient's Injuries*, 16 A.L.R. 5th 262 (1993).