

1 **PROFESSIONAL LICENSING AMENDMENTS**

2 2018 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Mike Schultz**

5 Senate Sponsor: David G. Buxton

6

7 **LONG TITLE**

8 **General Description:**

9 This bill modifies provisions of the Residence Lien Restriction and Lien Recovery
10 Fund Act, the Building Inspector and Factory Built Housing Licensing Act, and other
11 related provisions.

12 **Highlighted Provisions:**

13 This bill:

- 14 ▶ modifies provisions related to the Residence Lien Restriction and Lien Recovery
15 Fund Act, the Building Inspector and Factory Built Housing Licensing Act, and
16 other related provisions;
- 17 ▶ discontinues assessments to provide money for the continuing operation of the
18 Residence Lien Recovery Fund;
- 19 ▶ requires certain reporting requirements from the Division of Occupational and
20 Professional Licensing to the Legislature regarding the Residence Lien Recovery
21 Fund, including providing the Legislature with a recommendation of when
22 provisions related to the fund should be repealed due to insufficient money in the
23 fund to pay claims; and
- 24 ▶ makes technical changes.

25 **Money Appropriated in this Bill:**

26 None

27 **Other Special Clauses:**

28 None

29 **Utah Code Sections Affected:**

30 AMENDS:

31 **38-11-102**, as last amended by Laws of Utah 2014, Chapter 108

32 **38-11-104**, as last amended by Laws of Utah 2004, Chapter 42

33 **38-11-105**, as last amended by Laws of Utah 2008, Chapter 382

34 **38-11-106**, as last amended by Laws of Utah 2004, Chapter 42

35 **38-11-201**, as last amended by Laws of Utah 2013, Chapter 400

36 **38-11-202**, as last amended by Laws of Utah 2009, Chapter 183

37 **38-11-203**, as last amended by Laws of Utah 2016, Chapter 238

38 **38-11-301**, as last amended by Laws of Utah 2009, Chapter 183

39 **58-56-9**, as last amended by Laws of Utah 2011, Chapter 14

40 **58-56-9.3**, as last amended by Laws of Utah 2010, Chapter 310

41 **58-56-9.5**, as last amended by Laws of Utah 2010, Chapter 278

42 **63J-1-504**, as last amended by Laws of Utah 2013, Chapter 310

43 ENACTS:

44 **58-56-9.4**, Utah Code Annotated 1953

45 REPEALS AND REENACTS:

46 **38-11-206**, as last amended by Laws of Utah 2011, Chapter 367

47 REPEALS:

48 **38-11-302**, as last amended by Laws of Utah 2009, Chapter 183



50 *Be it enacted by the Legislature of the state of Utah:*

51 Section 1. Section **38-11-102** is amended to read:

52 **38-11-102. Definitions.**

53 (1) "Board" means the Residence Lien Recovery Fund Advisory Board established
54 under Section **38-11-104**.

55 (2) "Certificate of compliance" means an order issued by the director to the owner

56 finding that the owner is in compliance with the requirements of Subsections 38-11-204(4)(a)
57 and (4)(b) and is entitled to protection under Section 38-11-107.

58 (3) "Construction on an owner-occupied residence" means designing, engineering,
59 constructing, altering, remodeling, improving, repairing, or maintaining a new or existing
60 residence.

61 (4) "Department" means the Department of Commerce.

62 (5) "Director" means the director of the Division of Occupational and Professional
63 Licensing.

64 (6) "Division" means the Division of Occupational and Professional Licensing.

65 (7) "Duplex" means a single building having two separate living units.

66 (8) "Encumbered fund balance" means the aggregate amount of outstanding claims
67 against the fund. The remainder of the money in the fund is unencumbered funds.

68 (9) "Executive director" means the executive director of the Department of Commerce.

69 (10) "Factory built housing" is as defined in Section 15A-1-302.

70 (11) "Factory built housing retailer" means a person that sells factory built housing to
71 consumers.

72 (12) "Fund" means the Residence Lien Recovery Fund established under Section
73 38-11-201.

74 (13) "Laborer" means a person who provides services at the site of the construction on
75 an owner-occupied residence as an employee of an original contractor or other qualified
76 beneficiary performing qualified services on the residence.

77 (14) "Licensee" means any holder of a license issued under Title 58, Chapter 3a,
78 Architects Licensing Act; Chapter 22, Professional Engineers and Professional Land Surveyors
79 Licensing Act; Chapter 53, Landscape Architects Licensing Act; and Chapter 55, Utah
80 Construction Trades Licensing Act.

81 (15) "Nonpaying party" means the original contractor, subcontractor, or real estate
82 developer who has failed to pay the qualified beneficiary making a claim against the fund.

83 (16) "Original contractor" means a person who contracts with the owner of real
84 property or the owner's agent to provide services, labor, or material for the construction of an
85 owner-occupied residence.

86 (17) "Owner" means a person who:

87 (a) contracts with a person who is licensed as a contractor or is exempt from licensure
88 under Title 58, Chapter 55, Utah Construction Trades Licensing Act, for the construction on an
89 owner-occupied residence upon real property that the person:

90 (i) owns; or

91 (ii) purchases after the person enters into a contract described in this Subsection (17)(a)
92 and before completion of the owner-occupied residence;

93 (b) contracts with a real estate developer to buy a residence upon completion of the
94 construction on the owner-occupied residence; or

95 (c) purchases a residence from a real estate developer after completion of the
96 construction on the owner-occupied residence.

97 (18) "Owner-occupied residence" means a residence that is, or after completion of the
98 construction on the residence will be, occupied by the owner or the owner's tenant or lessee as a
99 primary or secondary residence within 180 days after the day on which the construction on the
100 residence is complete.

101 (19) "Qualified beneficiary" means a person who:

102 (a) provides qualified services;

103 (b) pays necessary fees [~~or assessments~~] required under this chapter; and

104 (c) registers with the division:

105 (i) as a licensed contractor under Subsection 38-11-301(1) or (2), if that person seeks
106 recovery from the fund as a licensed contractor; or

107 (ii) as a person providing qualified services other than as a licensed contractor under
108 Subsection 38-11-301(3) if the person seeks recovery from the fund in a capacity other than as
109 a licensed contractor.

110 (20) (a) "Qualified services" means the following performed in construction on an
111 owner-occupied residence:

112 (i) contractor services provided by a contractor licensed or exempt from licensure
113 under Title 58, Chapter 55, Utah Construction Trades Licensing Act;

114 (ii) architectural services provided by an architect licensed under Title 58, Chapter 3a,
115 Architects Licensing Act;

116 (iii) engineering and land surveying services provided by a professional engineer or
117 land surveyor licensed or exempt from licensure under Title 58, Chapter 22, Professional
118 Engineers and Professional Land Surveyors Licensing Act;

119 (iv) landscape architectural services by a landscape architect licensed or exempt from
120 licensure under Title 58, Chapter 53, Landscape Architects Licensing Act;

121 (v) design and specification services of mechanical or other systems;

122 (vi) other services related to the design, drawing, surveying, specification, cost
123 estimation, or other like professional services;

124 (vii) providing materials, supplies, components, or similar products;

125 (viii) renting equipment or materials;

126 (ix) labor at the site of the construction on the owner-occupied residence; and

127 (x) site preparation, set up, and installation of factory built housing.

128 (b) "Qualified services" does not include the construction of factory built housing in
129 the factory.

130 (21) "Real estate developer" means a person having an ownership interest in real
131 property who:

132 (a) contracts with a person who is licensed as a contractor or is exempt from licensure
133 under Title 58, Chapter 55, Utah Construction Trades Licensing Act, for the construction of a
134 residence that is offered for sale to the public; or

135 (b) is a licensed contractor under Title 58, Chapter 55, Utah Construction Trades
136 Licensing Act, who engages in the construction of a residence that is offered for sale to the

137 public.

138 (22) (a) "Residence" means an improvement to real property used or occupied, to be
139 used or occupied as, or in conjunction with:

140 (i) a primary or secondary detached single-family dwelling; or

141 (ii) a multifamily dwelling up to and including duplexes.

142 (b) "Residence" includes factory built housing.

143 (23) "Subsequent owner" means a person who purchases a residence from an owner
144 within 180 days after the day on which the construction on the residence is completed.

145 Section 2. Section **38-11-104** is amended to read:

146 **38-11-104. Board.**

147 (1) There is created the Residence Lien Recovery Fund Advisory Board consisting of:

148 (a) three individuals licensed as a contractor who are actively engaged in construction
149 on owner-occupied residences;

150 (b) three individuals who are employed in responsible management positions with
151 major suppliers of materials or equipment used in the construction on owner-occupied
152 residences; and

153 (c) one member from the general public who has no interest in the construction on
154 owner-occupied residences, or supply of materials used in the construction on owner-occupied
155 residences.

156 (2) The board shall be appointed and members shall serve their respective terms in
157 accordance with Section [58-1-201](#).

158 (3) The duties and responsibilities of the board shall be to:

159 (a) advise the division with respect to informal adjudication of any claim for payment
160 from the fund and any request for a certificate of compliance received by the division;

161 (b) act as the presiding officer, as defined by rule, in formal adjudicative proceedings
162 held before the division with respect to any claim made for payment from the fund;

163 (c) advise the division with respect to:

- 164 (i) the general operation of the fund;
- 165 [~~(ii) the amount and frequency of any assessment under this chapter;~~]
- 166 [~~(iii)~~] (ii) the amount of any fees required under this chapter; and
- 167 [~~(iv) the availability and advisability of using funds for purchase of surety bonds to~~
- 168 ~~guarantee payment to qualified beneficiaries; and]~~
- 169 [~~(v)~~] (iii) the limitation on the fund balance under Section 38-11-206; and
- 170 (d) review the administrative expenditures made by the division pursuant to Subsection
- 171 38-11-201(4) and report its findings regarding those expenditures to the executive director on
- 172 or before the first Monday of December of each year.

(4) The attorney general shall render legal assistance as requested by the board.

Section 3. Section 38-11-105 is amended to read:

38-11-105. Procedures established by rule.

In compliance with Title 63G, Chapter 4, Administrative Procedures Act, the division shall establish procedures by rule by which claims for compensation from the fund and requests for certificates of compliance shall be adjudicated [~~and by which assessments shall be collected~~].

Section 4. Section 38-11-106 is amended to read:

38-11-106. State not liable.

The state and the state's agencies, instrumentalities, and political subdivisions are not liable for:

- 184 (1) issuance or denial of any certificate of compliance;
- 185 (2) any claims made against the fund; or
- 186 (3) failure of the fund to pay any amounts ordered by the director to be paid from the
- 187 fund, including failure of the fund to pay any amounts ordered by the director to be paid
- 188 because there is insufficient money in the fund.

Section 5. Section 38-11-201 is amended to read:

38-11-201. Residence Lien Recovery Fund.

191 (1) There is created an expendable special revenue fund called the "Residence Lien
192 Recovery Fund."

193 ~~[(2) (a) The fund consists of all amounts collected by the division in accordance with
194 Section 38-11-202.]~~

195 ~~[(b) (i) The division shall deposit the funds in an account with the state treasurer.]~~

196 ~~[(ii) The division shall record the funds in the Residence Lien Recovery Fund.]~~

197 ~~[(c)] (2) The fund shall earn interest.~~

198 (3) The division shall employ personnel and resources necessary to administer the fund
199 and shall use fund money in accordance with Sections 38-11-203 and 38-11-204 and to pay the
200 costs charged to the fund by the attorney general.

201 (4) Costs incurred by the division, on or after May 8, 2018, for administering the fund
202 ~~[shall]~~ may be paid out of fund money in an amount that may be no more than a total of
203 \$300,000 for the remaining existence of the fund.

204 (5) (a) The Division of Finance shall report annually to the Legislature, the division,
205 and the board.

206 (b) The report shall state:

207 ~~[(a)]~~ (i) amounts received by the fund;

208 ~~[(b)]~~ (ii) disbursements from the fund;

209 ~~[(c)]~~ (iii) interest earned and credited to the fund; and

210 ~~[(d)]~~ (iv) the fund balance.

211 ~~[(6) (a) For purposes of establishing and assessing fees under Section 63J-1-504, the
212 provisions of this chapter are considered a new program for fiscal year 1995-96.]~~

213 ~~[(b) The department shall submit its fee schedule to the Legislature for its approval at
214 the 1996 Annual General Session.]~~

215 Section 6. Section 38-11-202 is amended to read:

216 **38-11-202. Payments to the fund.**

217 ~~[The]~~ Beginning on May 8, 2018, the Residence Lien Recovery Fund ~~[shall be~~

218 ~~supported solely from]~~ will no longer be supported by special assessments and will be solely
219 supported by:

220 [~~(1) initial and special assessments collected by the division from licensed contractors~~
221 ~~registered as qualified beneficiaries in accordance with Subsections 38-11-301(1) and (2) and~~
222 ~~Section 38-11-206;]~~

223 [~~(2) initial and special assessments collected by the division from other qualified~~
224 ~~beneficiaries registering with the division in accordance with Subsection 38-11-301(3) and~~
225 ~~Section 38-11-206;]~~

226 [~~(3)~~] (1) fees determined by the division under Section 63J-1-504 collected from
227 laborers under Subsection 38-11-204(7) when the laborers obtain a recovery from the fund;

228 [~~(4)~~] (2) amounts collected by subrogation under Section 38-11-205 on behalf of the
229 fund following a payment from the fund;

230 [~~(5)~~] (3) application fees determined by the division under Section 63J-1-504 collected
231 from:

232 (a) qualified beneficiaries or laborers under Subsection 38-11-204(1)(b) when qualified
233 beneficiaries or laborers make a claim against the fund; or

234 (b) owners or agents of the owners seeking to obtain a certificate of compliance for the
235 owner;

236 [~~(6)~~] (4) registration fees determined by the division under Section 63J-1-504 collected
237 from other qualified beneficiaries registering with the department in accordance with
238 Subsection 38-11-301(3)(a)(iii);

239 [~~(7)~~] (5) reinstatement fees determined by the division under Section 63J-1-504
240 collected from registrants in accordance with Subsection 38-11-302(5)(b);

241 [~~(8)~~] (6) civil fines authorized under Subsection 38-11-205(2) collected by the attorney
242 general for failure to reimburse the fund; and

243 [~~(9)~~] (7) any interest earned by the fund.

244 Section 7. Section 38-11-203 is amended to read:

245 **38-11-203. Disbursements from the fund -- Limitations.**

246 (1) A payment of any claim upon the fund by a qualified beneficiary shall be made only
247 upon an order issued by the director finding that:

248 (a) the claimant was a qualified beneficiary during the construction on a residence;

249 (b) the claimant complied with the requirements of Section 38-11-204;

250 (c) there is adequate money in the fund to pay the amount ordered; and

251 (d) the claimant provided the qualified services that are the basis of the claim.

252 (2) A payment of a claim upon the fund by a laborer shall be made only upon an order
253 issued by the director finding that:

254 (a) the laborer complied with the requirements of Subsection 38-11-204(7); and

255 (b) there is adequate money in the fund to pay the amount ordered.

256 (3) (a) An order under this section may be issued only after the division has complied
257 with the procedures established by rule under Section 38-11-105.

258 (b) The director shall order payment of the qualified services as established by
259 evidence, or if the claimant has obtained a judgment, then in the amount awarded for qualified
260 services in the judgment to the extent the qualified services are attributable to the
261 owner-occupied residence at issue in the claim.

262 (c) The director shall order payment of interest on amounts claimed for qualified
263 services based on the current prime interest rate at the time payment was due to the date the
264 claim is approved for payment except for delays attributable to the claimant but not more than
265 10% per annum.

266 (d) The rate shall be the prime lending rate as published in the Wall Street Journal on
267 the first business day of each calendar year adjusted annually.

268 (e) The director shall order payment of costs in the amount stated in the judgment. If
269 the judgment does not state a sum certain for costs, or if no judgment has been obtained, the
270 director shall order payment of reasonable costs as supported by evidence. The claim
271 application fee as established by the division pursuant to Subsection 38-11-204(1)(b) is not a

272 reimbursable cost.

273 (f) If a judgment has been obtained with attorneys' fees, notwithstanding the amount
274 stated in a judgment, or if no judgment has been obtained but the contract provides for
275 attorneys' fees, the director shall order payment of attorneys' fees not to exceed 15% of
276 qualified services. If the judgment does not state a sum for attorneys' fees, no attorneys' fees
277 will be paid by the director.

278 (4) (a) Payments made from the fund may not exceed \$75,000 per construction project
279 to qualified beneficiaries and laborers who have claim against the fund for that construction
280 project.

281 (b) If claims against the fund for a construction project exceed \$75,000, the \$75,000
282 shall be awarded proportionately so that each qualified beneficiary and laborer awarded
283 compensation from the fund for qualified services shall receive an identical percentage of the
284 qualified beneficiary's or laborer's award.

285 ~~[(5) Subject to the limitations of Subsection (4), if on the day the order is issued there
286 are inadequate funds to pay the entire claim and the director determines that the claimant has
287 otherwise met the requirements of Subsection (1) or (2), the director shall order additional
288 payments once the fund meets the balance limitations of Section 38-11-206.]~~

289 ~~[(6)]~~ (5) (a) A payment of any claim upon the fund may not be made to an assignee or
290 transferee unless an order issued by the director finds that:

291 (i) the claim is assigned or transferred to a person who is a qualified beneficiary; and

292 (ii) the person assigning or transferring the claim:

293 (A) was a qualified beneficiary during the construction on a residence; and

294 (B) provided the qualified services that are the basis of the claim.

295 (b) A claimant who is an assignee or transferee of a claim upon the fund under this
296 Subsection (6) does not have to meet the requirements of Subsections 38-11-203(1)(a) and (d).

297 Section 8. Section 38-11-206 is repealed and reenacted to read:

298 **38-11-206. Limitations on fund balance.**

299 By October 1 of each year, the division shall provide a written report to the Legislature
300 and the Business and Labor Interim Committee that describes:

- 301 (1) the amount of money in the fund, including the encumbered fund balance;
302 (2) an estimate of when the fund will have insufficient money to continue to pay claims
303 under this chapter; and
304 (3) a recommendation to the Legislature of whether the substantive provisions of this
305 chapter should be repealed due to insufficient money in the fund.

306 Section 9. Section **38-11-301** is amended to read:

307 **38-11-301. Registration as a qualified beneficiary -- Initial regular assessment --**
308 **Affidavit.**

309 (1) A person licensed as of July 1, 1995, as a contractor under the provisions of Title
310 58, Chapter 55, Utah Construction Trades Licensing Act, in license classifications that
311 regularly engage in providing qualified services shall be automatically registered as a qualified
312 beneficiary [~~upon payment of the initial assessment~~].

313 (2) A person applying for licensure as a contractor after July 1, 1995, in license
314 classifications that regularly engage in providing qualified services shall be automatically
315 registered as a qualified beneficiary upon issuance of a license [~~and payment of the initial~~
316 ~~assessment~~].

317 (3) (a) After July 1, 1995, any person providing qualified services as other than a
318 contractor as provided in Subsection (1) or any person exempt from licensure under the
319 provisions of Title 58, Chapter 55, Utah Construction Trades Licensing Act, may register as a
320 qualified beneficiary by:

- 321 (i) submitting an application in a form prescribed by the division;
322 (ii) demonstrating registration with the Division of Corporations and Commercial Code
323 as required by state law; and
324 (iii) paying a registration fee determined by the division under Section [63J-1-504](#) [~~;~~
325 ~~and~~].

326 ~~[(iv) paying the initial assessment established under Subsection (4), and any special~~
327 ~~assessment determined by the division under Subsection 38-11-206(1).]~~

328 (b) A person who does not register under Subsection (1), (2), or (3)(a) shall be
329 prohibited from recovering under the fund as a qualified beneficiary for work performed as
330 qualified services while not registered with the fund.

331 ~~[(4)(a) An applicant shall pay an initial assessment determined by the division under~~
332 ~~Section 63J-1-504.]~~

333 ~~[(b) The initial assessment to qualified registrants under Subsection (1) shall be made~~
334 ~~not later than July 15, 1995, and shall be paid no later than November 1, 1995.]~~

335 ~~[(c) The initial assessment to qualified registrants under Subsections (2) and (3) shall~~
336 ~~be paid at the time of application for license or registration, however, beginning on May 1,~~
337 ~~1996, only one initial assessment or special assessments thereafter shall be required for persons~~
338 ~~having multiple licenses under this section.]~~

339 ~~[(5) A person shall be considered to have been registered as a qualified beneficiary on~~
340 ~~January 1, 1995, for purposes of meeting the requirements of Subsection 38-11-204(1)(c)(ii) if~~
341 ~~the person:]~~

342 ~~[(a)(i) is licensed on or before July 1, 1995, as a contractor under the provisions of~~
343 ~~Title 58, Chapter 55, Utah Construction Trades Licensing Act, in license classifications that~~
344 ~~regularly engage in providing qualified services; or]~~

345 ~~[(ii) provides qualified services after July 1, 1995, as other than a contractor as~~
346 ~~provided in Subsection (5)(a)(i) or is exempt from licensure under the provisions of Title 58,~~
347 ~~Chapter 55, Utah Construction Trades Licensing Act; and]~~

348 ~~[(b) registers as a qualified beneficiary under Subsection (1) or (3) on or before~~
349 ~~November 1, 1995.]~~

350 Section 10. Section **58-56-9** is amended to read:

351 **58-56-9. Qualifications of inspectors -- Contract for inspection services.**

352 (1) An inspector employed by a local regulator, state regulator, or compliance agency

353 to enforce the codes shall:

354 (a) (i) meet minimum qualifications as established by the division in collaboration with
355 the commission;

356 (ii) be certified by a nationally recognized organization which promulgates
357 construction codes; or

358 (iii) pass an examination developed by the division in collaboration with the
359 commission;

360 (b) be currently licensed by the division as meeting those minimum qualifications; and

361 (c) be subject to revocation or suspension of the inspector's license or being placed on
362 probation if found guilty of unlawful or unprofessional conduct.

363 (2) A local regulator, state regulator, or compliance agency may contract for the
364 services of a licensed inspector not regularly employed by the regulator or agency.

365 (3) In accordance with Section 58-1-401, the division may:

366 (a) refuse to issue a license to an applicant;

367 (b) refuse to renew the license of a licensee;

368 (c) revoke, suspend, restrict, or place on probation the license of a licensee;

369 (d) issue a public or private reprimand;

370 (e) issue a citation to a licensee; and

371 (f) issue a cease and desist order.

372 Section 11. Section 58-56-9.3 is amended to read:

373 **58-56-9.3. Unprofessional conduct.**

374 Unprofessional conduct is as defined in Subsection 58-1-501(2) and includes:

375 (1) knowingly failing to inspect or issue correction notices for code violations which
376 when left uncorrected would constitute a hazard to the public health and safety and knowingly
377 failing to require that correction notices are complied with as a building inspector;

378 (2) the use of alcohol or the illegal use of drugs while performing duties as a building
379 inspector or at any time to the extent that the inspector is physically or mentally impaired and

- 380 unable to effectively perform the duties of an inspector;
- 381 (3) gross negligence in the performance of official duties as a building inspector;
- 382 (4) the personal use of information or knowingly revealing information to unauthorized
- 383 persons when that information has been obtained by a building inspector as a result of the
- 384 inspector's employment, work, or position as an inspector;
- 385 (5) unlawful acts or practices which are clearly unethical under generally recognized
- 386 standards of conduct of a building inspector;
- 387 (6) engaging in fraud or knowingly misrepresenting a fact relating to the performance
- 388 of duties and responsibilities as a building inspector;
- 389 (7) a building inspector knowingly failing to require that all plans, specifications,
- 390 drawings, documents, and reports be stamped by architects, professional engineers, or both as
- 391 established by law;
- 392 (8) a building inspector knowingly failing to report to the division an act or omission of
- 393 a licensee under Title 58, Chapter 55, Utah Construction Trades Licensing Act, which when
- 394 left uncorrected constitutes a hazard to public health and safety;
- 395 (9) a building inspector knowingly failing to report to the division unlicensed practice
- 396 persons who are required to be licensed under Title 58, Chapter 55, Utah Construction Trades
- 397 Licensing Act;
- 398 (10) a building inspector's approval of work which materially varies from approved
- 399 documents that have been stamped by an architect, professional engineer, or both unless
- 400 authorized by the licensed architect, professional engineer, or both;
- 401 (11) a building inspector failing to produce verification of current licensure and current
- 402 certifications for the codes upon request of the division, a compliance agency, or a contractor
- 403 or property owner whose work is being inspected;
- 404 (12) a building inspector requiring work that materially varies from the building codes
- 405 adopted by the state;
- 406 [~~12~~] (13) nondelivery of goods or services by a registered dealer which constitutes a

407 breach of contract by the dealer;

408 ~~[(13)]~~ (14) the failure of a registered dealer to pay a subcontractor or supplier any
409 amounts to which that subcontractor or supplier is legally entitled; and

410 ~~[(14)]~~ (15) any other activity which is defined as unprofessional conduct by division
411 rule in accordance with the provisions of Title 63G, Chapter 3, Utah Administrative
412 Rulemaking Act.

413 Section 12. Section **58-56-9.4** is enacted to read:

414 **58-56-9.4. Investigation of regulated activity.**

415 (1) The division is responsible for the investigation of a person or an activity that
416 violates the provisions of this chapter.

417 (2) An investigation by the division may include:

418 (a) a requirement that potential administrative appeals described in Section [15A-1-207](#)
419 have been exhausted before conducting the investigation;

420 (b) an investigation of a person engaged in unlawful or unprofessional conduct; and

421 (c) a referral to the Uniform Building Code Commission to review a dispute involving
422 an application or interpretation of a building code or construction law by a licensee.

423 Section 13. Section **58-56-9.5** is amended to read:

424 **58-56-9.5. Penalty for unlawful conduct -- Citations.**

425 (1) A person who violates a provision of Section [58-56-9.1](#) or who fails to comply with
426 a citation issued under this section after it is final is guilty of a class A misdemeanor.

427 (2) Grounds for immediate suspension of a licensee's license by the division under this
428 chapter include:

429 (a) the issuance of a citation for violation of a provision of Section [58-56-9.1](#) or
430 [58-56-9.3](#); and

431 (b) failure by a licensee to make application to, report to, or notify the division with
432 respect to a matter for which application, notification, or reporting is required under this
433 chapter or rules made under this chapter by the division.

434 (3) (a) If upon inspection or investigation, the division concludes that a person has
435 violated a provision of Section [58-56-9.1](#) or [58-56-9.3](#), or a rule or order issued with respect to
436 that section, and that disciplinary action is appropriate, the director or the director's designee
437 from within the division shall:

438 (i) promptly issue a citation to the person according to this chapter and any pertinent
439 rules;

440 (ii) attempt to negotiate a stipulated settlement; or

441 (iii) notify the person to appear before an adjudicative proceeding conducted under
442 Title 63G, Chapter 4, Administrative Procedures Act.

443 (b) (i) A person who violates a provision of Section [58-56-9.1](#) or [58-56-9.3](#), as
444 evidenced by an uncontested citation, a stipulated settlement, or by a finding of violation in an
445 adjudicative proceeding, may be assessed a fine under this Subsection (3)(b) and may, in
446 addition to or instead of the fine, be ordered by the division to cease from violating the
447 provision.

448 (ii) Except as otherwise provided in Subsection (2)(a), the division may not assess
449 licensure sanctions referred to in Subsection [58-56-9\(1\)\(c\)](#) through a citation.

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

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

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

459 (d) Each citation issued under this section, or a copy of each citation, may be served
460 upon any person upon whom a summons may be served:

- 461 (i) in accordance with the Utah Rules of Civil Procedure;
- 462 (ii) personally or upon the person's agent by a division investigator or by any person
- 463 specially designated by the director; or
- 464 (iii) by mail.
- 465 (e) (i) If within 20 calendar days from the service of a citation, the person to whom the
- 466 citation was issued fails to request a hearing to contest the citation, the citation becomes the
- 467 final order of the division and is not subject to further agency review.
- 468 (ii) The period to contest a citation may be extended by the division for cause.
- 469 (f) The division may refuse to issue or renew, suspend, revoke, or place on probation
- 470 the license of a licensee who fails to comply with a citation after it becomes final.
- 471 (g) The failure of an applicant for licensure to comply with a citation after it becomes
- 472 final is a ground for denial of a license.
- 473 (h) No citation may be issued under this section after the expiration of six months
- 474 following the occurrence of the violation.
- 475 (i) The director or the director's designee may assess fines for violations of Section
- 476 [58-56-9.1](#) or [58-56-9.3](#) as follows:
- 477 (i) for a first offense determined under this Subsection (3), a fine of up to \$1,000;
- 478 (ii) for a second offense, a fine of up to \$2,000; and
- 479 (iii) for any subsequent offense, a fine of up to \$2,000 for each day of continued
- 480 offense.
- 481 (j) For the purposes of issuing a final order under this section and assessing a fine
- 482 under Subsection (3)(i), an offense constitutes a second or subsequent offense if:
- 483 (i) the division previously issued a final order determining that a person committed a
- 484 first or second offense in violation of a provision of Section [58-56-9.1](#); or
- 485 (ii) (A) the division initiated an action for a first or second offense;
- 486 (B) no final order has been issued by the division in the action initiated under
- 487 Subsection (3)(j)(ii)(A);

488 (C) the division determines during an investigation that occurred after the initiation of
489 the action under Subsection (3)(j)(ii)(A) that the person committed a second or subsequent
490 violation of a provision of Section 58-56-9.1; and

491 (D) after determining that the person committed a second or subsequent offense under
492 Subsection (3)(j)(ii)(C), the division issues a final order on the action initiated under
493 Subsection (3)(j)(ii)(A).

494 (k) In issuing a final order for a second or subsequent offense under Subsection (3)(j),
495 the division shall comply with the requirements of this section.

496 (4) (a) Proceeds from a fine imposed under Subsection (3)(i) shall be deposited in the
497 Commerce Service Account created by Section 13-1-2.

498 (b) The director may collect an unpaid fine by:

499 (i) referring the matter to a collection agency; or

500 (ii) bringing an action in the district court of the county in which the person resides or
501 in the county where the director's office is located.

502 (c) (i) The state's attorney general or a county attorney shall provide legal assistance
503 and advice to the director in an action brought under Subsection (4)(b).

504 (ii) Reasonable attorney fees and costs shall be awarded in an action brought to enforce
505 the provisions of this section.

506 Section 14. Section 63J-1-504 is amended to read:

507 **63J-1-504. Fees -- Adoption, procedure, and approval -- Establishing and**
508 **assessing fees without legislative approval.**

509 (1) As used in this section:

510 (a) (i) "Agency" means each department, commission, board, council, agency,
511 institution, officer, corporation, fund, division, office, committee, authority, laboratory, library,
512 unit, bureau, panel, or other administrative unit of the state.

513 (ii) "Agency" does not mean the Legislature or its committees.

514 (b) "Fee agency" means any agency that is authorized to establish fees.

515 (c) "Fee schedule" means the complete list of fees charged by a fee agency and the
516 amount of those fees.

517 (2) Each fee agency shall adopt a schedule of fees assessed for services provided by the
518 fee agency that are:

519 (a) reasonable, fair, and reflect the cost of services provided; and

520 (b) established according to a cost formula determined by the executive director of the
521 Governor's Office of Management and Budget and the director of the Division of Finance in
522 conjunction with the agency seeking to establish the fee.

523 (3) Except as provided in Subsection (6), a fee agency may not:

524 (a) set fees by rule; or

525 (b) create, change, or collect any fee unless the fee has been established according to
526 the procedures and requirements of this section.

527 (4) Each fee agency that is proposing a new fee or proposing to change a fee shall:

528 (a) present each proposed fee at a public hearing, subject to the requirements of Title
529 52, Chapter 4, Open and Public Meetings Act;

530 (b) increase, decrease, or affirm each proposed fee based on the results of the public
531 hearing;

532 (c) except as provided in Subsection (6), submit the fee schedule to the Legislature as
533 part of the agency's annual appropriations request; and

534 (d) where necessary, modify the fee schedule to implement the Legislature's actions.

535 (5) (a) Each fee agency shall submit its fee schedule or special assessment amount to
536 the Legislature for its approval on an annual basis.

537 (b) The Legislature may approve, increase or decrease and approve, or reject any fee
538 submitted to it by a fee agency.

539 (6) After conducting the public hearing required by this section, a fee agency may
540 establish and assess fees without first obtaining legislative approval if:

541 (a) (i) the Legislature creates a new program that is to be funded by fees to be set by the

542 Legislature;

543 (ii) the new program's effective date is before the Legislature's next annual general
544 session; and

545 (iii) the fee agency submits the fee schedule for the new program to the Legislature for
546 its approval at a special session, if allowed in the governor's call, or at the next annual general
547 session of the Legislature, whichever is sooner; or

548 ~~[(b) the Division of Occupational and Professional licensing makes a special~~
549 ~~assessment against qualified beneficiaries under the Residence Lien Restriction and Lien~~
550 ~~Recovery Fund Act as provided in Subsection 38-11-206(1); or]~~

551 ~~[(c)]~~ (b) (i) the fee agency proposes to increase or decrease an existing fee for the
552 purpose of adding or removing a transactional fee that is charged or assessed by a
553 non-governmental third party but is included as part of the fee charged by the fee agency;

554 (ii) the amount of the increase or decrease in the fee is equal to the amount of the
555 transactional fee charged or assessed by the non-governmental third party; and

556 (iii) the increased or decreased fee is submitted to the Legislature for its approval at a
557 special session, if allowed in the governor's call, or at the next annual session of the
558 Legislature, whichever is sooner.

559 (7) (a) Each fee agency that wishes to change any fee shall submit to the governor as
560 part of the agency's annual appropriation request a list that identifies:

561 (i) the title or purpose of the fee;

562 (ii) the present amount of the fee;

563 (iii) the proposed new amount of the fee;

564 (iv) the percent that the fee will have increased if the Legislature approves the higher
565 fee;

566 (v) the estimated total annual revenue change that will result from the change in the
567 fee;

568 (vi) the account or fund into which the fee will be deposited; and

569 (vii) the reason for the change in the fee.

570 (b) (i) The governor may review and approve, modify and approve, or reject the fee
571 increases.

572 (ii) The governor shall transmit the list required by Subsection (7)(a), with any
573 modifications, to the Legislative Fiscal Analyst with the governor's budget recommendations.

574 (c) Bills approving any fee change shall be filed before the beginning of the
575 Legislature's annual general session, if possible.

576 (8) (a) Except as provided in Subsection (8)(b), the School and Institutional Trust
577 Lands Administration, established in Section 53C-1-201, is exempt from the requirements of
578 this section.

579 (b) The following fees of the School and Institutional Trust Lands Administration are
580 subject to the requirements of this section: application, assignment, amendment, affidavit for
581 lost documents, name change, reinstatement, grazing nonuse, extension of time, partial
582 conveyance, patent reissue, collateral assignment, electronic payment, and processing.

583 Section 15. **Repealer.**

584 This bill repeals:

585 Section 38-11-302, **Effective date and term of registration -- Penalty for failure to**
586 **pay assessments -- Reinstatement.**