

## **Title 34A. Utah Labor Code**

### **Chapter 1 Labor Commission Act**

#### **Part 1 General Provisions**

##### **34A-1-101 Title.**

- (1) This title is known as the "Utah Labor Code."
- (2) This chapter is known as the "Labor Commission Act."

Enacted by Chapter 375, 1997 General Session

##### **34A-1-102 Definitions.**

Unless otherwise specified, as used in this title:

- (1) "Commission" means the Labor Commission created in Section 34A-1-103.
- (2) "Commissioner" means the commissioner of the commission appointed under Section 34A-1-201.

Enacted by Chapter 375, 1997 General Session

##### **34A-1-103 Labor Commission -- Creation -- Seal.**

- (1) There is created the Labor Commission that has all of the policymaking functions, regulatory and enforcement powers, rights, duties, and responsibilities outlined in:
  - (a) this title; and
  - (b) unless otherwise specified, Title 34, Labor in General.
- (2) The commission may sue and be sued.
- (3)
  - (a) The commission shall have an official seal for the authentication of its orders. A description and impression of the seal shall be filed with the Division of Archives.
  - (b) A court in this state shall take judicial notice of the seal of the commission.

Enacted by Chapter 375, 1997 General Session

##### **34A-1-104 Commission authority.**

Within all other authority or responsibility granted to it by law, the commission may:

- (1) adopt rules when authorized by this title, or Title 34, Labor in General, in accordance with the procedures of Title 63G, Chapter 3, Utah Administrative Rulemaking Act;
- (2) conduct adjudicative proceedings in accordance with the procedures of Title 63G, Chapter 4, Administrative Procedures Act;
- (3) license agencies in accordance with this title or Title 34, Labor in General;
- (4) employ and determine the compensation of clerical, legal, technical, investigative, and other employees necessary to carry out its policymaking, regulatory, and enforcement powers, rights, duties, and responsibilities under this title or Title 34, Labor in General;
- (5) administer and enforce all laws for the protection of the life, health, and safety of employees;

- (6) ascertain and fix reasonable standards, and prescribe, modify, and enforce reasonable orders, for the adoption of safety devices, safeguards, and other means or methods of protection, to be as nearly uniform as possible, as necessary to carry out all laws and lawful orders relative to the protection of the life, health, and safety, of employees in employment and places of employment;
- (7) ascertain, fix, and order reasonable standards for the construction, repair, and maintenance of places of employment as shall make them safe;
- (8) investigate, ascertain, and determine reasonable classifications of persons, employments, and places of employment as necessary to carry out the purposes of this title or Title 34, Labor in General;
- (9) promote the voluntary arbitration, mediation, and conciliation of disputes between employers and employees;
- (10) ascertain and adopt reasonable standards and rules, prescribe and enforce reasonable orders, and take other actions appropriate for the protection of life, health, and safety of all persons with respect to all prospects, tunnels, pits, banks, open cut workings, quarries, strip mine operations, ore mills, and surface operations or any other mining operation, whether or not the relationship of employer and employee exists, but the commission may not assume jurisdiction or authority over adopted standards and regulations or perform any mining inspection or enforcement of mining rules and regulations so long as Utah's mining operations are governed by federal regulations;
- (11) develop processes to ensure that the commission responds to the full range of employee and employer clients; and
- (12) carry out the responsibilities assigned to it by statute.

Amended by Chapter 382, 2008 General Session

**34A-1-105 Commission budget -- Reports from divisions.**

- (1) The commission shall prepare and submit to the governor for inclusion in the governor's budget to be submitted to the Legislature, a budget of the commission's financial requirements needed to carry out its responsibilities as provided by law during the fiscal year following the Legislature's next annual general session.
- (2) The commissioner shall require a report from each of the divisions and offices of the commission, to aid in preparation of the commission budget.

Enacted by Chapter 375, 1997 General Session

**34A-1-106 Fees.**

- (1) Unless otherwise provided by statute, the commission may adopt a schedule of fees assessed for services provided by the commission by following the procedures and requirements of Section 63J-1-504.
- (2) The commission shall submit each fee established under this section to the Legislature for its approval as part of the commission's annual appropriations request.

Amended by Chapter 183, 2009 General Session

**Part 2**

## Organization

### **34A-1-201 Commissioner -- Appointment -- Removal -- Compensation -- Qualifications -- Responsibilities -- Reports.**

- (1)
  - (a) The chief administrative officer of the commission is the commissioner, who shall be appointed by the governor with the consent of the Senate.
  - (b) The commissioner shall serve at the pleasure of the governor.
  - (c) The commissioner shall receive a salary established by the governor within the salary range fixed by the Legislature in Title 67, Chapter 22, State Officer Compensation.
  - (d) The commissioner shall be experienced in administration, management, and coordination of complex organizations.
- (2)
  - (a) The commissioner shall serve full-time.
  - (b)
    - (i) Except as provided in Subsection (2)(b)(ii), the commissioner may not:
      - (A) hold any other office of this state, another state, or the federal government except in an ex officio capacity; or
      - (B) serve on any committee of any political party.
    - (ii) Notwithstanding Subsection (2)(b)(i), the commissioner may:
      - (A) hold a nominal position or title if it is required by law as a condition for the state participating in an appropriation or allotment of any money, property, or service that may be made or allotted for the commission; or
      - (B) serve as the chief administrative officer of any division, office, or bureau that is established within the commission.
    - (iii) If the commissioner holds a position as permitted under Subsection (2)(b)(ii), the commissioner may not be paid any additional compensation for holding the position.
- (3) Before beginning the duties as a commissioner, an appointed commissioner shall take and subscribe the constitutional oath of office and file the oath with the Division of Archives.
- (4) The commissioner shall:
  - (a) administer and supervise the commission in compliance with Title 67, Chapter 19, Utah State Personnel Management Act;
  - (b) approve the proposed budget of each division and the Appeals Board;
  - (c) approve all applications for federal grants or assistance in support of any commission program; and
  - (d) fulfill such other duties as assigned by the Legislature or as assigned by the governor that are not inconsistent with this title or Title 34, Labor in General.
- (5)
  - (a) The commissioner shall report annually to the Legislature and the governor concerning the operations of the commission and the programs that the commission administers.
  - (b) If federal law requires that a report to the governor or Legislature be given concerning the commission or a program administered by the commission, the commissioner or the commissioner's designee shall make that report.

Amended by Chapter 336, 2011 General Session

**34A-1-202 Divisions and office -- Creation -- Duties -- Labor Relations Board, Appeals Board, councils, and panel.**

- (1) There is created within the commission the following divisions and office:
  - (a) the Division of Industrial Accidents that shall administer the regulatory requirements of this title concerning industrial accidents and occupational disease;
  - (b) the Division of Occupational Safety and Health that shall administer the regulatory requirements of Chapter 6, Utah Occupational Safety and Health Act;
  - (c) the Division of Boiler and Elevator Safety that shall administer the regulatory requirements of Chapter 7, Safety;
  - (d) the Division of Antidiscrimination and Labor that shall administer the regulatory requirements of:
    - (i) Title 34, Labor in General, when specified by statute;
    - (ii) Chapter 5, Utah Antidiscrimination Act;
    - (iii) this title, when specified by statute; and
    - (iv) Title 57, Chapter 21, Utah Fair Housing Act;
  - (e) the Division of Adjudication that shall adjudicate claims or actions brought under this title; and
  - (f) the Utah Office of Coal Mine Safety created in Section 40-2-201.
- (2) In addition to the divisions created under this section, within the commission are the following:
  - (a) the Labor Relations Board created in Section 34-20-3;
  - (b) the Appeals Board created in Section 34A-1-205;
  - (c) the following program advisory councils:
    - (i) the workers' compensation advisory council created in Section 34A-2-107;
    - (ii) the Mine Safety Technical Advisory Council created in Section 40-2-203; and
    - (iii) the Coal Miner Certification Panel created in Section 40-2-204.
- (3) In addition to the responsibilities described in this section, the commissioner may assign to a division a responsibility granted to the commission by law.

Amended by Chapter 413, 2013 General Session

**34A-1-203 Commissioner -- Jurisdiction over division directors -- Authority.**

- (1) The commissioner has administrative jurisdiction over each division.
- (2) To effectuate greater efficiency and economy in the operations of the commission, the commissioner may:
  - (a) make changes in personnel and service functions in the divisions under the commissioner's administrative jurisdiction; and
  - (b) authorize designees to perform appropriate responsibilities.
- (3) To facilitate management of the commission, the commissioner may establish offices necessary to implement this title or to perform functions such as budgeting, planning, data processing, and personnel administration.

Enacted by Chapter 375, 1997 General Session

**34A-1-204 Division directors -- Appointment -- Compensation -- Qualifications.**

- (1) The chief officer of each division within the commission shall be a director, who shall serve as the executive and administrative head of the division.
- (2) A director shall be appointed by the commissioner with the concurrence of the governor and may be removed from that position at the will of the commissioner.

- (3) A director of a division shall receive compensation as provided by Title 67, Chapter 19, Utah State Personnel Management Act.
- (4)
  - (a) A director of a division shall be experienced in administration and possess such additional qualifications as determined by the commissioner.
  - (b) In addition to the requirements imposed under Subsection (4)(a), the director of the Division of Adjudication shall be admitted to the practice of law in this state.

Enacted by Chapter 375, 1997 General Session

**34A-1-205 Appeals Board -- Chair -- Appointment -- Compensation -- Qualifications.**

- (1) There is created the Appeals Board within the commission consisting of three members. The board may call and preside at adjudicative proceedings to review an order or decision that is subject to review by the Appeals Board under this title.
- (2)
  - (a) The governor shall appoint the members with the consent of the Senate and in accordance with this section.
  - (b) One member of the board shall be appointed to represent employers, in making this appointment, the governor shall consider nominations from employer organizations.
  - (c) One member of the board shall be appointed to represent employees, in making this appointment, the governor shall consider nominations from employee organizations.
  - (d) No more than two members may belong to the same political party.
  - (e) The governor shall, at the time of appointment or reappointment, make appointments to the board so that at least two of the members of the board are members of the Utah State Bar in good standing or resigned from the Utah State Bar in good standing.
- (3)
  - (a) The term of a member shall be six years beginning on March 1 of the year the member is appointed, except that the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of members are staggered so that one member is appointed every two years.
  - (b) The governor may remove a member only for inefficiency, neglect of duty, malfeasance or misfeasance in office, or other good and sufficient cause.
  - (c) A member shall hold office until a successor is appointed and has qualified.
- (4) A member shall be part-time and receive compensation as provided by Title 67, Chapter 19, Utah State Personnel Management Act.
- (5)
  - (a) The chief officer of the board shall be the chair, who shall serve as the executive and administrative head of the board.
  - (b) The governor shall appoint and may remove at will the chair from the position of chair.
- (6) A majority of the board shall constitute a quorum to transact business.
- (7)
  - (a) The commission shall provide the Appeals Board necessary staff support, except as provided in Subsection (7)(b).
  - (b) At the request of the Appeals Board, the attorney general shall act as an impartial aid to the Appeals Board in outlining the facts and the issues.

Amended by Chapter 428, 2013 General Session

### **Part 3 Adjudicative Proceedings**

#### **34A-1-301 Commission jurisdiction and power.**

The commission has the duty and the full power, jurisdiction, and authority to determine the facts and apply the law in this chapter or any other title or chapter it administers.

Renumbered and Amended by Chapter 375, 1997 General Session

#### **34A-1-302 Presiding officers for adjudicative proceedings -- Subpoenas -- Independent judgment -- Consolidation -- Record -- Notice of order.**

- (1)
  - (a) The commissioner shall authorize the Division of Adjudication to call, assign a presiding officer, and conduct hearings and adjudicative proceedings when an application for a proceeding is filed with the Division of Adjudication under this title.
  - (b) The director of the Division of Adjudication or the director's designee may issue subpoenas. Failure to respond to a properly issued subpoena may result in a contempt citation and offenders may be punished as provided in Section 78B-6-313.
  - (c) Witnesses subpoenaed under this section are allowed fees as provided by law for witnesses in the district court of the state. The witness fees shall be paid by the state unless the witness is subpoenaed at the instance of a party other than the commission.
  - (d) A presiding officer assigned under this section may not participate in any case in which the presiding officer is an interested party. Each decision of a presiding officer shall represent the presiding officer's independent judgment.
- (2) If, in the judgment of the presiding officer having jurisdiction of the proceeding the consolidation would not be prejudicial to any party, when the same or substantially similar evidence is relevant and material to the matters in issue in more than one proceeding, the presiding officer may:
  - (a) fix the same time and place for considering each matter;
  - (b) jointly conduct hearings;
  - (c) make a single record of the proceedings; and
  - (d) consider evidence introduced with respect to one proceeding as introduced in the others.
- (3)
  - (a) The commission shall keep a full and complete record of all adjudicative proceedings in connection with a disputed matter.
  - (b) All testimony at any hearing shall be recorded but need not be transcribed. If a party requests transcription, the transcription shall be provided at the party's expense.
  - (c) All records on appeals shall be maintained by the Division of Adjudication. The records shall include an appeal docket showing the receipt and disposition of the appeals.
- (4) A party in interest shall be given notice of the entry of a presiding officer's order or any order or award of the commission. The mailing of the copy of the order or award to the last-known address in the files of the commission of a party in interest and to the attorneys or agents of record in the case, if any, is considered to be notice of the order.
- (5) In any formal adjudicative proceeding, the presiding officer may take any action permitted under Section 63G-4-206.

Amended by Chapter 3, 2008 General Session  
Amended by Chapter 382, 2008 General Session

**34A-1-303 Review of administrative decision.**

- (1) A decision entered by an administrative law judge under this title is the final order of the commission unless a further appeal is initiated:
  - (a) under this title; and
  - (b) in accordance with the rules of the commission governing the review.
- (2)
  - (a) Unless otherwise provided, a person who is entitled to appeal a decision of an administrative law judge under this title may appeal the decision by filing a motion for review with the Division of Adjudication.
  - (b)
    - (i) Unless a party in interest to the appeal requests in accordance with Subsection (3) that the appeal be heard by the Appeals Board, the commissioner shall hear the review in accordance with Title 63G, Chapter 4, Administrative Procedures Act.
    - (ii) Subject to Subsection (2)(b)(iii), the decision of the commissioner is a final order of the commission unless within 30 days after the date the decision is issued further appeal is initiated pursuant to this section or Title 63G, Chapter 4, Administrative Procedures Act.
    - (iii) In the case of an award of permanent total disability benefits under Section 34A-2-413, the decision of the commissioner is a final order of the commission unless set aside by the court of appeals.
  - (c)
    - (i) If in accordance with Subsection (3) a party in interest to the appeal requests that the appeal be heard by the Appeals Board, the Appeals Board shall hear the review in accordance with:
      - (A) Section 34A-1-205; and
      - (B) Title 63G, Chapter 4, Administrative Procedures Act.
    - (ii) Subject to Subsection (2)(c)(iii), the decision of the Appeals Board is a final order of the commission unless within 30 days after the date the decision is issued further appeal is initiated pursuant to this section or Title 63G, Chapter 4, Administrative Procedures Act.
    - (iii) In the case of an award of permanent total disability benefits under Section 34A-2-413, the decision of the Appeals Board is a final order of the commission unless set aside by the court of appeals.
  - (d) The commissioner may transfer a motion for review to the Appeals Board for decision if the commissioner determines that the commissioner's ability to impartially decide the motion for review might reasonably be questioned.
- (3) A party in interest may request that an appeal be heard by the Appeals Board by filing the request with the Division of Adjudication:
  - (a) as part of the motion for review; or
  - (b) if requested by a party in interest who did not file a motion for review, within 20 days of the date the motion for review is filed with the Division of Adjudication.
- (4)
  - (a) On appeal, the commissioner or the Appeals Board may:
    - (i) affirm the decision of an administrative law judge;
    - (ii) modify the decision of an administrative law judge;
    - (iii) return the case to an administrative law judge for further action as directed; or
    - (iv) reverse the findings, conclusions, and decision of an administrative law judge.

- (b) The commissioner or Appeals Board may not conduct a trial de novo of the case.
  - (c) The commissioner or Appeals Board may base its decision on:
    - (i) the evidence previously submitted in the case; or
    - (ii) on written argument or written supplemental evidence requested by the commissioner or Appeals Board.
  - (d) The commissioner or Appeals Board may permit the parties to:
    - (i) file briefs or other papers; or
    - (ii) conduct oral argument.
  - (e) The commissioner or Appeals Board shall promptly notify the parties to any proceedings before the commissioner or Appeals Board of its decision, including its findings and conclusions.
- (5)
- (a) Each decision of a member of the Appeals Board shall represent the member's independent judgment.
  - (b) A member of the Appeals Board may not participate in any case in which the member is an interested party.
  - (c) If a member of the Appeals Board may not participate in a case because the member is an interested party, the two members of the Appeals Board that may hear the case shall assign an individual to participate as a member of the board in that case if the individual:
    - (i) is not an interested party in the case;
    - (ii) was not previously assigned to:
      - (A) preside over any proceeding related to the case; or
      - (B) take any administrative action related to the case; and
    - (iii) is representative of the following group that was represented by the member that may not hear the case under Subsection (5)(b):
      - (A) employers;
      - (B) employees; or
      - (C) the public.
  - (d) The two members of the Appeals Board may appoint an individual to participate as a member of the Appeals Board in a case if:
    - (i) there is a vacancy on the board at the time the Appeals Board hears the review of the case;
    - (ii) the individual appointed meets the conditions described in Subsections (5)(c)(i) and (ii); and
    - (iii) the individual appointed is representative of the following group that was represented by the member for which there is a vacancy:
      - (A) employers;
      - (B) employees; or
      - (C) the public.
- (6) If an order is appealed to the court of appeals after the party appealing the order has exhausted all administrative appeals, the court of appeals has jurisdiction to:
- (a) review, reverse, remand, or annul any order of the commissioner or Appeals Board; or
  - (b) suspend or delay the operation or execution of the order of the commissioner or Appeals Board being appealed.

Amended by Chapter 192, 2014 General Session

**34A-1-304 Definitions -- Rulemaking -- Electronic or similar methods of proceedings.**

- (1) For purposes of this section:
  - (a) "Deliver" means to serve, file, or otherwise provide a document.

- (b) "Document" includes a notice, order, decision, or other document that is required or permitted by a relevant statute.
- (c) "Relevant statute" means a provision of:
  - (i) this title;
  - (ii) Title 34, Labor in General, for which the commissioner has regulatory authority;
  - (iii) Title 40, Chapter 2, Coal Mine Safety Act; or
  - (iv) Title 57, Chapter 21, Utah Fair Housing Act.
- (2)
  - (a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission shall make rules governing adjudicative procedures under a relevant statute, including providing the form of a notice and the manner of serving a notice.
  - (b) Except as provided in this title and Title 63G, Chapter 4, Administrative Procedures Act, a rule made under this section is not required to conform to common law or statutory rules of evidence or other technical rules of procedure.
- (3) The rules made under this section shall protect the rights of the parties and include procedures to:
  - (a) dispose of a case informally or expedite claims adjudication;
  - (b) narrow issues; and
  - (c) simplify the methods of proof at a hearing.
- (4) The commission may by rule permit a hearing or other adjudicative proceeding to be conducted, recorded, or published by an electronic means or similar method.
- (5) Notwithstanding whether a relevant statute requires that a document be delivered by mail or otherwise, the commission may by rule, made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, permit a document to be delivered by electronic means pursuant to the rule.

Amended by Chapter 261, 2011 General Session

**34A-1-305 Orders of commission -- Presumed lawful.**

All orders of the commission within its jurisdiction shall be presumed reasonable and lawful until they are found otherwise in an action brought for that purpose, or until altered or revoked by the commission.

Renumbered and Amended by Chapter 375, 1997 General Session

**34A-1-306 Orders not to be set aside on technicalities.**

A substantial compliance with the requirements of this chapter shall be sufficient to give effect to the orders of the commission, and they may not be declared inoperative, illegal, or void for any omission of a technical nature.

Renumbered and Amended by Chapter 375, 1997 General Session

**34A-1-307 Action permitted in adjudicative proceedings.**

For the purposes mentioned in this title, the commission may take any action permitted:

- (1) if a formal adjudicative proceeding, under Section 63G-4-205 or 63G-4-206; or
- (2) if an informal adjudicative proceeding, under Section 63G-4-203.

Amended by Chapter 382, 2008 General Session

**34A-1-308 Depositions.**

The commission or any party may in any investigation cause depositions of witnesses residing within or without the state to be taken as in civil actions.

Renumbered and Amended by Chapter 375, 1997 General Session

**34A-1-309 Attorney fees.**

- (1) In a case before the commission in which an attorney is employed, the commission has full power to regulate and fix the fees of the attorney.
- (2) In accordance with Title 63G, Chapter 4, Administrative Procedures Act, an attorney may file an application for hearing with the Division of Adjudication to obtain an award of attorney fees as authorized by this section and commission rules.
- (3)
  - (a) The commission may award reasonable attorney fees on a contingency basis when there is generated:
    - (i) disability or death benefits; or
    - (ii) interest on disability or death benefits.
  - (b) An employer or its insurance carrier shall pay attorney fees awarded under Subsection (3)(a) out of the award of:
    - (i) disability or death benefits; or
    - (ii) interest on disability or death benefits.
- (4)
  - (a) In addition to the attorney fees ordered under Subsection (3), the commission may award reasonable attorney fees on a contingency basis for medical benefits ordered paid in the same percentages for an award under Subsection (3) provided for in rule made by the commission in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, if:
    - (i) medical benefits are not approved by:
      - (A) the employer or its insurance carrier; or
      - (B) the Uninsured Employer's Fund created in Section 34A-2-704;
    - (ii) after the employee employs an attorney, medical benefits are paid or ordered to be paid;
    - (iii) the commission's informal dispute resolution mechanisms are reasonably used by the parties before adjudication; and
    - (iv) the sum of the following at issue in the adjudication of the medical benefit claim is less than \$4,000:
      - (A) disability or death benefits; and
      - (B) interest on disability or death benefits.
  - (b) An employer or its insurance carrier shall pay attorney fees awarded under Subsection (4)(a) in addition to the payment of medical benefits ordered.

Amended by Chapter 216, 2009 General Session

**34A-1-310 Record of proceedings before commission.**

A record shall be kept of all proceedings before the commission on any investigation in accordance with Section 34A-1-302.

Renumbered and Amended by Chapter 375, 1997 General Session

## **Part 4 Miscellaneous**

### **34A-1-401 Attorney general and county attorneys -- Duties.**

If requested by the commission, the attorney general or any county or district attorney shall:

- (1) institute and prosecute the necessary actions or proceedings for the enforcement of any order of the commission or of any of the provisions of this title; or
- (2) defend any suit, action, or proceeding brought against the commission.

Renumbered and Amended by Chapter 375, 1997 General Session

### **34A-1-402 Publication of orders, rules, and rates.**

- (1)
  - (a) The commission shall make available in proper form for distribution to the public, its orders and rules; and
  - (b) furnish the information made available under Subsection (1) to any person upon request.
- (2) The commission may in accordance with Section 63G-2-203 charge a fee for furnishing materials under this section.

Amended by Chapter 382, 2008 General Session

### **34A-1-403 Judgments in favor of commission -- Preference.**

All judgments obtained in any action prosecuted by the commission or the state under this title shall have the same preference against the assets of the employer as claims for taxes.

Renumbered and Amended by Chapter 375, 1997 General Session

### **34A-1-404 Injunction prohibited.**

- (1) An injunction may not be issued suspending or restraining:
  - (a) any order by the commission or decision under this title; or
  - (b) any action of the state auditor, state treasurer, attorney general, or the auditor or treasurer of any county, required to be taken by them or any of them by this title.
- (2) Notwithstanding Subsection (1), this section does not affect:
  - (a) any right or defense in any action brought by the commission or the state in pursuance of authority contained in this title; or
  - (b) the right any party of interest has to appeal a decision or final order of the commission.

Renumbered and Amended by Chapter 375, 1997 General Session

### **34A-1-405 Employer's records subject to examination -- Penalty.**

- (1) A book, record, or payroll of an employer showing, or reflecting in any way upon the amount of the employer's wage expenditure shall always be open for inspection by the commission, or any of the commission's auditors, inspectors, or assistants, for the purpose of ascertaining:
  - (a) the correctness of the wage expenditure;
  - (b) the number of individuals employed; and

- (c) other information as may be necessary for the uses and purposes of the commission in its administration of the law.
- (2)
  - (a) If an employer refuses to submit a book, record, or payroll for inspection, after being presented with written authority from the commission, the employer is liable for a penalty of \$100 for each offense.
  - (b) A penalty imposed under this section shall be:
    - (i) ordered under a civil action;
    - (ii) deposited into the Uninsured Employers' Fund created in Section 34A-2-704 to be used for a purpose specified in Section 34A-2-704; and
    - (iii) collected by the administrator of the Uninsured Employers' Fund in accordance with Section 34A-2-704.

Amended by Chapter 288, 2009 General Session

**34A-1-406 Right of visitation.**

- (1) The commissioner or the commissioner's designee may:
  - (a) enter any place of employment for the purpose of:
    - (i) collecting facts and statistics; or
    - (ii) examining the provisions made for the health and safety of the employees in the place of employment; and
  - (b) bring to the attention of every employer any law, or any final order or rule of the commission, and any failure on the part of the employer to comply with the law, rule, or final order.
- (2) An employer may not refuse to admit the commissioner or the commissioner's designee to the employer's place of employment.

Renumbered and Amended by Chapter 375, 1997 General Session

**34A-1-407 Investigation of places of employment -- Violations of rules or orders --  
Temporary injunction.**

- (1)
  - (a) Upon complaint by any person that any employment or place of employment, regardless of the number of persons employed, is not safe for any employee or is in violation of state law, the commission shall refer the complaint for investigation and administrative action under:
    - (i) Chapter 2, Workers' Compensation Act;
    - (ii) Chapter 3, Utah Occupational Disease Act;
    - (iii) Chapter 5, Utah Antidiscrimination Act;
    - (iv) Chapter 6, Utah Occupational Safety and Health Act;
    - (v) Chapter 7, Safety; or
    - (vi) any combination of Subsections (1)(a)(i) through (v).
  - (b) Notwithstanding Subsection (1)(a) and Title 40, Chapter 2, Coal Mine Safety Act, for any Utah mine subject to the Federal Mine Safety and Health Act, the sole duty of the commission is to notify the appropriate federal agency of the complaint.
- (2) Notwithstanding any other penalty provided in this title, if any employer, after receiving notice, fails or refuses to obey the rules or order of the commission relative to the protection of the life, health, or safety of any employee, the district court of Utah is empowered, upon petition of the commission to issue, ex parte and without bond, a temporary injunction restraining the further operation of the employer's business.

Amended by Chapter 291, 2001 General Session

**34A-1-408 Investigations through representatives.**

- (1) For the purpose of making any investigation necessary for the implementation of this title with regard to any employment or place of employment, the commission may appoint, in writing, any competent person who is a resident of the state, as an agent, whose duties shall be prescribed in the written appointment.
- (2) In the discharge of the agent's duties, the agent shall have:
  - (a) every power of investigation granted in this title to the commission; and
  - (b) the same powers as a referee appointed by a district court with regard to taking evidence.
- (3) The commission may:
  - (a) conduct any number of the investigations contemporaneously through different agents; and
  - (b) delegate to the agents the taking of evidence bearing upon any investigation or hearing.
- (4) The recommendations made by the agents shall be advisory only and do not preclude the taking of further evidence or further investigation if the commission so orders.

Amended by Chapter 297, 2011 General Session

**34A-1-409 Partial invalidity -- Saving clause.**

Should any section or provision of this title be decided by the courts to be unconstitutional or invalid the same does not affect the validity of the title as a whole or any part of the title other than the part so decided to be unconstitutional.

Amended by Chapter 297, 2011 General Session

**Chapter 2**  
**Workers' Compensation Act**  
  
**Part 1**  
**General Provisions**

**34A-2-101 Title.**

This chapter shall be known as the "Workers' Compensation Act."

Renumbered and Amended by Chapter 375, 1997 General Session

**34A-2-102 Definition of terms.**

- (1) As used in this chapter:
  - (a) "Average weekly wages" means the average weekly wages as determined under Section 34A-2-409.
  - (b) "Award" means a final order of the commission as to the amount of compensation due:
    - (i) an injured employee; or
    - (ii) a dependent of a deceased employee.

- (c) "Compensation" means the payments and benefits provided for in this chapter or Chapter 3, Utah Occupational Disease Act.
  - (d)
    - (i) "Decision" means a ruling of:
      - (A) an administrative law judge; or
      - (B) in accordance with Section 34A-2-801:
        - (I) the commissioner; or
        - (II) the Appeals Board.
    - (ii) "Decision" includes:
      - (A) an award or denial of a medical, disability, death, or other related benefit under this chapter or Chapter 3, Utah Occupational Disease Act; or
      - (B) another adjudicative ruling in accordance with this chapter or Chapter 3, Utah Occupational Disease Act.
  - (e) "Director" means the director of the division, unless the context requires otherwise.
  - (f) "Disability" means an administrative determination that may result in an entitlement to compensation as a consequence of becoming medically impaired as to function. Disability can be total or partial, temporary or permanent, industrial or nonindustrial.
  - (g) "Division" means the Division of Industrial Accidents.
  - (h) "Impairment" is a purely medical condition reflecting an anatomical or functional abnormality or loss. Impairment may be either temporary or permanent, industrial or nonindustrial.
  - (i) "Order" means an action of the commission that determines the legal rights, duties, privileges, immunities, or other interests of one or more specific persons, but not a class of persons.
  - (j)
    - (i) "Personal injury by accident arising out of and in the course of employment" includes an injury caused by the willful act of a third person directed against an employee because of the employee's employment.
    - (ii) "Personal injury by accident arising out of and in the course of employment" does not include a disease, except as the disease results from the injury.
  - (k) "Safe" and "safety," as applied to employment or a place of employment, means the freedom from danger to the life or health of employees reasonably permitted by the nature of the employment.
  - (l) "Workers' Compensation Fund" means the nonprofit, quasi-public corporation created in Title 31A, Chapter 33, Workers' Compensation Fund.
- (2) As used in this chapter and Chapter 3, Utah Occupational Disease Act:
- (a) "Brother or sister" includes a half brother or sister.
  - (b) "Child" includes:
    - (i) a posthumous child; or
    - (ii) a child legally adopted prior to an injury.

Amended by Chapter 90, 2008 General Session

**34A-2-103 Employers enumerated and defined -- Regularly employed -- Statutory employers -- Exceptions.**

- (1)
  - (a) The state, and each county, city, town, and school district in the state are considered employers under this chapter and Chapter 3, Utah Occupational Disease Act.
  - (b) For the purposes of the exclusive remedy in this chapter and Chapter 3, Utah Occupational Disease Act, prescribed in Sections 34A-2-105 and 34A-3-102, the state is considered to be

a single employer and includes any office, department, agency, authority, commission, board, institution, hospital, college, university, or other instrumentality of the state.

- (2)
- (a) Except as provided in Subsection (4), each person, including each public utility and each independent contractor, who regularly employs one or more workers or operatives in the same business, or in or about the same establishment, under any contract of hire, express or implied, oral or written, is considered an employer under this chapter and Chapter 3, Utah Occupational Disease Act.
  - (b) As used in this Subsection (2):
    - (i) "Independent contractor" means any person engaged in the performance of any work for another who, while so engaged, is:
      - (A) independent of the employer in all that pertains to the execution of the work;
      - (B) not subject to the routine rule or control of the employer;
      - (C) engaged only in the performance of a definite job or piece of work; and
      - (D) subordinate to the employer only in effecting a result in accordance with the employer's design.
    - (ii) "Regularly" includes all employments in the usual course of the trade, business, profession, or occupation of the employer, whether continuous throughout the year or for only a portion of the year.
- (3)
- (a) The client under a professional employer organization agreement regulated under Title 31A, Chapter 40, Professional Employer Organization Licensing Act:
    - (i) is considered the employer of a covered employee; and
    - (ii) subject to Section 31A-40-209, shall secure workers' compensation benefits for a covered employee by complying with Subsection 34A-2-201(1) or (2) and commission rules.
  - (b) The division shall promptly inform the Insurance Department if the division has reason to believe that a professional employer organization is not in compliance with Subsection 34A-2-201(1) or (2) and commission rules.
- (4) A domestic employer who does not employ one employee or more than one employee at least 40 hours per week is not considered an employer under this chapter and Chapter 3, Utah Occupational Disease Act.
- (5)
- (a) As used in this Subsection (5):
    - (i)
      - (A) "agricultural employer" means a person who employs agricultural labor as defined in Subsections 35A-4-206(1) and (2) and does not include employment as provided in Subsection 35A-4-206(3); and
      - (B) notwithstanding Subsection (5)(a)(i)(A), only for purposes of determining who is a member of the employer's immediate family under Subsection (5)(a)(ii), if the agricultural employer is a corporation, partnership, or other business entity, "agricultural employer" means an officer, director, or partner of the business entity;
    - (ii) "employer's immediate family" means:
      - (A) an agricultural employer's:
        - (I) spouse;
        - (II) grandparent;
        - (III) parent;
        - (IV) sibling;
        - (V) child;

- (VI) grandchild;
- (VII) nephew; or
- (VIII) niece;
- (B) a spouse of any person provided in Subsections (5)(a)(ii)(A)(II) through (VIII); or
- (C) an individual who is similar to those listed in Subsection (5)(a)(ii)(A) or (B) as defined by rules of the commission; and
- (iii) "nonimmediate family" means a person who is not a member of the employer's immediate family.
- (b) For purposes of this chapter and Chapter 3, Utah Occupational Disease Act, an agricultural employer is not considered an employer of a member of the employer's immediate family.
- (c) For purposes of this chapter and Chapter 3, Utah Occupational Disease Act, an agricultural employer is not considered an employer of a nonimmediate family employee if:
  - (i) for the previous calendar year the agricultural employer's total annual payroll for all nonimmediate family employees was less than \$8,000; or
  - (ii)
    - (A) for the previous calendar year the agricultural employer's total annual payroll for all nonimmediate family employees was equal to or greater than \$8,000 but less than \$50,000; and
    - (B) the agricultural employer maintains insurance that covers job-related injuries of the employer's nonimmediate family employees in at least the following amounts:
      - (I) \$300,000 liability insurance, as defined in Section 31A-1-301; and
      - (II) \$5,000 for health care benefits similar to benefits under health care insurance as defined in Section 31A-1-301.
- (d) For purposes of this chapter and Chapter 3, Utah Occupational Disease Act, an agricultural employer is considered an employer of a nonimmediate family employee if:
  - (i) for the previous calendar year the agricultural employer's total annual payroll for all nonimmediate family employees is equal to or greater than \$50,000; or
  - (ii)
    - (A) for the previous year the agricultural employer's total payroll for nonimmediate family employees was equal to or exceeds \$8,000 but is less than \$50,000; and
    - (B) the agricultural employer fails to maintain the insurance required under Subsection (5)(c)(ii)(B).
- (6) An employer of agricultural laborers or domestic servants who is not considered an employer under this chapter and Chapter 3, Utah Occupational Disease Act, may come under this chapter and Chapter 3, Utah Occupational Disease Act, by complying with:
  - (a) this chapter and Chapter 3, Utah Occupational Disease Act; and
  - (b) the rules of the commission.
- (7)
  - (a)
    - (i) As used in this Subsection (7)(a), "employer" includes any of the following persons that procures work to be done by a contractor notwithstanding whether or not the person directly employs a person:
      - (A) a sole proprietorship;
      - (B) a corporation;
      - (C) a partnership;
      - (D) a limited liability company; or
      - (E) a person similar to one described in Subsections (7)(a)(i)(A) through (D).

- (ii) If an employer procures any work to be done wholly or in part for the employer by a contractor over whose work the employer retains supervision or control, and this work is a part or process in the trade or business of the employer, the contractor, all persons employed by the contractor, all subcontractors under the contractor, and all persons employed by any of these subcontractors, are considered employees of the original employer for the purposes of this chapter and Chapter 3, Utah Occupational Disease Act.
- (b) Any person who is engaged in constructing, improving, repairing, or remodeling a residence that the person owns or is in the process of acquiring as the person's personal residence may not be considered an employee or employer solely by operation of Subsection (7)(a).
- (c) A partner in a partnership or an owner of a sole proprietorship is not considered an employee under Subsection (7)(a) if the employer who procures work to be done by the partnership or sole proprietorship obtains and relies on either:
  - (i) a valid certification of the partnership's or sole proprietorship's compliance with Section 34A-2-201 indicating that the partnership or sole proprietorship secured the payment of workers' compensation benefits pursuant to Section 34A-2-201; or
  - (ii) if a partnership or sole proprietorship with no employees other than a partner of the partnership or owner of the sole proprietorship, a workers' compensation coverage waiver issued pursuant to Part 10, Workers' Compensation Coverage Waivers Act, stating that:
    - (A) the partnership or sole proprietorship is customarily engaged in an independently established trade, occupation, profession, or business; and
    - (B) the partner or owner personally waives the partner's or owner's entitlement to the benefits of this chapter and Chapter 3, Utah Occupational Disease Act, in the operation of the partnership or sole proprietorship.
- (d) A director or officer of a corporation is not considered an employee under Subsection (7)(a) if the director or officer is excluded from coverage under Subsection 34A-2-104(4).
- (e) A contractor or subcontractor is not an employee of the employer under Subsection (7)(a), if the employer who procures work to be done by the contractor or subcontractor obtains and relies on either:
  - (i) a valid certification of the contractor's or subcontractor's compliance with Section 34A-2-201; or
  - (ii) if a partnership, corporation, or sole proprietorship with no employees other than a partner of the partnership, officer of the corporation, or owner of the sole proprietorship, a workers' compensation coverage waiver issued pursuant to Part 10, Workers' Compensation Coverage Waivers Act, stating that:
    - (A) the partnership, corporation, or sole proprietorship is customarily engaged in an independently established trade, occupation, profession, or business; and
    - (B) the partner, corporate officer, or owner personally waives the partner's, corporate officer's, or owner's entitlement to the benefits of this chapter and Chapter 3, Utah Occupational Disease Act, in the operation of the partnership's, corporation's, or sole proprietorship's enterprise under a contract of hire for services.
- (f)
  - (i) For purposes of this Subsection (7)(f), "eligible employer" means a person who:
    - (A) is an employer; and
    - (B) procures work to be done wholly or in part for the employer by a contractor, including:
      - (I) all persons employed by the contractor;
      - (II) all subcontractors under the contractor; and
      - (III) all persons employed by any of these subcontractors.

- (ii) Notwithstanding the other provisions in this Subsection (7), if the conditions of Subsection (7)(f)(iii) are met, an eligible employer is considered an employer for purposes of Section 34A-2-105 of the contractor, subcontractor, and all persons employed by the contractor or subcontractor described in Subsection (7)(f)(i)(B).
  - (iii) Subsection (7)(f)(ii) applies if the eligible employer:
    - (A) under Subsection (7)(a) is liable for and pays workers' compensation benefits as an original employer under Subsection (7)(a) because the contractor or subcontractor fails to comply with Section 34A-2-201;
    - (B)
      - (I) secures the payment of workers' compensation benefits for the contractor or subcontractor pursuant to Section 34A-2-201;
      - (II) procures work to be done that is part or process of the trade or business of the eligible employer; and
      - (III) does the following with regard to a written workplace accident and injury reduction program that meets the requirements of Subsection 34A-2-111(3)(d):
        - (Aa) adopts the workplace accident and injury reduction program;
        - (Bb) posts the workplace accident and injury reduction program at the work site at which the eligible employer procures work; and
        - (Cc) enforces the workplace accident and injury reduction program according to the terms of the workplace accident and injury reduction program; or
    - (C)
      - (I) obtains and relies on:
        - (Aa) a valid certification described in Subsection (7)(c)(i) or (7)(e)(i);
        - (Bb) a workers' compensation coverage waiver described in Subsection (7)(c)(ii) or (7)(e)(ii); or
        - (Cc) proof that a director or officer is excluded from coverage under Subsection 34A-2-104(4);
      - (II) is liable under Subsection (7)(a) for the payment of workers' compensation benefits if the contractor or subcontractor fails to comply with Section 34A-2-201;
      - (III) procures work to be done that is part or process in the trade or business of the eligible employer; and
      - (IV) does the following with regard to a written workplace accident and injury reduction program that meets the requirements of Subsection 34A-2-111(3)(d):
        - (Aa) adopts the workplace accident and injury reduction program;
        - (Bb) posts the workplace accident and injury reduction program at the work site at which the eligible employer procures work; and
        - (Cc) enforces the workplace accident and injury reduction program according to the terms of the workplace accident and injury reduction program.
- (8)
    - (a) For purposes of this Subsection (8), "unincorporated entity" means an entity organized or doing business in the state that is not:
      - (i) an individual;
      - (ii) a corporation; or
      - (iii) publicly traded.
    - (b) For purposes of this chapter and Chapter 3, Utah Occupational Disease Act, an unincorporated entity that is required to be licensed under Title 58, Chapter 55, Utah Construction Trades Licensing Act, is presumed to be the employer of each individual who holds, directly or indirectly, an ownership interest in the unincorporated entity.

Notwithstanding Subsection (7)(c) and Subsection 34A-2-104(3), the unincorporated entity shall provide the individual who holds the ownership interest workers' compensation coverage under this chapter and Chapter 3, Utah Occupational Disease Act, unless the presumption is rebutted under Subsection (8)(c).

- (c) Pursuant to rules made by the commission in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, an unincorporated entity may rebut the presumption under Subsection (8)(b) for an individual by establishing by clear and convincing evidence that the individual:
  - (i) is an active manager of the unincorporated entity;
  - (ii) directly or indirectly holds at least an 8% ownership interest in the unincorporated entity; or
  - (iii) is not subject to supervision or control in the performance of work by:
    - (A) the unincorporated entity; or
    - (B) a person with whom the unincorporated entity contracts.
- (d) As part of the rules made under Subsection (8)(c), the commission may define:
  - (i) "active manager";
  - (ii) "directly or indirectly holds at least an 8% ownership interest"; and
  - (iii) "subject to supervision or control in the performance of work."
- (9)
  - (a) As used in this Subsection (9), "home and community based services" means one or more of the following services provided to an individual with a disability or to the individual's family that helps prevent the individual with a disability from being placed in a more restrictive setting:
    - (i) respite care;
    - (ii) skilled nursing;
    - (iii) nursing assistant services;
    - (iv) home health aide services;
    - (v) personal care and attendant services;
    - (vi) other in-home care, such as support for the daily activities of the individual with a disability;
    - (vii) specialized in-home training for the individual with a disability or a family member of the individual with a disability;
    - (viii) specialized in-home support, coordination, and other supported living services; and
    - (ix) other home and community based services unique to the individual with a disability or the family of the individual with a disability that help prevent the individual with a disability from being placed in a more restrictive setting.
  - (b) Notwithstanding Subsection (4) and subject to Subsection (9)(c), an individual with a disability or designated representative of the individual with a disability is considered an employer under this chapter and Chapter 3, Utah Occupational Disease Act, of an individual who provides home and community based services if the individual with a disability or designated representative of the individual with a disability:
    - (i) employs the individual to provide home and community based services for seven hours per week or more; and
    - (ii) pays the individual providing the home and community based services from state or federal money received by the individual with a disability or designated representative of the individual with a disability to fund home and community based services, including through a person designated by the Secretary of the Treasury in accordance with Section 3504, Internal Revenue Code, as a fiduciary, agent, or other person who has the control, receipt, custody, or disposal of, or pays the wages of, the individual providing the home and community based services.

- (c) The state and federal money received by an individual with a disability or designated representative of an individual with a disability shall include the cost of the workers' compensation coverage required by this Subsection (9) in addition to the money necessary to fund the home and community based services that the individual with a disability or family of the individual with a disability is eligible to receive so that the home and community based services are not reduced in order to pay for the workers' compensation coverage required by this Subsection (9).

(10)

- (a) For purposes of this Subsection (10), "federal executive agency" means an executive agency, as defined in 5 U.S.C. Sec. 105, of the federal government.
- (b) For purposes of determining whether two or more persons are considered joint employers under this chapter or Chapter 3, Utah Occupational Disease Act, an administrative ruling of a federal executive agency may not be considered a generally applicable law unless that administrative ruling is determined to be generally applicable by a court of law, or adopted by statute or rule .

(11)

- (a) As used in this Subsection (11):
  - (i) "Franchise" means the same as that term is defined in 16 C.F.R. Sec. 436.1.
  - (ii) "Franchisee" means the same as that term is defined in 16 C.F.R. Sec. 436.1.
  - (iii) "Franchisor" means the same as that term is defined in 16 C.F.R. Sec. 436.1.
- (b) For purposes of this chapter, a franchisor is not considered to be an employer of:
  - (i) a franchisee; or
  - (ii) a franchisee's employee.
- (c) With respect to a specific claim for relief under this chapter made by a franchisee or a franchisee's employee, this Subsection (11) does not apply to a franchisor under a franchise that exercises a type or degree of control over the franchisee or the franchisee's employee not customarily exercised by a franchisor for the purpose of protecting the franchisor's trademarks and brand.

Amended by Chapter 370, 2016 General Session

**34A-2-104 "Employee," "worker," and "operative" defined -- Specific circumstances -- Exemptions.**

- (1) As used in this chapter and Chapter 3, Utah Occupational Disease Act, "employee," "worker," and "operative" mean:
  - (a)
    - (i) an elective or appointive officer and any other person:
      - (A) in the service of:
        - (I) the state;
        - (II) a county, city, or town within the state; or
        - (III) a school district within the state;
      - (B) serving the state, or any county, city, town, or school district under:
        - (I) an election;
        - (II) appointment; or
        - (III) any contract of hire, express or implied, written or oral; and
    - (ii) including:
      - (A) an officer or employee of the state institutions of learning; and
      - (B) a member of the National Guard while on state active duty; and

- (b) a person in the service of any employer, as defined in Section 34A-2-103, who employs one or more workers or operatives regularly in the same business, or in or about the same establishment:
  - (i) under any contract of hire:
    - (A) express or implied; and
    - (B) oral or written;
  - (ii) including aliens and minors, whether legally or illegally working for hire; and
  - (iii) not including any person whose employment:
    - (A) is casual; and
    - (B) not in the usual course of the trade, business, or occupation of the employee's employer.
- (2)
  - (a) Unless a lessee provides coverage as an employer under this chapter and Chapter 3, Utah Occupational Disease Act, any lessee in mines or of mining property and each employee and sublessee of the lessee shall be:
    - (i) covered for compensation by the lessor under this chapter and Chapter 3, Utah Occupational Disease Act;
    - (ii) subject to this chapter and Chapter 3, Utah Occupational Disease Act; and
    - (iii) entitled to the benefits of this chapter and Chapter 3, Utah Occupational Disease Act, to the same extent as if the lessee, employee, or sublessee were employees of the lessor drawing the wages paid employees for substantially similar work.
  - (b) The lessor may deduct from the proceeds of ores mined by the lessees an amount equal to the insurance premium for that type of work.
- (3)
  - (a) A partnership or sole proprietorship may elect to include any partner of the partnership or owner of the sole proprietorship as an employee of the partnership or sole proprietorship under this chapter and Chapter 3, Utah Occupational Disease Act.
  - (b) If a partnership or sole proprietorship makes an election under Subsection (3)(a), the partnership or sole proprietorship shall serve written notice upon its insurance carrier naming the persons to be covered.
  - (c) A partner of a partnership or owner of a sole proprietorship may not be considered an employee of the partner's partnership or the owner's sole proprietorship under this chapter or Chapter 3, Utah Occupational Disease Act, until the notice described in Subsection (3)(b) is given.
  - (d) For premium rate making, the insurance carrier shall assume the salary or wage of the partner or sole proprietor electing coverage under Subsection (3)(a) to be 100% of the state's average weekly wage.
- (4)
  - (a) A corporation may elect not to include any director or officer of the corporation as an employee under this chapter and Chapter 3, Utah Occupational Disease Act.
  - (b) If a corporation makes an election under Subsection (4)(a), the corporation shall serve written notice naming the individuals who are directors or officers to be excluded from coverage:
    - (i) upon its insurance carrier, if any; or
    - (ii) upon the commission if the corporation is self-insured or has no employee other than the one or more directors or officers being excluded.
  - (c) A corporation may exclude no more than five individuals who are directors or officers under Subsection (4)(b)(ii).
  - (d) An exclusion under this Subsection (4) is subject to Subsection 34A-2-103(7)(d).

- (e) A director or officer of a corporation is considered an employee under this chapter and Chapter 3, Utah Occupational Disease Act, until the notice described in Subsection (4)(b) is given.
- (f) The commission may make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, regarding the form of the notice described in Subsection (4)(b)(ii), including a requirement to provide documentation, if any.
- (5) As used in this chapter and Chapter 3, Utah Occupational Disease Act, "employee," "worker," and "operative" do not include:
  - (a) a sales agent or associate broker, as defined in Section 61-2f-102, who performs services in that capacity for a principal broker if:
    - (i) substantially all of the sales agent's or associate broker's income for services is from real estate commissions; and
    - (ii) the sales agent's or associate broker's services are performed under a written contract that provides that:
      - (A) the real estate agent is an independent contractor; and
      - (B) the sales agent or associate broker is not to be treated as an employee for federal income tax purposes;
  - (b) an offender performing labor under Section 64-13-16 or 64-13-19, except as required by federal statute or regulation;
  - (c) an individual who for an insurance producer, as defined in Section 31A-1-301, solicits, negotiates, places, or procures insurance if:
    - (i) substantially all of the individual's income from those services is from insurance commissions; and
    - (ii) the services of the individual are performed under a written contract that states that the individual:
      - (A) is an independent contractor;
      - (B) is not to be treated as an employee for federal income tax purposes; and
      - (C) can derive income from more than one insurance company; or
  - (d) subject to Subsections (6), (7), and (8), an individual who:
    - (i)
      - (A) owns a motor vehicle; or
      - (B) leases a motor vehicle to a motor carrier;
    - (ii) personally operates the motor vehicle described in Subsection (5)(d)(i);
    - (iii) operates the motor vehicle described in Subsection (5)(d)(i) under a written agreement with the motor carrier that states that the individual operates the motor vehicle as an independent contractor; and
    - (iv)
      - (A) provides to the motor carrier at the time the written agreement described in Subsection (5)(d)(iii) is executed or as soon after the execution as provided by the commission, a copy of a workers' compensation coverage waiver issued pursuant to Part 10, Workers' Compensation Coverage Waivers Act, to the individual; and
      - (B) provides to the motor carrier at the time the written agreement described in Subsection (5)(d)(iii) is executed or as soon after the execution as provided by an insurer, proof that the individual is covered by occupational accident related insurance with the coverage and benefit limits listed in Subsection (7)(c).
- (6) An individual described in Subsection (5)(d) may become an employee under this chapter and Chapter 3, Utah Occupational Disease Act, if the employer of the individual complies with:
  - (a) this chapter and Chapter 3, Utah Occupational Disease Act; and

- (b) commission rules.
- (7) For purposes of Subsection (5)(d):
  - (a) "Motor carrier" means a person engaged in the business of transporting freight, merchandise, or other property by a commercial vehicle on a highway within this state.
  - (b) "Motor vehicle" means a self-propelled vehicle intended primarily for use and operation on the highways, including a trailer or semitrailer designed for use with another motorized vehicle.
  - (c) "Occupational accident related insurance" means insurance that provides the following coverage at a minimum aggregate policy limit of \$1,000,000 for all benefits paid, including medical expense benefits, for an injury sustained in the course of working under a written agreement described in Subsection (5)(d)(iii):
    - (i) disability benefits;
    - (ii) death benefits; and
    - (iii) medical expense benefits, which include:
      - (A) hospital coverage;
      - (B) surgical coverage;
      - (C) prescription drug coverage; and
      - (D) dental coverage.
- (8) For an individual described in Subsection (5)(d), the commission shall verify the existence of occupational accident insurance coverage with the coverage and benefit limits listed in Subsection (7)(c) before the commission may issue a workers' compensation coverage waiver to the individual pursuant to Part 10, Workers' Compensation Coverage Waivers Act.

Amended by Chapter 303, 2014 General Session

**34A-2-104.5 Nongovernment entity volunteers.**

- (1) As used in this section:
  - (a)
    - (i) "Intern" means a student or trainee who works without pay at a trade or occupation in order to gain work experience.
    - (ii) Notwithstanding Subsection (1)(a)(i), "intern" does not include an intern described in Section 53A-29-103 or 53B-16-403.
  - (b) "Nongovernment entity" means an entity or individual that:
    - (i) is an employer as provided in Section 34A-2-103; and
    - (ii) is not a government entity.
  - (c) "Utah minimum wage" means the highest wage designated as Utah's minimum wage under Title 34, Chapter 40, Utah Minimum Wage Act.
  - (d)
    - (i) "Volunteer" means an individual who donates service without pay or other compensation except expenses actually and reasonably incurred as approved by the supervising nongovernment entity.
    - (ii) "Volunteer" includes an intern of a nongovernment entity.
    - (iii) "Volunteer" does not include an individual participating in human subjects research to the extent that the participation is governed by federal law or regulation inconsistent with this chapter.
- (2) A volunteer for a nongovernment entity is not an employee of the nongovernment entity for purposes of this chapter and Chapter 3, Utah Occupational Disease Act, unless the nongovernment entity elects in accordance with this section to provide coverage under this chapter and Chapter 3, Utah Occupational Disease Act.

- (3)
  - (a) A nongovernment entity may elect to secure coverage for all of the nongovernment entity's volunteers by obtaining coverage for the volunteers in accordance with Section 34A-2-201 under the same policy it uses to cover the nongovernment entity's employees.
  - (b) If a nongovernment entity obtains coverage under Section 34A-2-201 for the nongovernment entity's volunteers, for purposes of receiving benefits under this chapter and Chapter 3, Utah Occupational Disease Act:
    - (i) a volunteer is considered an employee of the nongovernment entity; and
    - (ii) these benefits are the exclusive remedy of the volunteer in accordance with Section 34A-2-105 for an industrial injury or disease covered by this chapter and Chapter 3, Utah Occupational Disease Act.
- (4) A nongovernment entity shall keep sufficient records of the nongovernment entity's volunteers and the volunteers' duties to determine compliance with this section.
- (5) To compute the disability compensation benefits under Subsection (3), the disability compensation shall be calculated in accordance with Part 4, Compensation and Benefits, with the average weekly wage of the nongovernment volunteer assumed to be the Utah minimum wage at the time of the industrial accident or occupational disease that is the basis for the volunteer's workers' compensation claim.
- (6) A workers' compensation insurer shall calculate the premium for a nongovernment entity's volunteer on the basis of the Utah minimum wage on the actual hours the volunteer provides service to the nongovernment entity, except that a workers' compensation insurer may assume 30 hours worked per week if the nongovernment entity does not provide a record of actual hours worked. The imputed wages shall be assigned to the class code on the policy that best describes the volunteer's duties.
- (7) The failure or refusal of a nongovernment entity to make an election under this section in regard to volunteers does not alter, have an effect on, or give rise to any implication or presumption regarding:
  - (a) the nongovernment entity's duties or liabilities with respect to volunteers; or
  - (b) the rights of volunteers.
- (8) Subject to Subsection (3)(b)(ii), nothing in this section affects a volunteer's right to seek remedies available to the volunteer through a personal insurance policy that the volunteer obtains for the volunteer in addition to any workers' compensation benefits obtained under this section.
- (9) A nongovernment entity shall notify a volunteer of an election under Subsection (3)(a) by posting:
  - (a) printed notices where volunteers are likely to see the notices in conspicuous places about the nongovernment entity's place of business; and
  - (b) notices on a website that the nongovernment entity uses to recruit or provide information to volunteers.

Enacted by Chapter 390, 2016 General Session

**34A-2-105 Exclusive remedy against employer, and officer, agent, or employee of employer.**

- (1) The right to recover compensation pursuant to this chapter for injuries sustained by an employee, whether resulting in death or not, is the exclusive remedy against the employer and is the exclusive remedy against any officer, agent, or employee of the employer and the liabilities of the employer imposed by this chapter is in place of any and all other civil liability whatsoever, at common law or otherwise, to the employee or to the employee's spouse,

widow, children, parents, dependents, next of kin, heirs, personal representatives, guardian, or any other person whomsoever, on account of any accident or injury or death, in any way contracted, sustained, aggravated, or incurred by the employee in the course of or because of or arising out of the employee's employment, and an action at law may not be maintained against an employer or against any officer, agent, or employee of the employer based upon any accident, injury, or death of an employee. Nothing in this section prevents an employee, or the employee's dependents, from filing a claim for compensation in those cases in accordance with Chapter 3, Utah Occupational Disease Act.

- (2) The exclusive remedy provisions of this section apply to both the client and the professional employer organization in a coemployment relationship regulated under Title 31A, Chapter 40, Professional Employer Organization Licensing Act.
- (3)
  - (a) For purposes of this section:
    - (i) "Temporary employee" means an individual who for temporary work assignment is:
      - (A) an employee of a temporary staffing company; or
      - (B) registered by or otherwise associated with a temporary staffing company.
    - (ii) "Temporary staffing company" means a company that engages in the assignment of individuals as temporary full-time or part-time employees to fill assignments with a finite ending date to another independent entity.
  - (b) If the temporary staffing company secures the payment of workers' compensation in accordance with Section 34A-2-201 for all temporary employees of the temporary staffing company, the exclusive remedy provisions of this section apply to both the temporary staffing company and the client company and its employees and provide the temporary staffing company the same protection that a client company and its employees has under this section for the acts of any of the temporary staffing company's temporary employees on assignment at the client company worksite.

Amended by Chapter 318, 2008 General Session

**34A-2-106 Injuries or death caused by wrongful acts of persons other than employer, officer, agent, or employee of employer -- Rights of employer or insurance carrier in cause of action -- Maintenance of action -- Notice of intention to proceed against third party -- Right to maintain action not involving employee-employer relationship -- Disbursement of proceeds of recovery -- Exclusive remedy.**

- (1) When any injury or death for which compensation is payable under this chapter or Chapter 3, Utah Occupational Disease Act is caused by the wrongful act or neglect of a person other than an employer, officer, agent, or employee of the employer:
  - (a) the injured employee, or in case of death, the employee's dependents, may claim compensation; and
  - (b) the injured employee or the employee's heirs or personal representative may have an action for damages against the third person.
- (2)
  - (a) If compensation is claimed and the employer or insurance carrier becomes obligated to pay compensation, the employer or insurance carrier:
    - (i) shall become trustee of the cause of action against the third party; and
    - (ii) may bring and maintain the action either in its own name or in the name of the injured employee, or the employee's heirs or the personal representative of the deceased.

- (b) Notwithstanding Subsection (2)(a), an employer or insurance carrier may not settle and release a cause of action of which it is a trustee under Subsection (2)(a) without the consent of the commission.
- (3)
- (a) Before proceeding against a third party, to give a person described in Subsections (3)(a)(i) and (ii) a reasonable opportunity to enter an appearance in the proceeding, the injured employee or, in case of death, the employee's heirs, shall give written notice of the intention to bring an action against the third party to:
    - (i) the carrier; and
    - (ii) any other person obligated for the compensation payments.
  - (b) The injured employee, or, in case of death, the employee's heirs, shall give written notice to the carrier and other person obligated for the compensation payments of any known attempt to attribute fault to the employer, officer, agent, or employee of the employer:
    - (i) by way of settlement; or
    - (ii) in a proceeding brought by the injured employee, or, in case of death, the employee's heirs.
- (4) For the purposes of this section and notwithstanding Section 34A-2-103, the injured employee or the employee's heirs or personal representative may also maintain an action for damages against any of the following persons who do not occupy an employee-employer relationship with the injured or deceased employee at the time of the employee's injury or death:
- (a) a subcontractor;
  - (b) a general contractor;
  - (c) an independent contractor;
  - (d) a property owner; or
  - (e) a lessee or assignee of a property owner.
- (5) If any recovery is obtained against a third person, it shall be disbursed in accordance with Subsections (5)(a) through (c).
- (a) The reasonable expense of the action, including attorney fees, shall be paid and charged proportionately against the parties as their interests may appear. Any fee chargeable to the employer or carrier is to be a credit upon any fee payable by the injured employee or, in the case of death, by the dependents, for any recovery had against the third party.
  - (b) The person liable for compensation payments shall be reimbursed, less the proportionate share of costs and attorney fees provided for in Subsection (5)(a), for the payments made as follows:
    - (i) without reduction based on fault attributed to the employer, officer, agent, or employee of the employer in the action against the third party if the combined percentage of fault attributed to persons immune from suit is determined to be less than 40% prior to any reallocation of fault under Subsection 78B-5-819(2); or
    - (ii) less the amount of payments made multiplied by the percentage of fault attributed to the employer, officer, agent, or employee of the employer in the action against the third party if the combined percentage of fault attributed to persons immune from suit is determined to be 40% or more prior to any reallocation of fault under Subsection 78B-5-819(2).
  - (c) The balance shall be paid to the injured employee, or the employee's heirs in case of death, to be applied to reduce or satisfy in full any obligation thereafter accruing against the person liable for compensation.
- (6) The apportionment of fault to the employer in a civil action against a third party is not an action at law and does not impose any liability on the employer. The apportionment of fault does not alter or diminish the exclusiveness of the remedy provided to employees, their heirs, or personal representatives, or the immunity provided employers pursuant to Section 34A-2-105

or 34A-3-102 for injuries sustained by an employee, whether resulting in death or not. Any court in which a civil action is pending shall issue a partial summary judgment to an employer with respect to the employer's immunity as provided in Section 34A-2-105 or 34A-3-102, even though the conduct of the employer may be considered in allocating fault to the employer in a third party action in the manner provided in Sections 78B-5-817 through 78B-5-823.

Amended by Chapter 3, 2008 General Session

**34A-2-107 Appointment of workers' compensation advisory council -- Composition -- Terms of members -- Duties -- Compensation.**

- (1) The commissioner shall appoint a workers' compensation advisory council composed of:
  - (a) the following voting members:
    - (i) five employer representatives; and
    - (ii) five employee representatives; and
  - (b) the following nonvoting members:
    - (i) a representative of the Workers' Compensation Fund;
    - (ii) a representative of a private insurance carrier;
    - (iii) a representative of health care providers;
    - (iv) the Utah insurance commissioner or the insurance commissioner's designee; and
    - (v) the commissioner or the commissioner's designee.
- (2) Employers and employees shall consider nominating members of groups who historically may have been excluded from the council, such as women, minorities, and individuals with disabilities.
- (3)
  - (a) Except as required by Subsection (3)(b), as terms of current council members expire, the commissioner shall appoint each new member or reappointed member to a two-year term beginning July 1 and ending June 30.
  - (b) Notwithstanding the requirements of Subsection (3)(a), the commissioner shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of council members are staggered so that approximately half of the council is appointed every two years.
- (4)
  - (a) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.
  - (b) The commissioner shall terminate the term of a council member who ceases to be representative as designated by the member's original appointment.
- (5) The council shall confer at least quarterly for the purpose of advising the commission, the division, and the Legislature on:
  - (a) the Utah workers' compensation and occupational disease laws;
  - (b) the administration of the laws described in Subsection (5)(a); and
  - (c) rules related to the laws described in Subsection (5)(a).
- (6) Regarding workers' compensation, rehabilitation, and reemployment of employees who acquire a disability because of an industrial injury or occupational disease the council shall:
  - (a) offer advice on issues requested by:
    - (i) the commission;
    - (ii) the division; and
    - (iii) the Legislature; and
  - (b) make recommendations to:

- (i) the commission; and
  - (ii) the division.
- (7) The council shall study how hospital costs may be reduced for purposes of medical benefits for workers' compensation. The council shall report to the Business and Labor Interim Committee the council's recommendations by no later than November 30, 2017.
- (8) The commissioner or the commissioner's designee shall serve as the chair of the council and call the necessary meetings.
- (9) The commission shall provide staff support to the council.
- (10) 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.

Amended by Chapter 242, 2016 General Session

**34A-2-108 Void agreements between employers and employees.**

- (1) Except as provided in Section 34A-2-420, an agreement by an employee to waive the employee's rights to compensation under this chapter or Chapter 3, Utah Occupational Disease Act, is not valid.
- (2) An agreement by an employee to pay any portion of the premium paid by his employer is not valid.
- (3) Any employer who deducts any portion of the premium from the wages or salary of any employee entitled to the benefits of this chapter or Chapter 3, Utah Occupational Disease Act:
- (a) is guilty of a misdemeanor; and
  - (b) shall be fined not more than \$100 for each such offense.

Renumbered and Amended by Chapter 375, 1997 General Session

**34A-2-109 Interstate and intrastate commerce.**

- (1) Except as provided in Subsection (2), this chapter and Chapter 3, Utah Occupational Disease Act, apply to employers and their employees engaged in:
- (a) intrastate commerce;
  - (b) interstate commerce; and
  - (c) foreign commerce.
- (2) If a rule of liability or method of compensation is established by the Congress of the United States as to interstate or foreign commerce, this chapter and Chapter 3, Utah Occupational Disease Act, apply only to the extent that:
- (a) this chapter and Chapter 3, Utah Occupational Disease Act, has a mutual connection with intrastate work; and
  - (b) the connection to intrastate work is clearly separable and distinguishable from interstate or foreign commerce.

Renumbered and Amended by Chapter 375, 1997 General Session

**34A-2-110 Workers' compensation insurance fraud -- Elements -- Penalties -- Notice.**

- (1) As used in this section:
- (a) "Corporation" has the same meaning as in Section 76-2-201.

- (b) "Intentionally" has the same meaning as in Section 76-2-103.
  - (c) "Knowingly" has the same meaning as in Section 76-2-103.
  - (d) "Person" has the same meaning as in Section 76-1-601.
  - (e) "Recklessly" has the same meaning as in Section 76-2-103.
  - (f) "Thing of value" means one or more of the following obtained under this chapter or Chapter 3, Utah Occupational Disease Act:
    - (i) workers' compensation insurance coverage;
    - (ii) disability compensation;
    - (iii) a medical benefit;
    - (iv) a good;
    - (v) a professional service;
    - (vi) a fee for a professional service; or
    - (vii) anything of value.
- (2)
- (a) A person is guilty of workers' compensation insurance fraud if that person intentionally, knowingly, or recklessly:
    - (i) devises a scheme or artifice to do the following by means of a false or fraudulent pretense, representation, promise, or material omission:
      - (A) obtain a thing of value under this chapter or Chapter 3, Utah Occupational Disease Act;
      - (B) avoid paying the premium that an insurer charges, for an employee on the basis of the underwriting criteria applicable to that employee, to obtain a thing of value under this chapter or Chapter 3, Utah Occupational Disease Act; or
      - (C) deprive an employee of a thing of value under this chapter or Chapter 3, Utah Occupational Disease Act; and
    - (ii) communicates or causes a communication with another in furtherance of the scheme or artifice.
  - (b) A violation of this Subsection (2) includes a scheme or artifice to:
    - (i) make or cause to be made a false written or oral statement with the intent to obtain insurance coverage as mandated by this chapter or Chapter 3, Utah Occupational Disease Act, at a rate that does not reflect the risk, industry, employer, or class code actually covered by the insurance coverage;
    - (ii) form a business, reorganize a business, or change ownership in a business with the intent to:
      - (A) obtain insurance coverage as mandated by this chapter or Chapter 3, Utah Occupational Disease Act, at a rate that does not reflect the risk, industry, employer, or class code actually covered by the insurance coverage;
      - (B) misclassify an employee as described in Subsection (2)(b)(iii); or
      - (C) deprive an employee of workers' compensation coverage as required by Subsection 34A-2-103(8);
    - (iii) misclassify an employee as one of the following so as to avoid the obligation to obtain insurance coverage as mandated by this chapter or Chapter 3, Utah Occupational Disease Act:
      - (A) an independent contractor;
      - (B) a sole proprietor;
      - (C) an owner;
      - (D) a partner;
      - (E) an officer; or
      - (F) a member in a limited liability company;

- (iv) use a workers' compensation coverage waiver issued under Part 10, Workers' Compensation Coverage Waivers Act, to deprive an employee of workers' compensation coverage under this chapter or Chapter 3, Utah Occupational Disease Act; or
  - (v) collect or make a claim for temporary disability compensation as provided in Section 34A-2-410 while working for gain.
- (3)
- (a) Workers' compensation insurance fraud under Subsection (2) is punishable in the manner prescribed in Subsection (3)(c).
  - (b) A corporation or association is guilty of the offense of workers' compensation insurance fraud under the same conditions as those set forth in Section 76-2-204.
  - (c)
    - (i) In accordance with Subsection (3)(c)(ii), the determination of the degree of an offense under Subsection (2) shall be measured by the following on the basis of which creates the greatest penalty:
      - (A) the total value of all property, money, or other things obtained or sought to be obtained by the scheme or artifice described in Subsection (2); or
      - (B) the number of individuals not covered under this chapter or Chapter 3, Utah Occupational Disease Act, because of the scheme or artifice described in Subsection (2).
    - (ii) A person is guilty of:
      - (A) a class A misdemeanor:
        - (I) if the value of the property, money, or other thing of value described in Subsection (3)(c)(i)(A) is less than \$1,000; or
        - (II) for each individual described in Subsection (3)(c)(i)(B), if the number of individuals described in Subsection (3)(c)(i)(B) is less than five;
      - (B) a third degree felony:
        - (I) if the value of the property, money, or other thing of value described in Subsection (3)(c)(i)(A) is equal to or greater than \$1,000, but is less than \$5,000; or
        - (II) for each individual described in Subsection (3)(c)(i)(B), if the number of individuals described in Subsection (3)(c)(i)(B) is equal to or greater than five, but is less than 50; and
      - (C) a second degree felony:
        - (I) if the value of the property, money, or other thing of value described in Subsection (3)(c)(i)(A) is equal to or greater than \$5,000; or
        - (II) for each individual described in Subsection (3)(c)(i)(B), if the number of individuals described in Subsection (3)(c)(i)(B) is equal to or greater than 50.
- (4) The following are not a necessary element of an offense described in Subsection (2):
- (a) reliance on the part of a person;
  - (b) the intent on the part of the perpetrator of an offense described in Subsection (2) to permanently deprive a person of property, money, or anything of value; or
  - (c) an insurer or self-insured employer giving written notice in accordance with Subsection (5) that workers' compensation insurance fraud is a crime.
- (5)
- (a) An insurer or self-insured employer who, in connection with this chapter or Chapter 3, Utah Occupational Disease Act, prints, reproduces, or furnishes a form described in Subsection (5)(b) shall cause to be printed or displayed in comparative prominence with other content on the form the statement: "Any person who knowingly presents false or fraudulent underwriting information, files or causes to be filed a false or fraudulent claim for disability compensation or medical benefits, or submits a false or fraudulent report or billing for health care fees or other

professional services is guilty of a crime and may be subject to fines and confinement in state prison."

- (b) Subsection (5)(a) applies to a form upon which a person:
  - (i) applies for insurance coverage;
  - (ii) applies for a workers' compensation coverage waiver issued under Part 10, Workers' Compensation Coverage Waivers Act;
  - (iii) reports payroll;
  - (iv) makes a claim by reason of accident, injury, death, disease, or other claimed loss; or
  - (v) makes a report or gives notice to an insurer or self-insured employer.
- (c) An insurer or self-insured employer who issues a check, warrant, or other financial instrument in payment of compensation issued under this chapter or Chapter 3, Utah Occupational Disease Act, shall cause to be printed or displayed in comparative prominence above the area for endorsement a statement substantially similar to the following: "Workers' compensation insurance fraud is a crime punishable by Utah law."
- (d) This Subsection (5) applies only to the legal obligations of an insurer or a self-insured employer.
- (e) A person who violates Subsection (2) is guilty of workers' compensation insurance fraud, and the failure of an insurer or a self-insured employer to fully comply with this Subsection (5) is not:
  - (i) a defense to violating Subsection (2); or
  - (ii) grounds for suppressing evidence.
- (6) In the absence of malice, a person, employer, insurer, or governmental entity that reports a suspected fraudulent act relating to a workers' compensation insurance policy or claim is not subject to civil liability for libel, slander, or another relevant cause of action.
- (7) In an action involving workers' compensation, this section supersedes Title 31A, Chapter 31, Insurance Fraud Act.

Amended by Chapter 328, 2011 General Session

Amended by Chapter 413, 2011 General Session

**34A-2-111 Managed health care programs -- Other safety programs.**

- (1) As used in this section:
  - (a)
    - (i) "Health care provider" means a person who furnishes treatment or care to persons who have suffered bodily injury.
    - (ii) "Health care provider" includes:
      - (A) a hospital;
      - (B) a clinic;
      - (C) an emergency care center;
      - (D) a physician;
      - (E) a nurse;
      - (F) a nurse practitioner;
      - (G) a physician's assistant;
      - (H) a paramedic; or
      - (I) an emergency medical technician.
  - (b) "Physician" means any health care provider licensed under:
    - (i) Title 58, Chapter 5a, Podiatric Physician Licensing Act;
    - (ii) Title 58, Chapter 24b, Physical Therapy Practice Act;

- (iii) Title 58, Chapter 67, Utah Medical Practice Act;
  - (iv) Title 58, Chapter 68, Utah Osteopathic Medical Practice Act;
  - (v) Title 58, Chapter 69, Dentist and Dental Hygienist Practice Act;
  - (vi) Title 58, Chapter 70a, Physician Assistant Act;
  - (vii) Title 58, Chapter 71, Naturopathic Physician Practice Act;
  - (viii) Title 58, Chapter 72, Acupuncture Licensing Act;
  - (ix) Title 58, Chapter 73, Chiropractic Physician Practice Act; and
  - (x) Title 58, Chapter 31b, Nurse Practice Act, as an advanced practice registered nurse.
- (c) "Preferred health care facility" means a facility:
- (i) that is a health care facility as defined in Section 26-21-2; and
  - (ii) designated under a managed health care program.
- (d) "Preferred provider physician" means a physician designated under a managed health care program.
- (e) "Self-insured employer" is as defined in Section 34A-2-201.5.
- (2)
- (a) A self-insured employer and insurance carrier may adopt a managed health care program to provide employees the benefits of this chapter or Chapter 3, Utah Occupational Disease Act, beginning January 1, 1993. The plan shall comply with this Subsection (2).
- (b)
- (i) A preferred provider program may be developed if the preferred provider program allows a selection by the employee of more than one physician in the health care specialty required for treating the specific problem of an industrial patient.
  - (ii)
    - (A) Subject to the requirements of this section, if a preferred provider program is developed by an insurance carrier or self-insured employer, an employee is required to use:
      - (I) preferred provider physicians; and
      - (II) preferred health care facilities.
    - (B) If a preferred provider program is not developed, an employee may have free choice of health care providers.
  - (iii) The failure to do the following may, if the employee has been notified of the preferred provider program, result in the employee being obligated for any charges in excess of the preferred provider allowances:
    - (A) use a preferred health care facility; or
    - (B) initially receive treatment from a preferred provider physician.
  - (iv) Notwithstanding the requirements of Subsections (2)(b)(i) through (iii), a self-insured employer or other employer may:
    - (A)
      - (I)
        - (Aa) have its own health care facility on or near its worksite or premises; and
        - (Bb) continue to contract with other health care providers; or
      - (II) operate a health care facility; and
    - (B) require employees to first seek treatment at the provided health care or contracted facility.
  - (v) An employee subject to a preferred provider program or employed by an employer having its own health care facility may procure the services of any qualified health care provider:
    - (A) for emergency treatment, if a physician employed in the preferred provider program or at the health care facility is not available for any reason;
    - (B) for conditions the employee in good faith believes are nonindustrial; or
    - (C) when an employee living in a rural area would be unduly burdened by traveling to:

- (I) a preferred provider physician; or
- (II) a preferred health care facility.

(c)

(i)

- (A) An employer, insurance carrier, or self-insured employer may enter into contracts with the following for the purposes listed in Subsection (2)(c)(i)(B):
  - (I) health care providers;
  - (II) medical review organizations; or
  - (III) vendors of medical goods, services, and supplies including medicines.
- (B) A contract described in Subsection (2)(c)(i)(A) may be made for the following purposes:
  - (I) insurance carriers or self-insured employers may form groups in contracting for managed health care services with health care providers;
  - (II) peer review;
  - (III) methods of utilization review;
  - (IV) use of case management;
  - (V) bill audit;
  - (VI) discounted purchasing; and
  - (VII) the establishment of a reasonable health care treatment protocol program including the implementation of medical treatment and quality care guidelines that are:
    - (Aa) scientifically based;
    - (Bb) peer reviewed; and
    - (Cc) consistent with standards for health care treatment protocol programs that the commission shall establish by rules made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, including the authority of the commission to approve a health care treatment protocol program before it is used or disapprove a health care treatment protocol program that does not comply with this Subsection (2)(c)(i)(B)(VII).

- (ii) An insurance carrier may make any or all of the factors in Subsection (2)(c)(i) a condition of insuring an entity in its insurance contract.

(3)

- (a) In addition to a managed health care program, an insurance carrier may require an employer to establish a work place safety program if the employer:
  - (i) has an experience modification factor of 1.00 or higher, as determined by the National Council on Compensation Insurance; or
  - (ii) is determined by the insurance carrier to have a three-year loss ratio of 100% or higher.
- (b) A workplace safety program may include:
  - (i) a written workplace accident and injury reduction program that:
    - (A) promotes safe and healthful working conditions; and
    - (B) is based on clearly stated goals and objectives for meeting those goals; and
  - (ii) a documented review of the workplace accident and injury reduction program each calendar year delineating how procedures set forth in the program are met.
- (c) A written workplace accident and injury reduction program permitted under Subsection (3)(b)
  - (i) should describe:
    - (i) how managers, supervisors, and employees are responsible for implementing the program;
    - (ii) how continued participation of management will be established, measured, and maintained;
    - (iii) the methods used to identify, analyze, and control new or existing hazards, conditions, and operations;

- (iv) how the program will be communicated to all employees so that the employees are informed of work-related hazards and controls;
  - (v) how workplace accidents will be investigated and corrective action implemented; and
  - (vi) how safe work practices and rules will be enforced.
- (d) For the purposes of a workplace accident and injury reduction program of an eligible employer described in Subsection 34A-2-103(7)(f), the workplace accident and injury reduction program shall:
- (i) include the provisions described in Subsections (3)(b) and (c), except that the employer shall conduct a documented review of the workplace accident and injury reduction program at least semiannually delineating how procedures set forth in the workplace accident and injury reduction program are met; and
  - (ii) require a written agreement between the employer and all contractors and subcontractors on a project that states that:
    - (A) the employer has the right to control the manner or method by which the work is executed;
    - (B) if a contractor, subcontractor, or any employee of a contractor or subcontractor violates the workplace accident and injury reduction program, the employer maintains the right to:
      - (I) terminate the contract with the contractor or subcontractor;
      - (II) remove the contractor or subcontractor from the work site; or
      - (III) require that the contractor or subcontractor not permit an employee that violates the workplace accident and injury reduction program to work on the project for which the employer is procuring work; and
    - (C) the contractor or subcontractor shall provide safe and appropriate equipment subject to the right of the employer to:
      - (I) inspect on a regular basis the equipment of a contractor or subcontractor; and
      - (II) require that the contractor or subcontractor repair, replace, or remove equipment the employer determines not to be safe or appropriate.
- (4) The premiums charged to any employer who fails or refuses to establish a workplace safety program pursuant to Subsection (3)(b)(i) or (ii) may be increased by 5% over any existing current rates and premium modifications charged that employer.

Amended by Chapter 258, 2015 General Session

**34A-2-112 Administration of this chapter and Chapter 3.**

- (1) Administration of this chapter and Chapter 3, Utah Occupational Disease Act, is vested in the commission to be administered through the division, the Division of Adjudication, and for administrative appeals through the commissioner and the Appeals Board.
- (2) The commission:
  - (a) has jurisdiction over every workplace in the state and may administer this chapter and Chapter 3, Utah Occupational Disease Act, and any rule or order issued under these chapters, to ensure that every employee in this state has a safe workplace in which employers have secured the payment of workers' compensation benefits for their employees in accordance with this chapter and Chapter 3, Utah Occupational Disease Act;
  - (b) through the division under the supervision of the director, has the duty and full authority to take any administrative action authorized under this chapter or Chapter 3, Utah Occupational Disease Act; and
  - (c) through the Division of Adjudication, commissioner, and Appeals Board, provide for the adjudication and review of an administrative action, decision, or order of the commission in accordance with this title.

Enacted by Chapter 375, 1997 General Session

**34A-2-113 Designated agent required.**

Each workers' compensation insurance carrier writing insurance in this state shall maintain a designated agent in this state that is:

- (1) registered with the division; and
- (2) authorized to receive on behalf of the workers' compensation insurance carrier all notices or orders provided for under this chapter or Chapter 3, Utah Occupational Disease Act.

Enacted by Chapter 295, 2006 General Session

**Part 2**  
**Securing Workers' Compensation Benefits for Employees**

**34A-2-201 Employers to secure workers' compensation benefits for employees -- Methods.**

An employer shall secure the payment of workers' compensation benefits for its employees by:

- (1) insuring, and keeping insured, the payment of this compensation with the Workers' Compensation Fund;
- (2) insuring, and keeping insured, the payment of this compensation with any stock corporation or mutual association authorized to transact the business of workers' compensation insurance in this state; or
- (3) obtaining approval from the division in accordance with Section 34A-2-201.5 to pay direct compensation as a self-insured employer in the amount, in the manner, and when due as provided for in this chapter or Chapter 3, Utah Occupational Disease Act.

Amended by Chapter 222, 2000 General Session

**34A-2-201.3 Direct payments prohibited except by self-insured employer.**

(1) An employer who is not a self-insured employer, as defined in Section 34A-2-201.5, may not pay a benefit provided for under this chapter and Chapter 3, Utah Occupational Disease Act, directly:

- (a) to an employee; or
- (b) for the employee.

(2)

(a) Subject to Title 63G, Chapter 4, Administrative Procedures Act, if the division finds that an employer is violating or has violated Subsection (1), the division shall send written notice to the employer of the requirements of this section and Section 34A-2-201.

(b) The division shall send the notice described in Subsection (2)(a) to the last address on the records of the commission for the employer.

(3)

(a) If, after the division mails the notice required by Subsection (2) to an employer, the employer again violates Subsection (1), the division may impose a penalty against the employer of up to \$1,000 for each violation.

- (b) If, after the division imposes a penalty under Subsection (3)(a) against the employer, the employer again violates Subsection (1), the division may impose a penalty of up to \$5,000 for each violation.
- (4)
  - (a) The division shall deposit a penalty imposed under Subsection (3) into the Uninsured Employers' Fund created by Section 34A-2-704 to be used for the purposes of the Uninsured Employers' Fund specified in Section 34A-2-704.
  - (b) The administrator of the Uninsured Employers' Fund shall collect money required to be deposited into the Uninsured Employers' Fund under this Subsection (4) in accordance with Section 34A-2-704.
- (5) A penalty under this section is in addition to any other penalty imposed under this chapter or Chapter 3, Utah Occupational Disease Act, against an employer who fails to comply with Section 34A-2-201.
- (6) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission shall adopt rules to implement this section.

Amended by Chapter 288, 2009 General Session

**34A-2-201.5 Self-insured employer -- Acceptable security -- Procedures.**

- (1) As used in this section:
  - (a) "Acceptable security" means one or more of the following:
    - (i) cash;
    - (ii) a surety bond issued:
      - (A) by a person acceptable to the division; and
      - (B) in a form approved by the division;
    - (iii) an irrevocable letter of credit issued:
      - (A) by a depository institution acceptable to the division; and
      - (B) in a form approved by the division;
    - (iv) a United States Treasury Bill;
    - (v) a deposit in a depository institution that:
      - (A) has an office located in Utah; and
      - (B) is insured by the Federal Deposit Insurance Corporation; or
    - (vi) a certificate of deposit in a depository institution that:
      - (A) has an office located in Utah; and
      - (B) is insured by the Federal Deposit Insurance Corporation.
  - (b) "Compensation" is as defined in Section 34A-2-102.
  - (c) "Depository institution" is as defined in Section 7-1-103.
  - (d) "Member of a public agency insurance mutual" means a political subdivision or public agency that is included within a public agency insurance mutual.
  - (e) "Public agency insurance mutual" is as defined in Section 31A-1-103.
  - (f) "Self-insured employer" means one of the following that is authorized by the division to pay direct workers' compensation benefits under Subsection (2):
    - (i) an employer; or
    - (ii) a public agency insurance mutual.
- (2)
  - (a) If approved by the division as a self-insured employer in accordance with this section:
    - (i) an employer may directly pay compensation in the amount, in the manner, and when due as provided for in this chapter and Chapter 3, Utah Occupational Disease Act; and

- (ii) a public agency insurance mutual may directly pay compensation:
      - (A) on behalf of the members of the public agency insurance mutual; and
      - (B) in the amount, in the manner, and when due as provided in this chapter and Chapter 3, Utah Occupational Disease Act.
  - (b) If an employer's or a public agency insurance mutual's application to directly pay compensation as a self-insured employer is approved by the division, the application is considered acceptance:
    - (i) of the conditions, liabilities, and responsibilities imposed by this chapter and Chapter 3, Utah Occupational Disease Act, including the liability imposed pursuant to Subsection 34A-2-704(14);
    - (ii) by:
      - (A) the employer; or
      - (B)
        - (I) the public agency insurance mutual; and
        - (II) the members of the public agency insurance mutual.
  - (c) The division's denial under this Subsection (2) of an application to directly pay compensation as a self-insured employer becomes a final order of the commission 30 calendar days from the date of the denial unless within that 30 days the employer or the public agency insurance mutual that filed the application files an application for a hearing in accordance with Part 8, Adjudication.
- (3) To qualify as a self-insured employer, an employer or a public agency insurance mutual shall:
  - (a) submit a written application requesting to directly pay compensation as a self-insured employer;
  - (b) annually provide the division proof of the employer's or the public agency insurance mutual's ability to directly pay compensation in the amount, manner, and time provided by this chapter and Chapter 3, Utah Occupational Disease Act; and
  - (c) if requested by the division, deposit acceptable security in the amounts determined by the division to be sufficient to secure the employer's or the public agency insurance mutual's liabilities under this chapter and Chapter 3, Utah Occupational Disease Act.
- (4)
  - (a) Acceptable security deposited by a self-insured employer in accordance with Subsection (3)
    - (c) shall be:
      - (i) deposited on behalf of the division by the self-insured employer with the state treasurer; and
      - (ii) withdrawn only upon written order of the division.
  - (b) The self-insured employer has no right, title, interest in, or control over acceptable security that is deposited in accordance with this section.
  - (c) If the division determines that the amount of acceptable security deposited in accordance with this section is in excess of that needed to secure payment of the self-insured employer's liability under this chapter and Chapter 3, Utah Occupational Disease Act, the division shall return the amount that is determined to be excess to the self-insured employer.
- (5)
  - (a) The division may at any time require a self-insured employer to:
    - (i) increase or decrease the amount of acceptable security required to be deposited under Subsection (3)(c); or
    - (ii) modify the type of acceptable security to be deposited under Subsection (3)(c).
  - (b)
    - (i) If the division requires a self-insured employer to take an action described in Subsection (5)(a), a perfected security interest is created in favor of the division in the assets of the

self-insured employer to the extent necessary to pay any amount owed by the self-insured employer under this chapter and Chapter 3, Utah Occupational Disease Act, that cannot be paid by acceptable security deposited in accordance with this section.

- (ii) The perfected security interest created in Subsection (5)(b)(i) ends when the self-insured employer complies with the division's request under Subsection (5)(a) to the satisfaction of the division.
- (6)
- (a) If an employer or a public agency insurance mutual is approved under Subsection (2) to directly pay compensation as a self-insured employer, the division may revoke the employer's or the public agency insurance mutual's approval.
  - (b) The division's revocation of the employer's or the public agency insurance mutual's approval under Subsection (6)(a) becomes a final order of the commission 30 calendar days from the date of the revocation unless within that 30 days the employer or the public agency insurance mutual files an application for a hearing in accordance with Part 8, Adjudication.
- (7) If the division finds that a self-insured employer has failed to pay compensation that the self-insured employer was liable to pay under this chapter or Chapter 3, Utah Occupational Disease Act, the division may use the acceptable security deposited and any interest earned on the acceptable security to pay:
- (a) the self-insured employer's liability under this chapter and Chapter 3, Utah Occupational Disease Act; and
  - (b) any costs, including legal fees, associated with the administration of the compensation incurred by:
    - (i) the division;
    - (ii) a surety;
    - (iii) an adjusting agency; or
    - (iv) the Uninsured Employers' Fund.
- (8)
- (a) If the division determines that the acceptable security deposited under Subsection (3)(c) should be available for payment of the self-insured employer's liabilities under Subsection (7), the division shall:
    - (i) determine the method of claims administration, which may include administration by:
      - (A) a surety;
      - (B) an adjusting agency;
      - (C) the Uninsured Employers' Fund; or
      - (D) any combination of Subsections (8)(a)(i)(A) through (C); and
    - (ii) audit the self-insured employer's liabilities under this chapter and Chapter 3, Utah Occupational Disease Act.
  - (b) The following shall cooperate in the division's audit under Subsection (8)(a)(ii) and provide any relevant information in its possession:
    - (i) the self-insured employer;
    - (ii) if the self-insured employer is a public agency insurance mutual, a member of the public agency insurance mutual;
    - (iii) any excess insurer;
    - (iv) any adjusting agency;
    - (v) a surety;
    - (vi) an employee of a self-insured employer if the employee makes a claim for compensation under this chapter or Chapter 3, Utah Occupational Disease Act; and

- (vii) an employee of a member of a public agency insurance mutual that is approved as a self-insured employer under this section, if the employee makes a claim for compensation under this chapter or Chapter 3, Utah Occupational Disease Act.
- (9)
  - (a) Payment by a surety is a full release of the surety's liability under the bond to the extent of that payment, and entitles the surety to full reimbursement by the principal or the principal's estate including reimbursement of:
    - (i) necessary attorney's fees; and
    - (ii) other costs and expenses.
  - (b) A payment, settlement, or administration of benefits made in good faith pursuant to this section by a surety, an adjusting agency, the Uninsured Employers' Fund, or this division is valid and binding as between:
    - (i)
      - (A) the surety;
      - (B) adjusting agency;
      - (C) the Uninsured Employers' Fund; or
      - (D) the division;
    - (ii) the self-insured employer; and
    - (iii) if the self-insured employer is a public agency insurance mutual, the members of the public agency insurance mutual.
- (10)
  - (a) The division shall resolve any dispute concerning:
    - (i) the depositing, renewal, termination, exoneration, or return of all or any portion of acceptable security deposited under this section;
    - (ii) any liability arising out of the depositing or failure to deposit acceptable security;
    - (iii) the adequacy of the acceptable security; or
    - (iv) the reasonableness of administrative costs under Subsection (7)(b), including legal fees.
  - (b) The division's decision under Subsection (10)(a) becomes a final order of the commission 30 calendar days from the date of the decision, unless within that 30 days the employer or public agency insurance mutual files an application for hearing in accordance with Part 8, Adjudication.

Amended by Chapter 71, 2002 General Session

**34A-2-202 Assessment on self-insured employers including the state, counties, cities, towns, or school districts paying compensation direct.**

- (1)
  - (a)
    - (i) A self-insured employer, including a county, city, town, or school district, shall pay annually, on or before March 31, an assessment in accordance with this section and rules made by the commission under this section.
    - (ii) For purposes of this section, "self-insured employer" is as defined in Section 34A-2-201.5, except it includes the state if the state self-insures under Section 34A-2-203.
  - (b) The assessment required by Subsection (1)(a) is:
    - (i) to be collected by the State Tax Commission;
    - (ii) paid by the State Tax Commission into the state treasury as provided in Subsection 59-9-101(2); and
    - (iii) subject to the offset provided in Section 34A-2-202.5.

- (c) The assessment under Subsection (1)(a) shall be based on a total calculated premium multiplied by the premium assessment rate established pursuant to Subsection 59-9-101(2).
- (d) The total calculated premium, for purposes of calculating the assessment under Subsection (1)(a), shall be calculated by:
  - (i) multiplying the total of the standard premium for each class code calculated in Subsection (1)(e) by the self-insured employer's experience modification factor; and
  - (ii) multiplying the total under Subsection (1)(d)(i) by a safety factor determined under Subsection (1)(g).
- (e) A standard premium shall be calculated by:
  - (i) multiplying the prospective loss cost for the year being considered, as filed with the insurance department pursuant to Section 31A-19a-406, for each applicable class code by 1.10 to determine the manual rate for each class code; and
  - (ii) multiplying the manual rate for each class code under Subsection (1)(e)(i) by each \$100 of the self-insured employer's covered payroll for each class code.
- (f)
  - (i) Each self-insured employer paying compensation direct shall annually obtain the experience modification factor required in Subsection (1)(d)(i) by using:
    - (A) the rate service organization designated by the insurance commissioner in Section 31A-19a-404; or
    - (B) for a self-insured employer that is a public agency insurance mutual, an actuary approved by the commission.
  - (ii) If a self-insured employer's experience modification factor under Subsection (1)(f)(i) is less than 0.50, the self-insured employer shall use an experience modification factor of 0.50 in determining the total calculated premium.
- (g) To provide incentive for improved safety, the safety factor required in Subsection (1)(d)(ii) shall be determined based on the self-insured employer's experience modification factor as follows:

EXPERIENCE MODIFICATION FACTOR	SAFETY FACTOR
Less than or equal to 0.90	0.56
Greater than 0.90 but less than or equal to 1.00	0.78
Greater than 1.00 but less than or equal to 1.10	1.00
Greater than 1.10 but less than or equal to 1.20	1.22
Greater than 1.20	1.44

- (h)
  - (i) A premium or premium assessment modification other than a premium or premium assessment modification under this section may not be allowed.
  - (ii) If a self-insured employer paying compensation direct fails to obtain an experience modification factor as required in Subsection (1)(f)(i) within the reasonable time period established by rule by the State Tax Commission, the State Tax Commission shall use an experience modification factor of 2.00 and a safety factor of 2.00 to calculate the total calculated premium for purposes of determining the assessment.
  - (iii) Prior to calculating the total calculated premium under Subsection (1)(h)(ii), the State Tax Commission shall provide the self-insured employer with written notice that failure to obtain

an experience modification factor within a reasonable time period, as established by rule by the State Tax Commission:

- (A) shall result in the State Tax Commission using an experience modification factor of 2.00 and a safety factor of 2.00 in calculating the total calculated premium for purposes of determining the assessment; and
- (B) may result in the division revoking the self-insured employer's right to pay compensation direct.
- (i) The division may immediately revoke a self-insured employer's certificate issued under Sections 34A-2-201 and 34A-2-201.5 that permits the self-insured employer to pay compensation direct if the State Tax Commission assigns an experience modification factor and a safety factor under Subsection (1)(h) because the self-insured employer failed to obtain an experience modification factor.
- (2) Notwithstanding the annual payment requirement in Subsection (1)(a), a self-insured employer whose total assessment obligation under Subsection (1)(a) for the preceding year was \$10,000 or more shall pay the assessment in quarterly installments in the same manner provided in Section 59-9-104 and subject to the same penalty provided in Section 59-9-104 for not paying or underpaying an installment.
- (3)
  - (a) The State Tax Commission shall have access to all the records of the division for the purpose of auditing and collecting any amounts described in this section.
  - (b) Time periods for the State Tax Commission to allow a refund or make an assessment shall be determined in accordance with Title 59, Chapter 1, Part 14, Assessment, Collections, and Refunds Act.
- (4)
  - (a) A review of appropriate use of job class assignment and calculation methodology may be conducted as directed by the division at any reasonable time as a condition of the self-insured employer's certification of paying compensation direct.
  - (b) The State Tax Commission shall make any records necessary for the review available to the commission.
  - (c) The commission shall make the results of any review available to the State Tax Commission.

Amended by Chapter 212, 2009 General Session

**34A-2-202.5 Offset for occupational health and safety related donations.**

- (1) As used in this section:
  - (a) "Occupational health and safety center" means the Rocky Mountain Center for Occupational and Environmental Health created in Title 53B, Chapter 17, Part 8, Rocky Mountain Center for Occupational and Environmental Health.
  - (b) "Qualified donation" means a donation that is:
    - (i) cash;
    - (ii) given directly to an occupational health and safety center; and
    - (iii) given exclusively for the purpose of:
      - (A) supporting graduate level education and training in fields of:
        - (I) safety and ergonomics;
        - (II) industrial hygiene;
        - (III) occupational health nursing; and
        - (IV) occupational medicine;

- (B) providing continuing education programs for employers designed to promote workplace safety; and
  - (C) paying reasonable administrative, personnel, equipment, and overhead costs of the occupational health and safety center.
  - (c) "Self-insured employer" is a self-insured employer as defined in Section 34A-2-201.5 that is required to pay the assessment imposed under Section 34A-2-202.
- (2)
- (a) A self-insured employer may offset against the assessment imposed under Section 34A-2-202 an amount equal to the lesser of:
    - (i) the total of qualified donations made by the self-insured employer in the calendar year for which the assessment is calculated; and
    - (ii) .10% of the self-insured employer's total calculated premium calculated under Subsection 34A-2-202(1)(d) for the calendar year for which the assessment is calculated.
  - (b) The offset provided under this Subsection (2) shall be allocated in proportion to the percentages provided in Subsection 59-9-101(2)(c).
- (3) An occupational health and safety center shall:
- (a) provide a self-insured employer a receipt for any qualified donation made by the self-insured employer to the occupational health and safety center;
  - (b) expend money received by a qualified donation:
    - (i) for the purposes described in Subsection (1)(b)(iii); and
    - (ii) in a manner that can be audited to ensure that the money is expended for the purposes described in Subsection (1)(b)(iii); and
  - (c) in conjunction with the report required by Section 59-9-102.5, report to the Legislature through the Office of the Legislative Fiscal Analyst by no later than July 1 of each year:
    - (i) the qualified donations received by the occupational health and safety center in the previous calendar year; and
    - (ii) the expenditures during the previous calendar year of qualified donations received by the occupational health and safety center.

Amended by Chapter 342, 2011 General Session

**34A-2-203 Payment of premiums for workers' compensation.**

- (1) Until June 30, 2007, a department, commission, board, or other agency of the state shall pay the insurance premium on its employees direct to the Workers' Compensation Fund.
  - (2) Beginning July 1, 2007, the state shall secure the payment of workers' compensation benefits for its employees:
    - (a) by:
      - (i) insuring, and keeping insured, the payment of this compensation with the Workers' Compensation Fund;
      - (ii) insuring, and keeping insured, the payment of this compensation with any stock corporation or mutual association authorized to transact the business of workers' compensation insurance in this state; or
      - (iii) paying direct compensation as a self-insured employer in the amount, in the manner, and when due as provided for in this chapter or Chapter 3, Utah Occupational Disease Act;
    - (b) in accordance with Title 63A, Chapter 4, Risk Management; and
    - (c) subject to Subsection (3).
- (3)

- (a) If the state determines to secure the payment of workers' compensation benefits for its employees by paying direct compensation as a self-insured employer in the amount, in the manner, and due as provided for in this chapter or Chapter 3, Utah Occupational Disease Act, the state is:
  - (i) exempt from Section 34A-2-202.5 and Subsection 34A-2-704(14); and
  - (ii) required to pay a premium assessment as provided in Section 34A-2-202.
- (b) If the state chooses to pay workers' compensation benefits for its employees through insuring under Subsection (2)(a)(i) or (ii), the state shall obtain that insurance in accordance with Title 63G, Chapter 6a, Utah Procurement Code.

Amended by Chapter 347, 2012 General Session

**34A-2-204 Compliance with chapter -- Notice to employees.**

- (1) Each employer providing insurance, or electing directly to pay compensation to the employer's injured workers, or the dependents of the employer's killed employees, in accordance with this chapter and Chapter 3, Utah Occupational Disease Act, shall post in conspicuous places about the employer's place of business typewritten or printed notices stating, that:
  - (a) the employer has complied with this chapter and Chapter 3, Utah Occupational Disease Act, and all the rules of the commission made under this chapter and Chapter 3, Utah Occupational Disease Act; and
  - (b) if such is the case, the employer has been authorized by the division directly to compensate the employees or dependents.
- (2) The notice required in Subsection (1) when posted in accordance with Subsection (1), shall constitute sufficient notice to the employer's employees of the fact that the employer has complied with the law as to securing compensation to the employer's employees and their dependents.

Renumbered and Amended by Chapter 375, 1997 General Session

**34A-2-205 Notification of workers' compensation insurance coverage to division -- Cancellation requirements -- Penalty for violation.**

- (1)
  - (a) An insurance carrier writing workers' compensation insurance coverage in this state or for this state, regardless of the state in which the policy is written, shall file notification of that coverage with the division or the division's designee within 30 days after the inception date of the policy in the form prescribed by the division.
  - (b) A policy described in Subsection (1)(a) is in effect from inception until canceled by filing with the division or the division's designee a notification of cancellation in the form prescribed by the division within 10 days after the cancellation of a policy.
  - (c) Failure to notify the division or its designee under Subsection (1)(b) results in the continued liability of the carrier until the date that notice of cancellation is received by the division or the division's designee.
  - (d) An insurance carrier described in this Subsection (1) shall make a filing within 30 days of:
    - (i) the reinstatement of a policy;
    - (ii) the changing or addition of a name or address of the insured; or
    - (iii) the merger of an insured with another entity.
  - (e) A filing under this section shall include:
    - (i) the name of the insured;

- (ii) the principal business address;
  - (iii) any and all assumed name designations;
  - (iv) the address of all locations within this state where business is conducted; and
  - (v) all federal employer identification numbers or federal tax identification numbers.
- (2) Noncompliance with this section is grounds for revocation of an insurance carrier's certificate of authority in addition to the grounds specified in Title 31A, Insurance Code.
- (3)
- (a) The division may assess an insurer up to \$150 if the insurer fails to comply with this section.
  - (b) The division shall deposit an amount assessed under Subsection (3)(a) into the Uninsured Employers' Fund created in Section 34A-2-704 to be used for the purposes of the Uninsured Employer's Fund specified in Section 34A-2-704.
  - (c) The administrator of the Uninsured Employers' Fund shall collect money required to be deposited into the Uninsured Employers' Fund under this Subsection (3) in accordance with Section 34A-2-704.
- (4)
- (a) The notification of workers' compensation insurance coverage required to be filed under Subsection (1) is a protected record under Section 63G-2-305.
  - (b) The commission or any of its divisions may not disclose the information described in Subsection (4)(a) except as provided in:
    - (i) Title 63G, Chapter 2, Government Records Access and Management Act, for a protected record; or
    - (ii) Subsection (4)(c), notwithstanding whether Title 63G, Chapter 2, Government Records Access and Management Act, permits disclosure.
  - (c) The commission may disclose the information described in Subsection (4)(a) if:
    - (i) the information is disclosed on an individual case basis related to a single employer;
    - (ii) the information facilitates the:
      - (A) coverage of subcontractors by identifying the insurance carrier providing workers' compensation coverage for an employer;
      - (B) filing of a claim by an employee; or
      - (C) payment of services rendered on an employee's claim by a medical practitioner; and
    - (iii) promotes the purposes of this chapter or Chapter 3, Utah Occupational Disease Act.
  - (d) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission shall make rules concerning when information may be disclosed under Subsection (4)(c).

Amended by Chapter 288, 2009 General Session

**34A-2-206 Furnishing information to division -- Employers' annual report -- Rights of division -- Examination of employers under oath -- Penalties.**

- (1)
- (a) Every employer shall furnish the division, upon request, all information required by it to carry out the purposes of this chapter and Chapter 3, Utah Occupational Disease Act.
  - (b) In the month of July of each year every employer shall prepare and mail to the division a statement containing the following information:
    - (i) the number of persons employed during the preceding year from July 1, to June 30, inclusive;
    - (ii) the number of the persons employed at each kind of employment;

- (iii) the scale of wages paid in each class of employment, showing the minimum and maximum wages paid; and
  - (iv) the aggregate amount of wages paid to all employees.
- (2)
- (a) The information required under Subsection (1) shall be furnished in the form prescribed by the division.
  - (b) Every employer shall:
    - (i) answer fully and correctly all questions and give all the information sought by the division under Subsection (1); or
    - (ii) if unable to comply with Subsection (2)(b)(i), give to the division, in writing, good and sufficient reasons for the failure.
- (3)
- (a) The division may require the information required to be furnished by this chapter or Chapter 3, Utah Occupational Disease Act, to be made under oath and returned to the division within the period fixed by it or by law.
  - (b) The division, or any person employed by the division for that purpose, shall have the right to examine, under oath, any employer, or the employer's agents or employees, for the purpose of ascertaining any information that the employer is required by this chapter or Chapter 3, Utah Occupational Disease Act, to furnish to the division.
- (4)
- (a) The division may seek a penalty of not to exceed \$500 for each offense to be recovered in a civil action brought by the commission or the division on behalf of the commission against an employer who:
    - (i) within a reasonable time to be fixed by the division and after the receipt of written notice signed by the director or the director's designee specifying the information demanded and served by certified mail, refuses to furnish to the division:
      - (A) the annual statement required by this section; or
      - (B) other information as may be required by the division under this section; or
    - (ii) willfully furnishes a false or untrue statement.
  - (b) All penalties collected under Subsection (4)(a) shall be paid into the Employers' Reinsurance Fund created in Section 34A-2-702.

Renumbered and Amended by Chapter 375, 1997 General Session

**34A-2-207 Noncompliance -- Civil action by employees.**

- (1)
- (a) Employers who fail to comply with Section 34A-2-201 are not entitled to the benefits of this chapter or Chapter 3, Utah Occupational Disease Act, during the period of noncompliance, but shall be liable in a civil action to their employees for damages suffered by reason of personal injuries arising out of or in the course of employment caused by the wrongful act, neglect, or default of the employer or any of the employer's officers, agents, or employees, and also to the dependents or personal representatives of such employees when death results from such injuries.
  - (b) In any action described in Subsection (1)(a), the defendant may not avail himself of any of the following defenses:
    - (i) the fellow-servant rule;
    - (ii) assumption of risk; or
    - (iii) contributory negligence.

- (2) Proof of the injury shall constitute prima facie evidence of negligence on the part of the employer and the burden shall be upon the employer to show freedom from negligence resulting in the injury.
- (3) An employer who fails to comply with Section 34A-2-201 is subject to Sections 34A-2-208 and 34A-2-212.
- (4) In any civil action permitted under this section against the employer, the employee shall be entitled to necessary costs and a reasonable attorney fee assessed against the employer.

Amended by Chapter 13, 1998 General Session

**34A-2-208 Right to compensation when employer fails to comply.**

- (1) Any employee, or the employee's dependents if death has ensued, may, in lieu of proceeding against the employee's employer by civil action in the courts as provided in Section 34A-2-207, file an application with the Division of Adjudication for compensation in accordance with this chapter or Chapter 3, Utah Occupational Disease Act, when:
  - (a) the employee's employer failed to comply with Section 34A-2-201;
  - (b) the employee has been injured by accident arising out of or in the course of the employee's employment, wherever the injury occurred; and
  - (c) the injury described in Subsection (1)(b) was not purposely self-inflicted.
- (2) An application for compensation filed under Subsection (1) shall be treated by the commission, including for purposes of appeal to the commissioner or Appeals Board, as an application for hearing under Section 34A-2-801.
- (3)
  - (a) If an application for compensation is filed under Subsection (1), in accordance with Part 8, Adjudication, the commission shall determine the award due to:
    - (i) the injured employee; or
    - (ii) the employee's dependents in case death has ensued.
  - (b) The employer shall pay the award determined under Subsection (3)(a) to the persons entitled to the compensation within 10 days after receiving notice from the commission of the amount of the award determined under Subsection (3)(a).

Renumbered and Amended by Chapter 375, 1997 General Session

**34A-2-209 Employer's penalty for violation -- Notice of noncompliance -- Proof required -- Admissible evidence -- Criminal prosecution.**

- (1)
  - (a)
    - (i) An employer who fails to comply, and every officer of a corporation or association that fails to comply, with Section 34A-2-201 is guilty of a class B misdemeanor.
    - (ii) Each day's failure to comply with Subsection (1)(a)(i) is a separate offense.
  - (b) If the division sends written notice of noncompliance by certified mail to the last-known address of an employer, a corporation, or an officer of a corporation or association, and the employer, corporation, or officer does not within 10 days of the day on which the notice is delivered provide to the division proof of compliance, the notice and failure to provide proof constitutes prima facie evidence that the employer, corporation, or officer is in violation of this section.
- (2)

- (a) If the division has reason to believe that an employer is conducting business without securing the payment of compensation in a manner provided in Section 34A-2-201, the division may give notice of noncompliance by certified mail to the following at the last-known address of the following:
    - (i) the employer; or
    - (ii) if the employer is a corporation or association:
      - (A) the corporation or association; or
      - (B) the officers of the corporation or association.
  - (b) If an employer, corporation, or officer described in Subsection (2)(a) does not, within 10 days of the day on which the notice is delivered, provide to the division proof of compliance, the employer and every officer of an employer corporation or association is guilty of a class B misdemeanor.
  - (c) Each day's failure to comply with Subsection (2)(a) is a separate offense.
- (3) A fine, penalty, or money collected or assessed under this section shall be:
- (a) deposited in the Uninsured Employers' Fund created by Section 34A-2-704;
  - (b) used for the purposes of the Uninsured Employers' Fund specified in Section 34A-2-704; and
  - (c) collected by the Uninsured Employers' Fund administrator in accordance with Section 34A-2-704.
- (4) A form or record kept by the division or its designee pursuant to Section 34A-2-205 is admissible as evidence to establish noncompliance under this section.
- (5) The commission or division on behalf of the commission may prosecute or request the attorney general or district attorney to prosecute a criminal action in the name of the state to enforce this chapter or Chapter 3, Utah Occupational Disease Act.

Amended by Chapter 288, 2009 General Session

**34A-2-210 Power to bring suit for noncompliance.**

- (1)
- (a) The commission or the division on behalf of the commission may maintain a suit in any court of the state to enjoin any employer, within this chapter or Chapter 3, Utah Occupational Disease Act, from further operation of the employer's business, when the employer fails to provide for the payment of benefits in one of the three ways provided in Section 34A-2-201.
  - (b) Upon a showing of failure to provide for the payment of benefits, the court shall enjoin the further operation of the employer's business until the payment of these benefits has been secured by the employer as required by Section 34A-2-201. The court may enjoin the employer without requiring bond from the commission or division.
- (2) If the division has reason to believe that an employer is conducting a business without securing the payment of compensation in one of the three ways provided in Section 34A-2-201, the division may give the employer five days written notice by registered mail of the noncompliance and if the employer within the five days written notice does not remedy the default:
- (a) the commission or the division on behalf of the commission may file suit under Subsection (1); and
  - (b) the court may, ex parte, issue without bond a temporary injunction restraining the further operation of the employer's business.

Enacted by Chapter 375, 1997 General Session

**34A-2-211 Notice of noncompliance to employer -- Enforcement power of division -- Penalty.**

- (1)
  - (a) In addition to the remedies specified in Section 34A-2-210, if the division has reason to believe that an employer is conducting business without securing the payment of benefits in a manner provided in Section 34A-2-201, the division may give that employer written notice of the noncompliance by certified mail to the last-known address of the employer.
  - (b) If the employer does not remedy the default within 15 days after the day on which the notice is delivered, the division may issue an order requiring the employer to appear before the division and show cause why the employer should not be ordered to comply with Section 34A-2-201.
  - (c) If the division finds that an employer has failed to provide for the payment of benefits in a manner provided in Section 34A-2-201, the division may require the employer to comply with Section 34A-2-201.
- (2)
  - (a) Notwithstanding Subsection (1), the division may impose a penalty against the employer under this Subsection (2):
    - (i) subject to Title 63G, Chapter 4, Administrative Procedures Act; and
    - (ii) if the division believes that an employer of one or more employees is conducting business without securing the payment of benefits in a manner provided in Section 34A-2-201.
  - (b) The penalty imposed under Subsection (2)(a) shall be the greater of:
    - (i) \$1,000; or
    - (ii) three times the amount of the premium the employer would have paid for workers' compensation insurance based on the rate filing of the Workers' Compensation Fund, during the period of noncompliance.
  - (c) For purposes of Subsection (2)(b)(ii):
    - (i) the premium is calculated by applying rates and rate multipliers to the payroll basis under Subsection (2)(c)(ii), using the highest rated employee class code applicable to the employer's operations; and
    - (ii) the payroll basis is 150% of the state's average weekly wage multiplied by the highest number of workers employed by the employer during the period of the employer's noncompliance multiplied by the number of weeks of the employer's noncompliance up to a maximum of 156 weeks.
- (3) A penalty imposed under Subsection (2) shall be:
  - (a) deposited in the Uninsured Employers' Fund created by Section 34A-2-704;
  - (b) used for the purposes of the Uninsured Employers' Fund specified in Section 34A-2-704; and
  - (c) collected by the Uninsured Employers' Fund administrator in accordance with Section 34A-2-704.
- (4)
  - (a) An employer who disputes a determination, imposition, or amount of a penalty imposed under Subsection (2) shall request a hearing before an administrative law judge within 30 days of the date of issuance of the administrative action imposing the penalty or the administrative action becomes a final order of the commission.
  - (b) An employer's request for a hearing under Subsection (4)(a) shall specify the facts and grounds that are the basis of the employer's objection to the determination, imposition, or amount of the penalty.
  - (c) An administrative law judge's decision under this Subsection (4) may be reviewed pursuant to Part 8, Adjudication.
- (5) An administrative action issued by the division under this section shall:
  - (a) be in writing;

- (b) be sent by certified mail to the last-known address of the employer;
  - (c) state the findings and administrative action of the division; and
  - (d) specify its effective date, which may be:
    - (i) immediate; or
    - (ii) at a later date.
- (6) A final order of the commission under this section, upon application by the commission made on or after the effective date of the order to a court of general jurisdiction in any county in this state, may be enforced by an order to comply:
- (a) entered ex parte; and
  - (b) without notice by the court.

Amended by Chapter 288, 2009 General Session

**34A-2-212 Docketing awards in district court -- Enforcing judgment.**

- (1)
- (a) Except as provided in Subsection (3), an abstract of a final order of the commission providing an award may be filed under this chapter or Chapter 3, Utah Occupational Disease Act, in the office of the clerk of the district court of any county in the state when all administrative and appellate remedies are exhausted.
  - (b) The abstract shall be docketed in the judgment docket of the district court where the abstract is filed. The time of the receipt of the abstract shall be noted on the abstract by the clerk of the district court and entered in the docket.
  - (c) When filed and docketed under Subsections (1)(a) and (b), the order shall constitute a lien from the time of the docketing upon the real property of the employer situated in the county, for a period of eight years from the date of the order unless the award provided in the final order is satisfied during the eight-year period.
  - (d) Execution may be issued on the lien within the same time and in the same manner and with the same effect as if the award were a judgment of the district court.
- (2)
- (a) If the employer was uninsured at the time of the injury, the county attorney for the county in which the applicant or the employer resides, depending on the district in which the final order is docketed, shall enforce the judgment when requested by the commission or division on behalf of the commission.
  - (b) In an action to enforce an order docketed under Subsection (1), reasonable attorney fees and court costs shall be allowed in addition to the award.
- (3) Unless stayed pursuant to Section 63G-4-405, or set aside by the court of appeals, a preliminary or final decision of the commissioner or Appeals Board awarding permanent total disability compensation under Section 34A-2-413 is enforceable by abstract filed in the office of the clerk of the district court of any county in the state.

Amended by Chapter 192, 2014 General Session

**34A-2-213 Coordination of benefits with health benefit plan -- Timely payment of claims.**

- (1)
- (a) This section applies if:
    - (i) a health benefit plan paid medical claims under Section 31A-22-619.6; and
    - (ii) the Labor Commission under 34A-2-801 issued an order or approved the terms of a settlement agreement under Section 34A-2-420, which:

- (A) found that the medical claims are compensable under Title 34A, Chapter 2, Workers' Compensation Act, or Title 34A, Chapter 3, Utah Occupational Disease Act; and
  - (B) is final under Section 34A-2-801.
  - (b) For purposes of this section, "workers' compensation carrier" means any of the entities an employer may use to provide workers' compensation benefits for its employees under Section 34A-2-201.
- (2)
- (a) The Labor Commission shall provide a health benefit plan with notice that an application for hearing has been filed in accordance with Subsection 31A-22-619.6(2)(a)(i) if either the employee or a health care provider requests that the commission send the notice.
  - (b) The Labor Commission shall prepare and provide notice to an injured employee of the employee's right to payment by the employee's health benefit plan under Section 31A-22-619.6. The notice provided under this Subsection (2) shall include the process the employee shall follow to obtain payment from a health benefit plan for a medical claim that is the subject of an application for hearing under Section 34A-2-801.
- (3)
- (a) The Labor Commission shall, within three business days after the date on which the order under Section 34A-2-801 or approval of the terms of a settlement agreement under Section 34A-2-420 is signed by the administrative law judge, send a copy of the order or terms of the settlement agreement to:
    - (i) a health benefit plan that made payments under Section 31A-22-619.6;
    - (ii) the workers' compensation carrier; and
    - (iii) the injured worker.
  - (b) The workers' compensation carrier shall, within 15 business days after the day on which the Labor Commission's order under Section 34A-2-801 or settlement agreement under Section 34A-2-420 is final, pay:
    - (i) the health benefit plan, in the amount the plan paid to the health care provider for medical claims that are compensable under the order or the terms of the settlement agreement, plus interest accrued at the rate of 8% per annum from the date the health benefit plan paid the medical claims until the date the workers' compensation carrier reimburses the health benefit plan, unless, in settlement negotiations, the health benefit plan agreed to waive, in whole or in part, reimbursement for medical claims paid, interest accrued, or both; and
    - (ii) the employee, in the amount of:
      - (A) any co-payments, coinsurance, deductibles, or other out-of-pocket expenses paid or incurred by the employee; and
      - (B) interest accrued at the rate of 8% per annum from the date the employee paid the expenses described in Subsection (3)(b)(ii)(A) until the date the workers' compensation carrier reimburses the employee.
- (4) If the Labor Commission determines that a workers' compensation carrier did not make the payment required by Subsection (3) within the time period required in Subsection (3), the commissioner shall:
- (a) assess and collect a penalty from the workers' compensation carrier in:
    - (i) the amount of \$500 for failure to pay the amount required by Subsections (3)(b)(i) and (ii) within the period of time required by Subsections (3)(b)(i) and (ii); and
    - (ii) an additional amount of \$500 for each calendar month:
      - (A) that accrues after the penalty is assessed under Subsection (4)(a)(i); and
      - (B) for which the amount required by Subsections (3)(b)(i) and (ii) are not paid;

- (b) deposit any penalties collected under this Subsection (4) into the Uninsured Employers' Fund created in Section 34A-2-704; and
  - (c) notify the Utah Insurance Department of the workers' compensation carrier's failure to pay the health benefit plan or the employee in accordance with this section.
- (5) The penalty imposed by Subsection (4) is in addition to any action taken or penalty imposed by the Utah Insurance Department under Title 31A, Insurance Code.
- (6) The commission may adopt administrative rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to:
- (a) establish procedures for:
    - (i) assessing and collecting penalties under Subsection (4); and
    - (ii) providing notice as required by this section; and
  - (b) enforce the provisions of this section.
- (7) This section sunsets in accordance with Section 63I-1-234.

Amended by Chapter 348, 2016 General Session

### **Part 3**

### **Protection of Life, Health, and Safety**

#### **34A-2-301 Places of employment to be safe -- Willful neglect -- Penalty.**

- (1) An employer may not:
- (a) construct, occupy, or maintain any place of employment that is not safe;
  - (b) require or knowingly permit any employee to be in any employment or place of employment that is not safe;
  - (c) fail to provide and use safety devices and safeguards;
  - (d) remove, disable, or bypass safety devices and safeguards;
  - (e) fail to obey orders of the commission;
  - (f) fail to obey rules of the commission;
  - (g) fail to adopt and use methods and processes reasonably adequate to render the employment and place of employment safe; or
  - (h) fail or neglect to do every other thing reasonably necessary to protect the life, health, and safety of the employer's employees.
- (2) Compensation as provided in this chapter shall be increased 15%, except in case of injury resulting in death, when injury is caused by the willful failure of an employer to comply with:
- (a) the law;
  - (b) a rule of the commission;
  - (c) any lawful order of the commission; or
  - (d) the employer's own written workplace safety program.

Amended by Chapter 131, 2003 General Session

#### **34A-2-302 Employee's willful misconduct -- Penalty.**

- (1) For purposes of this section:
- (a) "Controlled substance" is as defined in Section 58-37-2.
  - (b) "Local government employee" is as defined in Section 34-41-101.
  - (c) "Local governmental entity" is as defined in Section 34-41-101.

- (d) "State institution of higher education" is as defined in Section 34-41-101.
- (e) "Valid prescription" is a prescription, as defined in Section 58-37-2, that:
  - (i) is prescribed for a controlled substance for use by the employee for whom it was prescribed; and
  - (ii) has not been altered or forged.
- (2) An employee may not:
  - (a) remove, displace, damage, destroy, or carry away any safety device or safeguard provided for use in any employment or place of employment;
  - (b) interfere in any way with the use of a safety device or safeguard described in Subsection (2) (a) by any other person;
  - (c) interfere with the use of any method or process adopted for the protection of any employee in the employer's employment or place of employment; or
  - (d) fail or neglect to follow and obey orders and to do every other thing reasonably necessary to protect the life, health, and safety of employees.
- (3) Except in case of injury resulting in death:
  - (a) compensation provided for by this chapter shall be reduced 15% when injury is caused by the willful failure of the employee:
    - (i) to use safety devices when provided by the employer; or
    - (ii) to obey any order or reasonable rule adopted by the employer for the safety of the employee; and
  - (b) except when the employer permitted, encouraged, or had actual knowledge of the conduct described in Subsection (4):
    - (i) disability compensation may not be awarded under this chapter or Chapter 3, Utah Occupational Disease Act, to an employee when the major contributing cause of the employee's injury is the employee's conduct described in Subsection (4); or
    - (ii) disability compensation to an employee under this chapter or Chapter 3, Utah Occupational Disease Act, shall be reduced by 15% when the employee's conduct is a contributing cause of the employee's injury but not the major contributing cause.
- (4) The conduct described in Subsection (3)(b) is the employee's:
  - (a) knowing use of a controlled substance that the employee did not obtain under a valid prescription;
  - (b) intentional abuse of a controlled substance that the employee obtained under a valid prescription if the employee uses the controlled substance intentionally:
    - (i) in excess of prescribed therapeutic amounts; or
    - (ii) in an otherwise abusive manner; or
  - (c) intoxication from alcohol with a blood or breath alcohol concentration of .08 grams or greater as shown by a chemical test.
- (5)
  - (a) For purposes of Subsections (3) and (4), as shown by a chemical test that conforms to scientifically accepted analytical methods and procedures and includes verification or confirmation of any positive test result by gas chromatography, gas chromatography-mass spectroscopy, or other comparably reliable analytical method, before the result of the test may be used as a basis for the presumption, it is presumed that the major contributing cause of the employee's injury is the employee's conduct described in Subsection (4) if at the time of the injury:
    - (i) the employee has in the employee's system:
      - (A) any amount of a controlled substance or its metabolites if the employee did not obtain the controlled substance under a valid prescription; or

- (B) a controlled substance the employee obtained under a valid prescription or the metabolites of the controlled substance if the amount in the employee's system is consistent with the employee using the controlled substance intentionally:
  - (I) in excess of prescribed therapeutic amounts; or
  - (II) in an otherwise abusive manner; or
- (ii) the employee has a blood or breath alcohol concentration of .08 grams or greater.
- (b) The presumption created under Subsection (5)(a) may be rebutted by a preponderance of the evidence showing that:
  - (i) the chemical test creating the presumption is inaccurate because the employer failed to comply with:
    - (A) Sections 34-38-4 through 34-38-6; or
    - (B) if the employer is a local governmental entity or state institution of higher education, Section 34-41-104 and Subsection 34-41-103(5);
  - (ii) the employee did not engage in the conduct described in Subsection (4);
  - (iii) the test results do not exclude the possibility of passive inhalation of marijuana because the concentration of total urinary cannabinoids is less than 50 nanograms/ml as determined by a test conducted in accordance with:
    - (A) Sections 34-38-4 through 34-38-6; or
    - (B) if the employer is a local governmental entity or state institution of higher education, Section 34-41-104 and Subsection 34-41-103(5);
  - (iv) a competent medical opinion from a physician verifies that the amount of controlled substances, metabolites, or alcohol in the employee's system does not support a finding that the conduct described in Subsection (4) was the major contributing cause of the employee's injury or a contributing cause of the employee's injury; or
  - (v)
    - (A) the conduct described in Subsection (4) was not a contributing cause of the employee's injury; or
    - (B) the employee's mental and physical condition were not impaired at the time of the injury.
- (c)
  - (i) Except as provided in Subsections (5)(c)(ii) and (iii), if a chemical test that creates the presumption under Subsection (5)(a) is taken at the request of the employer, the employer shall comply with:
    - (A) Title 34, Chapter 38, Drug and Alcohol Testing; or
    - (B) if the employee is a local governmental employee or an employee of a state institution of higher education, Title 34, Chapter 41, Local Governmental Entity Drug-Free Workplace Policies.
  - (ii) Notwithstanding Section 34-38-13, the results of a test taken under Title 34, Chapter 38, Drug and Alcohol Testing, may be disclosed to the extent necessary to establish or rebut the presumption created under Subsection (5)(a).
  - (iii) Notwithstanding Section 34-41-103, the results of a test taken under Title 34, Chapter 41, Local Governmental Entity Drug-Free Workplace Policies, may be disclosed to the extent necessary to establish or rebut the presumption created under Subsection (5)(a).
- (6)
  - (a) A test sample taken pursuant to this section shall be taken as a split sample.
  - (b) One part of the sample is to be used by the employer for testing pursuant to Subsection (5)
    - (a):
      - (i) at a testing facility selected by the employer; and
      - (ii) at the employer's or the employer's workers' compensation carrier's expense.

- (c) The testing facility selected under Subsection (6)(b) shall hold the part of the sample not used under Subsection (6)(b) until the sooner of:
  - (i) six months from the date of the original test; or
  - (ii) when the employee requests that the sample be tested.
- (d) The employee has only six months from the date of the original test to have the remaining sample tested:
  - (i) at the employee's expense; and
  - (ii) at the testing facility selected by the employee, except that the test shall meet the requirements of Subsection (5)(a).
- (7) If any provision of this section, or the application of any provision of this section to any person or circumstance, is held invalid, the remainder of this section shall be given effect without the invalid provision or application.

Amended by Chapter 182, 2014 General Session

## **Part 4 Compensation and Benefits**

### **34A-2-401 Compensation for industrial accidents to be paid.**

- (1) An employee described in Section 34A-2-104 who is injured and the dependents of each such employee who is killed, by accident arising out of and in the course of the employee's employment, wherever such injury occurred, if the accident was not purposely self-inflicted, shall be paid:
  - (a) compensation for loss sustained on account of the injury or death;
  - (b) the amount provided in this chapter for:
    - (i) medical, nurse, and hospital services;
    - (ii) medicines; and
    - (iii) in case of death, the amount of funeral expenses.
- (2) The responsibility for compensation and payment of medical, nursing, and hospital services and medicines, and funeral expenses provided under this chapter shall be:
  - (a) on the employer and the employer's insurance carrier; and
  - (b) not on the employee.
- (3) Payment of benefits provided by this chapter or Chapter 3, Utah Occupational Disease Act, shall commence within 30 calendar days after any final award by the commission.

Amended by Chapter 55, 1999 General Session

### **34A-2-402 Mental stress claims.**

- (1) Physical, mental, or emotional injuries related to mental stress arising out of and in the course of employment shall be compensable under this chapter only when there is a sufficient legal and medical causal connection between the employee's injury and employment.
- (2)
  - (a) Legal causation requires proof of extraordinary mental stress from a sudden stimulus arising predominantly and directly from employment.

- (b) The extraordinary and sudden nature of the alleged mental stress is judged according to an objective standard in comparison with contemporary national employment and nonemployment life.
- (3) Medical causation requires proof that the physical, mental, or emotional injury was medically caused by the mental stress that is the legal cause of the physical, mental, or emotional injury.
- (4) Good faith employer personnel actions including disciplinary actions, work evaluations, job transfers, layoffs, demotions, promotions, terminations, or retirements, may not form the basis of compensable mental stress claims under this chapter.
- (5) Alleged discrimination, harassment, or unfair labor practices otherwise actionable at law may not form the basis of compensable mental stress claims under this chapter.
- (6) An employee who alleges a compensable industrial accident involving mental stress bears the burden of proof to establish legal and medical causation by a preponderance of the evidence.

Renumbered and Amended by Chapter 375, 1997 General Session

**34A-2-403 Dependents -- Presumption.**

- (1)
  - (a) The following persons are presumed to be wholly dependent for support upon a deceased employee:
    - (i) a child under 18 years of age, subject to the conditions of Subsections (1)(b) and (2)(b);
    - (ii) a child who is 18 years of age or older:
      - (A) if the child is:
        - (I) physically or mentally incapacitated; and
        - (II) dependent upon the parent who is the deceased employee; and
      - (B) subject to the conditions of Subsections (1)(b) and (2)(b); and
    - (iii) for purposes of a payment to be made under Subsection 34A-2-702(5)(b)(i), a surviving spouse with whom the deceased employee lived at the time of the employee's death.
  - (b) Subsections (1)(a)(i) and (ii) require that:
    - (i) the deceased employee be the parent of the child; or
    - (ii)
      - (A) the deceased employee be legally bound to support the child; and
      - (B) the child be living with the deceased employee at the time of the death of the employee.
- (2)
  - (a) In a case not provided for in Subsection (1), the question of dependency, in whole or in part, shall be determined in accordance with the facts in each particular case existing at the time of the injury or death of an employee:
    - (i) except for purposes of a dependency review under Subsection 34A-2-702(5)(b)(iv); and
    - (ii) subject to the other provisions of this section.
  - (b) A person may not be considered a dependent unless that person is:
    - (i) a member of the family of the deceased employee;
    - (ii) the spouse of the deceased employee;
    - (iii) a lineal descendant or ancestor of the deceased employee; or
    - (iv) a brother or sister of the deceased employee.

Amended by Chapter 27, 2008 General Session

Amended by Chapter 90, 2008 General Session

**34A-2-404 Injuries to minors.**

- (1) A minor is considered sui juris for the purposes of this chapter and Chapter 3, Utah Occupational Disease Act, and no other person shall have any cause of action or right to compensation for an injury to the minor employee.
- (2) Notwithstanding Subsection (1), in the event of the award of a lump sum of compensation to a minor employee, the sum shall be paid only to the minor's legally appointed guardian.

Renumbered and Amended by Chapter 375, 1997 General Session

**34A-2-405 Employee injured outside state -- Entitled to compensation -- Limitation of time.**

- (1) Except as provided in Subsection (2), if an employee who has been hired or is regularly employed in this state receives personal injury by accident arising out of and in the course of employment outside of this state, the employee, or the employee's dependents in case of the employee's death, shall be entitled to compensation according to the law of this state.
- (2) This section applies only to those injuries received by the employee within six months after leaving this state, unless prior to the expiration of the six-month period the employer has filed with the division notice that the employer has elected to extend such coverage a greater period of time.

Renumbered and Amended by Chapter 375, 1997 General Session

**34A-2-406 Exemptions from chapter for employees temporarily in state -- Conditions -- Evidence of insurance.**

- (1) Any employee who has been hired in another state and the employee's employer are exempt from this chapter and Chapter 3, Utah Occupational Disease Act, while the employee is temporarily within this state doing work for the employee's employer if:
  - (a) the employer has furnished workers' compensation insurance coverage under the workers' compensation or similar laws of the other state;
  - (b) the coverage covers the employee's employment while in this state; and
  - (c)
    - (i) the extraterritorial provisions of this chapter and Chapter 3, Utah Occupational Disease Act, are recognized in the other state and employers and employees who are covered in this state are likewise exempted from the application of the workers' compensation or similar laws of the other state; or
    - (ii) the Workers' Compensation Fund:
      - (A) is an admitted insurance carrier in the other state; or
      - (B) has agreements with a carrier and is able to furnish workers' compensation insurance or similar coverage to Utah employers and their subsidiaries or affiliates doing business in the other state.
- (2) The benefits under the workers' compensation or similar laws of the other state are the exclusive remedy against an employer for any injury, whether resulting in death or not, received by an employee while working for the employer in this state.
- (3) A certificate from an authorized officer of the industrial commission or similar department of the other state certifying that the employer is insured in the other state and has provided extraterritorial coverage insuring the employer's employees while working in this state is prima facie evidence that the employer carries compensation insurance.

Amended by Chapter 222, 2000 General Session

**34A-2-407 Reporting of industrial injuries -- Regulation of health care providers.**

(1) As used in this section, "physician" is as defined in Section 34A-2-111.

- (2)
- (a) An employee sustaining an injury arising out of and in the course of employment shall provide notification to the employee's employer promptly of the injury.
  - (b) If the employee is unable to provide the notification required by Subsection (2)(a), the following may provide notification of the injury to the employee's employer:
    - (i) the employee's next of kin; or
    - (ii) the employee's attorney.
  - (c) An employee claiming benefits under this chapter or Chapter 3, Utah Occupational Disease Act, shall comply with rules adopted by the commission regarding disclosure of medical records of the employee medically relevant to the industrial accident or occupational disease claim.

- (3)
- (a) An employee is barred for any claim of benefits arising from an injury if the employee fails to notify within the time period described in Subsection (3)(b):
    - (i) the employee's employer in accordance with Subsection (2); or
    - (ii) the division.
  - (b) The notice required by Subsection (3)(a) shall be made within:
    - (i) 180 days of the day on which the injury occurs; or
    - (ii) in the case of an occupational hearing loss, the time period specified in Section 34A-2-506.

- (4) The following constitute notification of injury required by Subsection (2):
- (a) an employer's report filed with:
    - (i) the division; or
    - (ii) the employer's workers' compensation insurance carrier;
  - (b) a physician's injury report filed with:
    - (i) the division;
    - (ii) the employer; or
    - (iii) the employer's workers' compensation insurance carrier;
  - (c) a workers' compensation insurance carrier's report filed with the division; or
  - (d) the payment of any medical or disability benefits by:
    - (i) the employer; or
    - (ii) the employer's workers' compensation insurance carrier.

- (5)
- (a) An employer and the employer's workers' compensation insurance carrier, if any, shall file a report in accordance with the rules made under Subsection (5)(b) of a:
    - (i) work-related fatality; or
    - (ii) work-related injury resulting in:
      - (A) medical treatment;
      - (B) loss of consciousness;
      - (C) loss of work;
      - (D) restriction of work; or
      - (E) transfer to another job.
  - (b) An employer or the employer's workers' compensation insurance carrier, if any, shall file a report required by Subsection (5)(a), and any subsequent reports of a previously reported injury as may be required by the commission, within the time limits and in the manner established by rule by the commission made after consultation with the workers'

compensation advisory council and in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act. A rule made under this Subsection (5)(b) shall:

- (i) be reasonable; and
  - (ii) take into consideration the practicality and cost of complying with the rule.
- (c) A report is not required to be filed under this Subsection (5) for a minor injury, such as a cut or scratch that requires first aid treatment only, unless:
- (i) a treating physician files a report with the division in accordance with Subsection (9); or
  - (ii) a treating physician is required to file a report with the division in accordance with Subsection (9).
- (6) An employer and its workers' compensation insurance carrier, if any, required to file a report under Subsection (5) shall provide the employee with:
- (a) a copy of the report submitted to the division; and
  - (b) a statement, as prepared by the division, of the employee's rights and responsibilities related to the industrial injury.
- (7) An employer shall maintain a record in a manner prescribed by the commission by rule of all:
- (a) work-related fatalities; or
  - (b) work-related injuries resulting in:
    - (i) medical treatment;
    - (ii) loss of consciousness;
    - (iii) loss of work;
    - (iv) restriction of work; or
    - (v) transfer to another job.
- (8)
- (a) Except as provided in Subsection (8)(b), an employer or a workers' compensation insurance carrier who refuses or neglects to make a report, maintain a record, or file a report as required by this section is subject to a civil assessment:
    - (i) imposed by the division, subject to the requirements of Title 63G, Chapter 4, Administrative Procedures Act; and
    - (ii) that may not exceed \$500.
  - (b) An employer or workers' compensation insurance carrier is not subject to the civil assessment under this Subsection (8) if:
    - (i) the employer or workers' compensation insurance carrier submits a report later than required by this section; and
    - (ii) the division finds that the employer or workers' compensation insurance carrier has shown good cause for submitting a report later than required by this section.
  - (c)
    - (i) A civil assessment collected under this Subsection (8) shall be deposited into the Uninsured Employers' Fund created in Section 34A-2-704 to be used for a purpose specified in Section 34A-2-704.
    - (ii) The administrator of the Uninsured Employers' Fund shall collect money required to be deposited into the Uninsured Employers' Fund under this Subsection (8)(c) in accordance with Section 34A-2-704.
- (9)
- (a) A physician attending an injured employee shall comply with rules established by the commission regarding:
    - (i) fees for physician's services;
    - (ii) disclosure of medical records of the employee medically relevant to the employee's industrial accident or occupational disease claim;

- (iii) reports to the division regarding:
  - (A) the condition and treatment of an injured employee; or
  - (B) any other matter concerning industrial cases that the physician is treating; and
- (iv) rules made under Section 34A-2-407.5.
- (b) A physician who is associated with, employed by, or bills through a hospital is subject to Subsection (9)(a).
- (c) A hospital providing services for an injured employee is not subject to the requirements of Subsection (9)(a) except for rules made by the commission that are described in Subsection (9)(a)(ii) or (iii) or Section 34A-2-407.5.
- (d) The commission's schedule of fees may reasonably differentiate remuneration to be paid to providers of health services based on:
  - (i) the severity of the employee's condition;
  - (ii) the nature of the treatment necessary; and
  - (iii) the facilities or equipment specially required to deliver that treatment.
- (e) This Subsection (9) does not prohibit a contract with a provider of health services relating to the pricing of goods and services.
- (10) A copy of the initial report filed under Subsection (9)(a)(iii) shall be furnished to:
  - (a) the division;
  - (b) the employee; and
  - (c)
    - (i) the employer; or
    - (ii) the employer's workers' compensation insurance carrier.
- (11)
  - (a) As used in this Subsection (11):
    - (i) "Balance billing" means charging a person, on whose behalf a workers' compensation insurance carrier or self-insured employer is obligated to pay medical benefits under this chapter or Chapter 3, Utah Occupational Disease Act, for the difference between what the workers' compensation insurance carrier or self-insured employer reimburses the hospital for covered medical services and what the hospital charges for those covered medical services.
    - (ii) "Covered medical services" means medical services provided by a hospital that are covered by workers' compensation medical benefits under this chapter or Chapter 3, Utah Occupational Disease Act.
    - (iii) "Health benefit plan" means the same as that term is defined in Section 31A-22-619.6.
    - (iv) "Self-insured employer" means the same as that term is defined in Section 34A-2-201.5.
  - (b) Subject to Subsection (11)(d), a workers' compensation insurance carrier or self-insured employer may contract, either in writing or by mutual oral agreement, with a hospital to establish reimbursement rates.
  - (c) Subject to Subsection (11)(d), for the time period beginning on May 10, 2016, and ending on July 1, 2018, a workers' compensation insurance carrier or self-insured employer that is reimbursing a hospital that has not entered into a contract described in Subsection (11)(b) shall reimburse the hospital for covered medical services at 85% of the billed hospital fees for the covered medical services.
  - (d) A hospital may not engage in balance billing.
  - (e) Covered services paid under a health benefit plan are subject to coordination of benefits in accordance with Sections 31A-22-619.6 and 34A-2-213.
- (12)

- (a) Subject to appellate review under Section 34A-1-303, the commission has exclusive jurisdiction to hear and determine:
  - (i) whether goods provided to or services rendered to an employee are compensable pursuant to this chapter or Chapter 3, Utah Occupational Disease Act, including:
    - (A) medical, nurse, or hospital services;
    - (B) medicines; and
    - (C) artificial means, appliances, or prosthesis;
  - (ii) except for amounts charged or paid under Subsection (11), the reasonableness of the amounts charged or paid for a good or service described in Subsection (12)(a)(i); and
  - (iii) collection issues related to a good or service described in Subsection (12)(a)(i).
- (b) Except as provided in Subsection (12)(a), Subsection 34A-2-211(6), or Section 34A-2-212, a person may not maintain a cause of action in any forum within this state other than the commission for collection or payment for goods or services described in Subsection (12)(a) that are compensable under this chapter or Chapter 3, Utah Occupational Disease Act.

Amended by Chapter 242, 2016 General Session

**34A-2-407.5 Rules regarding treatment protocols and determinations of medical necessity -- Contracts.**

- (1) The commission may by rule, made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, establish for purposes of health care goods and services compensable under this chapter and Chapter 3, Utah Occupational Disease Act, reasonable health care treatment protocols, that include determinations of medical necessity, and medical treatment and quality care guidelines that are:
  - (a) scientifically based;
  - (b) peer reviewed; and
  - (c) consistent with any general standards for health care treatment protocols that the commission establishes by rule.
- (2) Notwithstanding Subsection (1), the commission may authorize an insurer or employer to use all or part of reasonable health care treatment protocols, that include determinations of medical necessity, and medical treatment and quality care guidelines that are:
  - (a) scientifically based;
  - (b) peer reviewed; and
  - (c) consistent with any general standards for health care treatment protocols that the commission shall establish by rule.
- (3) Nothing in this section shall be construed to prevent:
  - (a) an insurer or employer from contracting with a provider of health services as permitted by Subsection 34A-2-111(2)(c)(i)(B)(VII);
  - (b) the commission from adjudicating disputes arising under the terms of this section; or
  - (c) a provider of health services from bringing to the commission a dispute arising under protocols, guidelines, or other terms of this section.

Enacted by Chapter 72, 2013 General Session

**34A-2-408 Compensation -- None for first three days after injury unless disability extended.**

- (1)
  - (a) Except as provided in Subsections (1)(b) and (2), compensation may not be allowed for the first three days after the injury is received.

- (b) The disbursements authorized in this chapter or Chapter 3, Utah Occupational Disease Act, for medical, nurse and hospital services, and for medicines and funeral expenses are payable for the first three days after the injury is received.
- (2) If the period of total temporary disability lasts more than 14 days, compensation shall also be payable for the first three days after the injury is received.

Renumbered and Amended by Chapter 375, 1997 General Session

**34A-2-409 Average weekly wage -- Basis of computation.**

- (1) Except as otherwise provided in this chapter or Chapter 3, Utah Occupational Disease Act, the average weekly wage of the injured employee at the time of the injury is the basis upon which to compute the weekly compensation rate and shall be determined as follows:
  - (a) if at the time of the injury the wages are fixed by the year, the average weekly wage shall be that yearly wage divided by 52;
  - (b) if at the time of the injury the wages are fixed by the month, the average weekly wage shall be that monthly wage divided by 4-1/3;
  - (c) if at the time of the injury the wages are fixed by the week, that amount shall be the average weekly wage;
  - (d) if at the time of the injury the wages are fixed by the day, the weekly wage shall be determined by multiplying the daily wage by the greater of:
    - (i) the number of days and fraction of days in the week during which the employee under a contract of hire was working at the time of the accident, or would have worked if the accident had not intervened; or
    - (ii) three days;
  - (e) if at the time of the injury the wages are fixed by the hour, the average weekly wage shall be determined by multiplying the hourly rate by the greater of:
    - (i) the number of hours the employee would have worked for the week if the accident had not intervened; or
    - (ii) 20 hours;
  - (f) if at the time of the injury the hourly wage has not been fixed or cannot be ascertained, the average weekly wage for the purpose of calculating compensation shall be the usual wage for similar services where those services are rendered by paid employees;
  - (g)
    - (i) if at the time of the injury the wages are fixed by the output of the employee, the average weekly wage shall be the wage most favorable to the employee computed by dividing by 13 the wages, not including overtime or premium pay, of the employee earned through that employer in the first, second, third, or fourth period of 13 consecutive calendar weeks in the 52 weeks immediately preceding the injury; or
    - (ii) if the employee has been employed by that employer less than 13 calendar weeks immediately preceding the injury, the employee's average weekly wage shall be computed as under Subsection (1)(g)(i), presuming the wages, not including overtime or premium pay, to be the amount the employee would have earned had the employee been so employed for the full 13 calendar weeks immediately preceding the injury and had worked, when work was available to other employees, in a similar occupation.
- (2) If none of the methods in Subsection (1) will fairly determine the average weekly wage in a particular case, the commission shall use such other method as will, based on the facts presented, fairly determine the employee's average weekly wage.

- (3) When the average weekly wage of the injured employee at the time of the injury is determined in accordance with this section, it shall be taken as the basis upon which to compute the weekly compensation rate. After the weekly compensation is computed, it shall be rounded to the nearest dollar.
- (4) If it is established that the injured employee was of such age and experience when injured that under natural conditions the employee's wages would be expected to increase, that fact may be considered in arriving at the employee's average weekly wage.

Renumbered and Amended by Chapter 375, 1997 General Session

**34A-2-410 Temporary disability -- Amount of payments -- State average weekly wage defined.**

- (1)
  - (a) Subject to Subsections (1)(b) and (5), in case of temporary disability, so long as the disability is total, the employee shall receive 66-2/3% of that employee's average weekly wages at the time of the injury but:
    - (i) not more than a maximum of 100% of the state average weekly wage at the time of the injury per week; and
    - (ii)
      - (A) subject to Subsections (1)(a)(ii)(B) and (C), not less than a minimum of \$45 per week plus:
        - (I) \$5 for a dependent spouse; and
        - (II) \$5 for each dependent child under the age of 18 years, up to a maximum of four dependent children;
      - (B) not to exceed the average weekly wage of the employee at the time of the injury; and
      - (C) not to exceed 100% of the state average weekly wage at the time of the injury per week.
    - (b) In no case shall the compensation benefits exceed 312 weeks at the rate of 100% of the state average weekly wage at the time of the injury over a period of 12 years from the date of the injury.
  - (2) If a light duty medical release is obtained before the employee reaches a fixed state of recovery and no light duty employment is available to the employee from the employer, temporary disability benefits shall continue to be paid.
  - (3) The "state average weekly wage" as referred to in this chapter and Chapter 3, Utah Occupational Disease Act, shall be determined by the commission as follows:
    - (a) On or before June 1 of each year, the total wages reported on contribution reports to the Unemployment Insurance Division for the preceding calendar year shall be divided by the average monthly number of insured workers determined by dividing the total insured workers reported for the preceding year by 12.
    - (b) The average annual wage obtained under Subsection (3)(a) shall be divided by 52.
    - (c) The average weekly wage determined under Subsection (3)(b) is rounded to the nearest dollar.
  - (4) The state average weekly wage determined under Subsection (3) shall be used as the basis for computing the maximum compensation rate for:
    - (a) injuries or disabilities arising from occupational disease that occurred during the 12-month period commencing July 1 following the June 1 determination; and
    - (b) any death resulting from the injuries or disabilities arising from occupational disease.
  - (5) The commission may reduce or terminate temporary disability compensation in accordance with Section 34A-2-410.5.

Amended by Chapter 258, 2015 General Session

**34A-2-410.5 Employee cooperation with reemployment.**

- (1) As used in this section:
  - (a) "Controlled substance" is as defined in Section 58-37-2.
  - (b) "Correctional facility" means:
    - (i) a correctional facility as defined in Section 76-8-311.3; or
    - (ii) a facility operated by or contracting with the federal government to house a criminal offender in either a secure or nonsecure setting.
  - (c) "Disability claim" means a claim for compensation for:
    - (i) a temporary total disability benefit; or
    - (ii) a temporary partial disability benefit.
  - (d) "Local governmental entity" is as defined in Section 34-41-101.
  - (e) "Reemployment" means employment that:
    - (i) is after an accident or occupational disease that is the basis for a disability claim; and
    - (ii) in a manner consistent with Subsection (2)(b), offers to an employee an opportunity for earnings, considering the employee's:
      - (A) education;
      - (B) experience; and
      - (C) physical and mental impairment or condition.
  - (f) "State institution of higher education" means an institution listed in Section 53B-3-102.
  - (g) "Valid prescription" is a prescription, as defined in Section 58-37-2, that is:
    - (i) prescribed for a controlled substance for use by the employee for whom it is prescribed; and
    - (ii) not altered or forged.
- (2) In accordance with this section, the commission may reduce or terminate an employee's disability compensation for a disability claim for good cause shown by the employer including if:
  - (a) the employer terminates the employee from the reemployment and the termination is:
    - (i) reasonable;
    - (ii) for cause; and
    - (iii) as a result, in whole or in part, of:
      - (A) criminal conduct;
      - (B) violent conduct; or
      - (C) a violation of a reasonable, written workplace health, safety, licensure, or nondiscrimination rule that is applied in a manner that is reasonable and nondiscriminatory;
  - (b) the employee is incarcerated in a correctional facility for a period of time that would result in the termination of the employee's reemployment in accordance with a reasonable, written workplace rule that is applied in a manner that is reasonable and nondiscriminatory; or
  - (c) subject to Subsection (6), the employee is terminated from the reemployment:
    - (i)
      - (A) for use of a controlled substance that the employee did not obtain under a valid prescription;
      - (B) for intentional abuse of a controlled substance that the employee obtained under a valid prescription, if the employee uses the controlled substance intentionally:
        - (I) in excess of a prescribed therapeutic amount; or
        - (II) in an otherwise abusive manner; or

- (C) for the use of alcohol that results in intoxication from alcohol with a blood or breath alcohol concentration of .08 grams or greater; and
  - (ii) in accordance with a reasonable, written workplace rule that is applied in a manner that is reasonable and nondiscriminatory.
- (3) Notwithstanding the other provisions of this section, the employee described in Subsection (2) is eligible for medical benefits to the extent otherwise allowed under this title.
- (4)
- (a) An employer or the employer's insurance carrier may file an application for a hearing with the Division of Adjudication to request that an employee's disability compensation for a disability claim be reduced or terminated under this section.
  - (b) An action under this Subsection (4) is barred if an application for a hearing is not filed within one year from the day on which the employer terminates the employee from reemployment as described in Subsection (2).
  - (c) An employer or the employer's insurance carrier shall notify the employee that the employer or employer's insurance carrier has filed a request for a hearing under this section within three business days of the day on which the filing is made.
- (5)
- (a) The commission may reduce or terminate the disability compensation of an employee for a disability claim if after a hearing requested under Subsection (4), the commission determines that the conditions of Subsection (2) are met.
  - (b) The commission shall issue an order as to whether or not an employee's disability compensation is reduced or terminated under this section by no later than 45 days from the day on which an application for a hearing is filed.
  - (c) A reduction or termination of disability compensation under this Subsection (5) takes effect on the day determined by the commission.
  - (d) If the disability compensation is ordered terminated or reduced, the employer or employer's insurance carrier shall treat a resulting overpayment as an offset against the employer's or employer's insurance carrier's future obligations to pay disability compensation to the employee.
- (6)
- (a) For purposes of Subsection (2)(c), the commission may consider a chemical test that conforms to scientifically accepted analytical methods and procedures and includes verification or confirmation of any positive test result by gas chromatography, gas chromatography-mass spectroscopy, or other comparably reliable analytical method showing that the employee has:
    - (i) in the employee's system during employment:
      - (A) any amount of a controlled substance or its metabolites if the employee did not obtain the controlled substance under a valid prescription; or
      - (B) a controlled substance the employee obtained under a valid prescription or the metabolites of the controlled substance if the amount in the employee's system is consistent with the employee using the controlled substance intentionally:
        - (I) in excess of prescribed therapeutic amounts; or
        - (II) in an otherwise abusive manner; or
    - (ii) a blood or breath alcohol concentration of .08 grams or greater during employment.
  - (b) A local governmental entity or state institution of higher education shall comply with Title 34, Chapter 41, Local Governmental Entity Drug-Free Workplace Policies, in engaging in a test for a controlled substance that is the basis of a presumption under this section.

- (7) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules:
  - (a) describing factors to be considered under Subsection (2); and
  - (b) related to the procedures for a request for a hearing under this section.
- (8) The adjudication of a dispute arising under this section is governed by Part 8, Adjudication.
- (9) An issue related to an employee's cooperation with regard to a claim for compensation for permanent total disability benefits is governed by Section 34A-2-413.

Enacted by Chapter 349, 2008 General Session

**34A-2-411 Temporary partial disability -- Amount of payments.**

- (1) If the injury causes temporary partial disability for work, the employee shall receive weekly compensation equal to:
  - (a) 66-2/3% of the difference between the employee's average weekly wages before the accident and the weekly wages the employee is able to earn after the accident, but not more than 100% of the state average weekly wage at the time of injury; plus
  - (b) \$5 for a dependent spouse and \$5 for each dependent child under the age of 18 years, up to a maximum of four such dependent children, but only up to a total weekly compensation that does not exceed 100% of the state average weekly wage at the time of injury.
- (2) The commission may order an award for temporary partial disability for work at any time prior to 12 years after the date of the injury to an employee:
  - (a) whose physical condition resulting from the injury is not finally healed and fixed 12 years after the date of injury; and
  - (b) who files an application for hearing under Section 34A-2-417.
- (3) The duration of weekly payments may not exceed 312 weeks nor continue more than 12 years after the date of the injury. Payments shall terminate when the disability ends or the injured employee dies.

Amended by Chapter 261, 1999 General Session

**34A-2-412 Permanent partial disability -- Scale of payments.**

- (1) An employee who sustained a permanent impairment as a result of an industrial accident and who files an application for hearing under Section 34A-2-417 may receive a permanent partial disability award from the commission.
- (2) Weekly payments may not in any case continue after the disability ends, or the death of the injured person.
- (3)
  - (a) In the case of the injuries described in Subsections (4) through (6), the compensation shall be 66-2/3% of that employee's average weekly wages at the time of the injury, but not more than a maximum of 66-2/3% of the state average weekly wage at the time of the injury per week and not less than a minimum of \$45 per week plus \$5 for a dependent spouse and \$5 for each dependent child under the age of 18 years, up to a maximum of four dependent children, but not to exceed 66-2/3% of the state average weekly wage at the time of the injury per week.
  - (b) The compensation determined under Subsection (3)(a) shall be:
    - (i) paid in routine pay periods not to exceed four weeks for the number of weeks provided for in this section; and

(ii) in addition to the compensation provided for temporary total disability and temporary partial disability.

(4) For the loss of:	Number of Weeks
(a) Upper extremity	
(i) Arm	
(A) Arm and shoulder (forequarter amputation)	218
(B) Arm at shoulder joint, or above deltoid insertion	187
(C) Arm between deltoid insertion and elbow joint, at elbow joint, or below elbow joint proximal to insertion of biceps tendon	178
(D) Forearm below elbow joint distal to insertion of biceps tendon	168
(ii) Hand	
(A) At wrist or midcarpal or midmetacarpal amputation	168
(B) All fingers except thumb at metacarpophalangeal joints	101
(iii) Thumb	
(A) At metacarpophalangeal joint or with resection of carpometacarpal bone	67
(B) At interphalangeal joint	50
(iv) Index finger	
(A) At metacarpophalangeal joint or with resection of metacarpal bone	42
(B) At proximal interphalangeal joint	34
(C) At distal interphalangeal joint	18
(v) Middle finger	
(A) At metacarpophalangeal joint or with resection of metacarpal bone	34
(B) At proximal interphalangeal joint	27
(C) At distal interphalangeal joint	15
(vi) Ring finger	
(A) At metacarpophalangeal joint or with resection of metacarpal bone	17
(B) At proximal interphalangeal joint	13
(C) At distal interphalangeal joint	8
(vii) Little finger	
(A) At metacarpophalangeal joint or with resection of metacarpal bone	

	.....	8
(B) At proximal interphalangeal joint	.....	6
(C) At distal interphalangeal joint	.....	4
(b) Lower extremity		
(i) Leg		
(A) Hemipelvectomy (leg, hip and pelvis)	.....	156
(B) Leg at hip joint or three inches or less below tuberosity of ischium	.....	125
(C) Leg above knee with functional stump, at knee joint or Gritti-Stokes amputation or below knee with short stump (three inches or less below intercondylar notch)	.....	112
(D) Leg below knee with functional stump	.....	88
(ii) Foot		
(A) Foot at ankle	.....	88
(B) Foot partial amputation (Chopart's)	.....	66
(C) Foot midmetatarsal amputation	.....	44
(iii) Toes		
(A) Great toe		
(I) With resection of metatarsal bone	.....	26
(II) At metatarsophalangeal joint	.....	16
(III) At interphalangeal joint	.....	12
(B) Lesser toe (2nd -- 5th)		
(I) With resection of metatarsal bone	.....	4
(II) At metatarsophalangeal joint	.....	3
(III) At proximal interphalangeal joint	.....	2
(IV) At distal interphalangeal joint	.....	1
(C) All toes at metatarsophalangeal joints	.....	26
(iv) Miscellaneous		
(A) One eye by enucleation	.....	120
(B) Total blindness of one eye	.....	100

- (C) Total loss of binaural hearing ..... 109
- (5) Permanent and complete loss of use shall be deemed equivalent to loss of the member. Partial loss or partial loss of use shall be a percentage of the complete loss or loss of use of the member. This Subsection (5) does not apply to the items listed in Subsection (4)(b)(iv).
- (6)
- (a) For any permanent impairment caused by an industrial accident that is not otherwise provided for in the schedule of losses in this section, permanent partial disability compensation shall be awarded by the commission based on the medical evidence.
- (b) Compensation for any impairment described in Subsection (6)(a) shall, as closely as possible, be proportionate to the specific losses in the schedule set forth in this section.
- (c) Permanent partial disability compensation may not:
- (i) exceed 312 weeks, which shall be considered the period of compensation for permanent total loss of bodily function; and
- (ii) be paid for any permanent impairment that existed prior to an industrial accident.
- (7) The amounts specified in this section are all subject to the limitations as to the maximum weekly amount payable as specified in this section, and in no event shall more than a maximum of 66-2/3% of the state average weekly wage at the time of the injury for a total of 312 weeks in compensation be required to be paid.

Renumbered and Amended by Chapter 375, 1997 General Session

**34A-2-413 Permanent total disability -- Amount of payments -- Rehabilitation.**

- (1)
- (a) In the case of a permanent total disability resulting from an industrial accident or occupational disease, the employee shall receive compensation as outlined in this section.
- (b) To establish entitlement to permanent total disability compensation, the employee shall prove by a preponderance of evidence that:
- (i) the employee sustained a significant impairment or combination of impairments as a result of the industrial accident or occupational disease that gives rise to the permanent total disability entitlement;
- (ii) the employee has a permanent, total disability; and
- (iii) the industrial accident or occupational disease is the direct cause of the employee's permanent total disability.
- (c) To establish that an employee has a permanent, total disability the employee shall prove by a preponderance of the evidence that:
- (i) the employee is not gainfully employed;
- (ii) the employee has an impairment or combination of impairments that reasonably limit the employee's ability to do basic work activities;
- (iii) the industrial or occupationally caused impairment or combination of impairments prevent the employee from performing the essential functions of the work activities for which the employee has been qualified until the time of the industrial accident or occupational disease that is the basis for the employee's permanent total disability claim; and
- (iv) the employee cannot perform other work reasonably available, taking into consideration the employee's:
- (A) age;
- (B) education;
- (C) past work experience;

- (D) medical capacity; and
  - (E) residual functional capacity.
- (d) Evidence of an employee's entitlement to disability benefits other than those provided under this chapter and Chapter 3, Utah Occupational Disease Act, if relevant:
- (i) may be presented to the commission;
  - (ii) is not binding; and
  - (iii) creates no presumption of an entitlement under this chapter and Chapter 3, Utah Occupational Disease Act.
- (e) In determining under Subsections (1)(b) and (c) whether an employee cannot perform other work reasonably available, the following may not be considered:
- (i) whether the employee is incarcerated in a facility operated by or contracting with a federal, state, county, or municipal government to house a criminal offender in either a secure or nonsecure setting; or
  - (ii) whether the employee is not legally eligible to be employed because of a reason unrelated to the impairment or combination of impairments.
- (2) For permanent total disability compensation during the initial 312-week entitlement, compensation is 66-2/3% of the employee's average weekly wage at the time of the injury, limited as follows:
- (a) compensation per week may not be more than 85% of the state average weekly wage at the time of the injury;
  - (b)
    - (i) subject to Subsection (2)(b)(ii), compensation per week may not be less than the sum of \$45 per week and:
      - (A) \$5 for a dependent spouse; and
      - (B) \$5 for each dependent child under the age of 18 years, up to a maximum of four dependent minor children; and
    - (ii) the amount calculated under Subsection (2)(b)(i) may not exceed:
      - (A) the maximum established in Subsection (2)(a); or
      - (B) the average weekly wage of the employee at the time of the injury; and
  - (c) after the initial 312 weeks, the minimum weekly compensation rate under Subsection (2)(b) is 36% of the current state average weekly wage, rounded to the nearest dollar.
- (3) This Subsection (3) applies to claims resulting from an accident or disease arising out of and in the course of the employee's employment on or before June 30, 1994.
- (a) The employer or the employer's insurance carrier is liable for the initial 312 weeks of permanent total disability compensation except as outlined in Section 34A-2-703 as in effect on the date of injury.
  - (b) The employer or the employer's insurance carrier may not be required to pay compensation for any combination of disabilities of any kind, as provided in this section and Sections 34A-2-410 through 34A-2-412 and Part 5, Industrial Noise, in excess of the amount of compensation payable over the initial 312 weeks at the applicable permanent total disability compensation rate under Subsection (2).
  - (c) The Employers' Reinsurance Fund shall for an overpayment of compensation described in Subsection (3)(b), reimburse the overpayment:
    - (i) to the employer or the employer's insurance carrier; and
    - (ii) out of the Employers' Reinsurance Fund's liability to the employee.
  - (d) After an employee receives compensation from the employee's employer, the employer's insurance carrier, or the Employers' Reinsurance Fund for any combination of disabilities amounting to 312 weeks of compensation at the applicable permanent total disability

compensation rate, the Employers' Reinsurance Fund shall pay all remaining permanent total disability compensation.

- (e) Employers' Reinsurance Fund payments shall commence immediately after the employer or the employer's insurance carrier satisfies its liability under this Subsection (3) or Section 34A-2-703.
- (4) This Subsection (4) applies to claims resulting from an accident or disease arising out of and in the course of the employee's employment on or after July 1, 1994.
  - (a) The employer or the employer's insurance carrier is liable for permanent total disability compensation.
  - (b) The employer or the employer's insurance carrier may not be required to pay compensation for any combination of disabilities of any kind, as provided in this section and Sections 34A-2-410 through 34A-2-412 and Part 5, Industrial Noise, in excess of the amount of compensation payable over the initial 312 weeks at the applicable permanent total disability compensation rate under Subsection (2).
  - (c) The employer or the employer's insurance carrier may recoup the overpayment of compensation described in Subsection (4) by reasonably offsetting the overpayment against future liability paid before or after the initial 312 weeks.
- (5)
  - (a) A finding by the commission of permanent total disability is not final, unless otherwise agreed to by the parties, until:
    - (i) an administrative law judge reviews a summary of reemployment activities undertaken pursuant to Section 34A-2-413.5;
    - (ii) the employer or the employer's insurance carrier submits to the administrative law judge:
      - (A) a reemployment plan as prepared by a qualified rehabilitation provider reasonably designed to return the employee to gainful employment; or
      - (B) notice that the employer or the employer's insurance carrier will not submit a plan; and
    - (iii) the administrative law judge, after notice to the parties, holds a hearing, unless otherwise stipulated, to:
      - (A) consider evidence regarding rehabilitation; and
      - (B) review any reemployment plan submitted by the employer or the employer's insurance carrier under Subsection (5)(a)(ii).
  - (b) Before commencing the procedure required by Subsection (5)(a), the administrative law judge shall order:
    - (i) the initiation of permanent total disability compensation payments to provide for the employee's subsistence; and
    - (ii) the payment of any undisputed disability or medical benefits due the employee.
  - (c) Notwithstanding Subsection (5)(a), an order for payment of benefits described in Subsection (5)(b) is considered a final order for purposes of Section 34A-2-212.
  - (d) The employer or the employer's insurance carrier shall be given credit for any disability payments made under Subsection (5)(b) against its ultimate disability compensation liability under this chapter or Chapter 3, Utah Occupational Disease Act.
  - (e) An employer or the employer's insurance carrier may not be ordered to submit a reemployment plan. If the employer or the employer's insurance carrier voluntarily submits a plan, the plan is subject to Subsections (5)(e)(i) through (iii).
    - (i) The plan may include, but not require an employee to pay for:
      - (A) retraining;
      - (B) education;
      - (C) medical and disability compensation benefits;

- (D) job placement services; or
- (E) incentives calculated to facilitate reemployment.
- (ii) The plan shall include payment of reasonable disability compensation to provide for the employee's subsistence during the rehabilitation process.
- (iii) The employer or the employer's insurance carrier shall diligently pursue the reemployment plan. The employer's or insurance carrier's failure to diligently pursue the reemployment plan is cause for the administrative law judge on the administrative law judge's own motion to make a final decision of permanent total disability.
- (f) If a preponderance of the evidence shows that successful rehabilitation is not possible, the administrative law judge shall order that the employee be paid weekly permanent total disability compensation benefits.
- (g) If a preponderance of the evidence shows that pursuant to a reemployment plan, as prepared by a qualified rehabilitation provider and presented under Subsection (5)(e), an employee could immediately or without unreasonable delay return to work but for the following, an administrative law judge shall order that the employee be denied the payment of weekly permanent total disability compensation benefits:
  - (i) incarceration in a facility operated by or contracting with a federal, state, county, or municipal government to house a criminal offender in either a secure or nonsecure setting; or
  - (ii) not being legally eligible to be employed because of a reason unrelated to the impairment or combination of impairments.
- (6)
  - (a) The period of benefits commences on the date the employee acquired the permanent, total disability, as determined by a final order of the commission based on the facts and evidence, and ends:
    - (i) with the death of the employee; or
    - (ii) when the employee is capable of returning to regular, steady work.
  - (b) An employer or the employer's insurance carrier may provide or locate for a permanently totally disabled employee reasonable, medically appropriate, part-time work in a job earning at least minimum wage, except that the employee may not be required to accept the work to the extent that it would disqualify the employee from social security disability benefits.
  - (c) An employee shall:
    - (i) fully cooperate in the placement and employment process; and
    - (ii) accept the reasonable, medically appropriate, part-time work.
  - (d) In a consecutive four-week period when an employee's gross income from the work provided under Subsection (6)(b) exceeds \$500, the employer or insurance carrier may reduce the employee's permanent total disability compensation by 50% of the employee's income in excess of \$500.
  - (e) If a work opportunity is not provided by the employer or the employer's insurance carrier, an employee with a permanent, total disability may obtain medically appropriate, part-time work subject to the offset provisions of Subsection (6)(d).
  - (f)
    - (i) The commission shall establish rules regarding the part-time work and offset.
    - (ii) The adjudication of disputes arising under this Subsection (6) is governed by Part 8, Adjudication.
  - (g) The employer or the employer's insurance carrier has the burden of proof to show that medically appropriate part-time work is available.
  - (h) The administrative law judge may:
    - (i) excuse an employee from participation in any work:

- (A) that would require the employee to undertake work exceeding the employee's:
  - (I) medical capacity; or
  - (II) residual functional capacity; or
- (B) for good cause; or
- (ii) allow the employer or the employer's insurance carrier to reduce permanent total disability benefits as provided in Subsection (6)(d) when reasonable, medically appropriate, part-time work is offered, but the employee fails to fully cooperate.
- (7) When an employee is rehabilitated or the employee's rehabilitation is possible but the employee has some loss of bodily function, the award shall be for permanent partial disability.
- (8) As determined by an administrative law judge, an employee is not entitled to disability compensation, unless the employee fully cooperates with any evaluation or reemployment plan under this chapter or Chapter 3, Utah Occupational Disease Act. The administrative law judge shall dismiss without prejudice the claim for benefits of an employee if the administrative law judge finds that the employee fails to fully cooperate, unless the administrative law judge states specific findings on the record justifying dismissal with prejudice.
- (9)
  - (a) The loss or permanent and complete loss of the use of the following constitutes total and permanent disability that is compensated according to this section:
    - (i) both hands;
    - (ii) both arms;
    - (iii) both feet;
    - (iv) both legs;
    - (v) both eyes; or
    - (vi) any combination of two body members described in this Subsection (9)(a).
  - (b) A finding of permanent total disability pursuant to Subsection (9)(a) is final.
- (10)
  - (a) An insurer or self-insured employer may periodically reexamine a permanent total disability claim, except those based on Subsection (9), for which the insurer or self-insured employer had or has payment responsibility to determine whether the employee continues to have a permanent, total disability.
  - (b) Reexamination may be conducted no more than once every three years after an award is final, unless good cause is shown by the employer or the employer's insurance carrier to allow more frequent reexaminations.
  - (c) The reexamination may include:
    - (i) the review of medical records;
    - (ii) employee submission to one or more reasonable medical evaluations;
    - (iii) employee submission to one or more reasonable rehabilitation evaluations and retraining efforts;
    - (iv) employee disclosure of Federal Income Tax Returns;
    - (v) employee certification of compliance with Section 34A-2-110; and
    - (vi) employee completion of one or more sworn affidavits or questionnaires approved by the division.
  - (d) The insurer or self-insured employer shall pay for the cost of a reexamination with appropriate employee reimbursement pursuant to rule for reasonable travel allowance and per diem as well as reasonable expert witness fees incurred by the employee in supporting the employee's claim for permanent total disability benefits at the time of reexamination.

- (e) If an employee fails to fully cooperate in the reasonable reexamination of a permanent total disability finding, an administrative law judge may order the suspension of the employee's permanent total disability benefits until the employee cooperates with the reexamination.
- (f)
  - (i) If the reexamination of a permanent total disability finding reveals evidence that reasonably raises the issue of an employee's continued entitlement to permanent total disability compensation benefits, an insurer or self-insured employer may petition the Division of Adjudication for a rehearing on that issue. The insurer or self-insured employer shall include with the petition, documentation supporting the insurer's or self-insured employer's belief that the employee no longer has a permanent, total disability.
  - (ii) If the petition under Subsection (10)(f)(i) demonstrates good cause, as determined by the Division of Adjudication, an administrative law judge shall adjudicate the issue at a hearing.
  - (iii) Evidence of an employee's participation in medically appropriate, part-time work may not be the sole basis for termination of an employee's permanent total disability entitlement, but the evidence of the employee's participation in medically appropriate, part-time work under Subsection (6) may be considered in the reexamination or hearing with other evidence relating to the employee's status and condition.
- (g) In accordance with Section 34A-1-309, the administrative law judge may award reasonable attorney fees to an attorney retained by an employee to represent the employee's interests with respect to reexamination of the permanent total disability finding, except if the employee does not prevail, the attorney fees shall be set at \$1,000. The attorney fees awarded shall be paid by the employer or the employer's insurance carrier in addition to the permanent total disability compensation benefits due.
- (h) During the period of reexamination or adjudication, if the employee fully cooperates, each insurer, self-insured employer, or the Employers' Reinsurance Fund shall continue to pay the permanent total disability compensation benefits due the employee.
- (11) If any provision of this section, or the application of any provision to any person or circumstance, is held invalid, the remainder of this section is given effect without the invalid provision or application.

Amended by Chapter 31, 2016 General Session

**34A-2-413.5 Injured worker reemployment.**

- (1) As used in this section:
  - (a)
    - (i) "Gainful employment" means employment that:
      - (A) is reasonably attainable in view of an industrial injury or occupational disease; and
      - (B) offers to an injured worker, as reasonably feasible, an opportunity for earnings.
    - (ii) Factors considered in determining gainful employment include an injured worker's:
      - (A) education;
      - (B) experience; and
      - (C) physical and mental impairment and condition.
  - (b) "Initial written report" means a report described in Subsection (5).
  - (c) "Injured worker" means an employee who sustains an industrial injury or occupational disease for which benefits are provided under this chapter or Chapter 3, Utah Occupational Disease Act.
  - (d) "Injured worker with a disability" means an injured worker who:
    - (i) because of the injury or disease that is the basis of the employee being an injured worker:

- (A) is or will be unable to return to work in the injured worker's usual and customary occupation; or
- (B) is unable to perform work for which the injured worker has previous training and experience; and
- (ii) reasonably can be expected to attain gainful employment after an evaluation provided for in accordance with this section.
- (e) "Parties" means:
  - (i) an injured worker with a disability;
  - (ii) the employer of the injured worker with a disability;
  - (iii) the employer's workers' compensation insurance carrier; and
  - (iv) a rehabilitation or reemployment professional for the employer or the employer's workers' compensation insurance carrier.
- (f) "Reemployment plan" means a written:
  - (i) description or rationale for the manner and means by which it is proposed an injured worker with a disability may return to gainful employment; and
  - (ii) definition of the voluntary responsibilities of:
    - (A) the injured worker with a disability;
    - (B) the employer; and
    - (C) one or more other parties involved with the implementation of the reemployment plan.
- (2)
  - (a) This section applies only to an industrial injury or occupational disease that occurs on or after July 1, 1990.
  - (b) This section is intended to promote and monitor the state's and the employer's capacity to assist the injured worker in returning to the workforce by evaluating the effectiveness of the voluntary efforts of employers under this section.
- (3) This section does not affect the duties of the Utah State Office of Rehabilitation created in Section 35A-1-202.
- (4) The commission may provide for the administration of this section by rule in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- (5) An employer or the employer's workers' compensation insurance carrier may voluntarily prepare an initial written report assessing an injured worker's need or lack of need for vocational assistance in reemployment if:
  - (a) it appears that the injured worker is or will be an injured worker with a disability; or
  - (b) the period of the injured worker's temporary total disability compensation period exceeds 90 days.
- (6)
  - (a) Subject to Subsection (6)(b), an employer or the employer's workers' compensation insurance carrier may serve the initial written report, if one has been prepared, on the injured worker.
  - (b) If an employer or the employer's workers' compensation insurance carrier serves an initial written report on an injured worker, the employer or the employer's workers' compensation insurance carrier shall comply with Subsection (6)(a) by no later than 30 days after the earlier of the day on which:
    - (i) it appears that the injured worker is or will be an injured worker with a disability; or
    - (ii) the 90-day period described in Subsection (5)(b) ends.
- (7) With the initial written report, if one is prepared and used in the determination process, an employer or the employer's workers' compensation insurance carrier shall provide an injured worker information regarding reemployment.

- (8) Subject to the other provisions of this section, if an injured worker is an injured worker with a disability, the employer or the employer's workers' compensation insurance carrier may, within 10 days after the day on which the employer or workers' compensation insurance carrier serves the initial written report on the injured worker, refer the injured worker with a disability to:
  - (a) the Utah State Office of Rehabilitation; or
  - (b) at the employer's or workers' compensation insurance carrier's option, a private rehabilitation or reemployment service.
- (9) An employer or the employer's workers' compensation insurance carrier shall make the referral required by Subsection (8) for the purpose of:
  - (a) providing an evaluation; and
  - (b) developing a reemployment plan.
- (10) The objective of reemployment is to return an injured worker with a disability to gainful employment in the following order of employment priority:
  - (a) same job, same employer;
  - (b) modified job, same employer;
  - (c) same job, new employer;
  - (d) modified job, new employer;
  - (e) new job, new employer; or
  - (f) retraining in a new occupation.
- (11) Nothing in this section or its application is intended to:
  - (a) modify or in any way affect an existing employee-employer relationship; or
  - (b) provide an employee with a guarantee or right to employment or continued employment with an employer.
- (12) A rehabilitation counselor to whom a referral is made under Subsection (8) shall have the same or comparable qualifications as those established by the Utah State Office of Rehabilitation for personnel assigned to rehabilitation and evaluation duties.

Amended by Chapter 271, 2016 General Session

**34A-2-414 Benefits in case of death -- Distribution of award to dependents -- Death of dependents -- Remarriage of surviving spouse.**

- (1)
  - (a) Subject to the other provisions of this section, benefits in case of death of an employee shall be paid to one or more of the dependents of the decedent employee for the benefit of all the dependents.
  - (b) Unless another apportionment is determined by the commission, benefits in case of death of an employee shall be apportioned among the dependents by:
    - (i) dividing the amount of benefits by the number of dependents; and
    - (ii) allotting each dependent an equal share.
  - (c) If one or more of the dependents described in Subsection (1)(a) is partly dependent, the commission may apportion the benefits in a manner different than Subsection (1)(b).
  - (d) In the case of a minor child who is a dependent, a benefit shall be paid to:
    - (i) the minor child's surviving parent; or
    - (ii) if there is no surviving parent, a court appointed custodian or guardian.
- (2) A dependent or a person to whom a benefit is paid for a dependent, shall apply the benefit to the use of the one or more beneficiaries.
- (3) In all cases of death, if:

- (a) the dependents are a surviving spouse and one or more minor children, it is sufficient for the surviving spouse to apply for benefits on behalf of the surviving spouse and the minor children; and
  - (b) all of the dependents are minor children, a guardian or next friend of the minor dependents shall apply for the benefits.
- (4)
- (a) An administrative law judge may, for the purpose of protecting the rights and interests of a minor dependent who does not have a surviving parent or court appointed custodian or guardian, direct that the benefits be deposited into an interest bearing account for the purpose of receiving a payment due the minor dependent.
  - (b) Money deposited into an interest bearing account under Subsection (4)(a) shall be released to:
    - (i) a court appointed custodian or guardian of the minor dependent when the custodian or guardian is appointed; or
    - (ii) a minor dependent when the minor dependent becomes 18 years of age.
  - (c) The commission, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, may make rules related to the requirements of an interest bearing account described in Subsection (4)(a).
- (5) If a dependent of a deceased employee dies during the period covered by weekly payments authorized by this section, the right of the deceased dependent to compensation under this chapter or Chapter 3, Utah Occupational Disease Act, ceases.
- (6)
- (a) If a surviving spouse, who is a dependent of a deceased employee and who is receiving the benefits of this chapter or Chapter 3, Utah Occupational Disease Act, remarries, the surviving spouse's sole right after the remarriage to further benefits is the right to receive in a lump sum the lesser of:
    - (i) the balance of the weekly compensation payments unpaid:
      - (A) from the day on which the surviving spouse remarries; and
      - (B) to the end of 312 weeks from the date of the injury from which death resulted; or
    - (ii) an amount equal to 52 weeks of compensation at the weekly compensation rate the surviving spouse is receiving at the time of the remarriage.
  - (b) If there are other dependents remaining as of the day on which a surviving spouse remarries, benefits payable under this chapter or Chapter 3, Utah Occupational Disease Act, shall be paid for the use and benefit of the other dependents.
- (7) Weekly benefits to be paid under this section shall be paid at intervals of not less than four weeks.

Amended by Chapter 90, 2008 General Session

**34A-2-415 Increase of benefits to a dependent -- Effect of death, marriage, majority, or termination of dependency of children -- Death, divorce, or remarriage of spouse.**

If a benefit is made to, or increased because of a dependent spouse or dependent minor child, as provided in this chapter or Chapter 3, Utah Occupational Disease Act, the benefit or increase in amount of the benefit shall cease on the day on which:

- (1) a minor child:
  - (a) dies;
  - (b) marries;
  - (c) becomes 18 years of age; or

- (d) is no longer dependent; or
- (2) the spouse of the employee:
  - (a) dies;
  - (b) divorces the employee; or
  - (c) subject to Section 34A-2-414 relative to the remarriage of a spouse, remarries.

Amended by Chapter 90, 2008 General Session

**34A-2-416 Additional benefits in special cases.**

Benefits received by a wholly dependent person under this chapter or Chapter 3, Utah Occupational Disease Act, extend indefinitely if at the termination of the benefits:

- (1) the wholly dependent person is still in a dependent condition; and
- (2) under all reasonable circumstances the wholly dependent person should be entitled to additional benefits.

Amended by Chapter 235, 2016 General Session

**34A-2-417 Claims and benefits -- Time limits for filing -- Burden of proof.**

- (1)
  - (a) Except with respect to prosthetic devices or in a permanent total disability case, an employee is entitled to be compensated for a medical expense if:
    - (i) the medical expense is:
      - (A) reasonable in amount; and
      - (B) necessary to treat the industrial accident; and
    - (ii) the employee submits or makes a reasonable attempt to submit the medical expense:
      - (A) to the employee's employer or insurance carrier for payment; and
      - (B) within one year from the later of:
        - (I) the day on which the medical expense is incurred; or
        - (II) the day on which the employee knows or in the exercise of reasonable diligence should have known that the medical expense is related to the industrial accident.
  - (b) For an industrial accident that occurs on or after July 1, 1988, and is the basis of a claim for a medical expense, an employee is entitled to be compensated for the medical expense if the employee meets the requirements of Subsection (1)(a).
- (2)
  - (a) A claim described in Subsection (2)(b) is barred, unless the employee:
    - (i) files an application for hearing with the Division of Adjudication no later than six years from the date of the accident; and
    - (ii) by no later than 12 years from the date of the accident, is able to meet the employee's burden of proving that the employee is due the compensation claimed under this chapter.
  - (b) Subsection (2)(a) applies to a claim for compensation for:
    - (i) temporary total disability benefits;
    - (ii) temporary partial disability benefits;
    - (iii) permanent partial disability benefits; or
    - (iv) permanent total disability benefits.
  - (c) The commission may enter an order awarding or denying an employee's claim for compensation under this chapter within a reasonable time period beyond 12 years from the date of the accident, if:
    - (i) the employee complies with Subsection (2)(a); and

- (ii) 12 years from the date of the accident:
  - (A)
    - (I) the employee is fully cooperating in a commission approved reemployment plan; and
    - (II) the results of that commission approved reemployment plan are not known; or
  - (B) the employee is actively adjudicating issues of compensability before the commission.
- (3) A claim for death benefits is barred unless an application for hearing is filed within one year of the date of death of the employee.
- (4)
  - (a)
    - (i) Subject to Subsections (2)(c) and (4)(b), after an employee files an application for hearing within six years from the date of the accident, the Division of Adjudication may enter an order to show cause why the employee's claim should not be dismissed because the employee has failed to meet the employee's burden of proof to establish an entitlement to compensation claimed in the application for hearing.
    - (ii) The order described in Subsection (4)(a)(i) may be entered on the motion of the:
      - (A) Division of Adjudication;
      - (B) employee's employer; or
      - (C) employer's insurance carrier.
  - (b) Under Subsection (4)(a), the Division of Adjudication may dismiss a claim:
    - (i) without prejudice; or
    - (ii) with prejudice only if:
      - (A) the Division of Adjudication adjudicates the merits of the employee's entitlement to the compensation claimed in the application for hearing; or
      - (B) the employee fails to comply with Subsection (2)(a)(ii).
  - (c) If a claim is dismissed without prejudice under Subsection (4)(b), the employee is subject to the time limits under Subsection (2)(a) to claim compensation under this chapter.
- (5) A claim for compensation under this chapter is subject to a claim or lien for recovery under Section 26-19-5.

Amended by Chapter 174, 2010 General Session

**34A-2-418 Awards -- Medical, nursing, hospital, and burial expenses -- Artificial means and appliances.**

- (1) In addition to the compensation provided in this chapter or Chapter 3, Utah Occupational Disease Act, and subject to Subsection 34A-2-407(11), the employer or the insurance carrier shall pay reasonable sums for medical, nurse, and hospital services, for medicines, and for artificial means, appliances, and prostheses necessary to treat the injured employee.
- (2) If death results from the injury, the employer or the insurance carrier shall pay the burial expenses in ordinary cases as established by rule.
- (3) If a compensable accident results in the breaking of or loss of an employee's artificial means or appliance including eyeglasses, the employer or insurance carrier shall provide a replacement of the artificial means or appliance.
- (4) An administrative law judge may require the employer or insurance carrier to maintain the artificial means or appliances or provide the employee with a replacement of any artificial means or appliance for the reason of breakage, wear and tear, deterioration, or obsolescence.
- (5) An administrative law judge may, in unusual cases, order, as the administrative law judge considers just and proper, the payment of additional sums:
  - (a) for burial expenses; or

(b) to provide for artificial means or appliances.

Amended by Chapter 242, 2016 General Session

**34A-2-419 Agreements in addition to compensation and benefits.**

- (1)
- (a) Subject to the approval of the division, any employer securing the payment of workers' compensation benefits for its employees under Section 34A-2-201 may enter into or continue any agreement with the employer's employees to provide compensation or other benefits in addition to the compensation and other benefits provided by this chapter or Chapter 3, Utah Occupational Disease Act.
  - (b) An agreement may not be approved if it requires contributions from the employees, unless it confers benefits in addition to those provided under this chapter or Chapter 3, Utah Occupational Disease Act, at least commensurate with the contributions.
  - (c) An agreement for additional benefits may be terminated by the division if:
    - (i) it appears that the agreement is not fairly administered;
    - (ii) its operation discloses defects threatening its solvency; or
    - (iii) for any substantial reason it fails to accomplish the purposes of this chapter or Chapter 3, Utah Occupational Disease Act.
  - (d) If the agreement is terminated, the division shall determine the proper distribution of any remaining assets.
  - (e) The termination under Subsection (1)(c) becomes a final order of the commission effective 30 days from the date the division terminates the agreement, unless within the 30 days either the employer or employee files an application for hearing with the Division of Adjudication in accordance with Part 8, Adjudication. The application for hearing may contest:
    - (i) the recommendation to terminate the agreement;
    - (ii) the distribution of remaining assets after termination; or
    - (iii) both the recommendation to terminate and the distribution of remaining assets.
- (2)
- (a) Any employer who makes a deduction from the wages or salary of any employee to pay for the statutory benefits of this chapter or Chapter 3, Utah Occupational Disease Act, is guilty of a class A misdemeanor.
  - (b) Subject to the supervision of the division, nothing in this chapter or Chapter 3, Utah Occupational Disease Act, may be construed as preventing the employer and the employer's employees from entering into mutual contracts and agreements respecting hospital benefits and accommodations, medical and surgical services, nursing, and medicines to be furnished to the employees as provided in this chapter or Chapter 3, Utah Occupational Disease Act, if no direct or indirect profit is made by any employer as a result of the contract or agreement.
- (3) The purpose and intent of this section is that, where hospitals are maintained and medical and surgical services and medicines furnished by the employer from payments by, or assessments on, the employer's employees, the payments or assessments may not be more or greater than necessary to make these benefits self-supporting for the care and treatment of the employer's employees. Money received or retained by the employer from the employees for the purpose of these benefits shall be paid and applied to these services. Any hospitals so maintained in whole or in part by payments or assessment of employees are subject to the inspection and supervision of the division as to services and treatment rendered to the employees.

Renumbered and Amended by Chapter 375, 1997 General Session

**34A-2-420 Continuing jurisdiction of commission -- No authority to change statutes of limitation -- Authority to destroy records -- Interest on award -- Authority to approve final settlement claims.**

- (1)
  - (a) The powers and jurisdiction of the commission over each case is continuing.
  - (b) After notice and hearing, the Division of Adjudication, commissioner, or Appeals Board in accordance with Part 8, Adjudication, may from time to time modify or change a former finding or order of the commission.
  - (c) This section may not be interpreted as modifying the statutes of limitations contained in Section 34A-2-417 or other sections of this chapter or Chapter 3, Utah Occupational Disease Act, or authorizing the commission to change these statutes of limitations.
  - (d) In addition to other settlements permissible under this chapter or Chapter 3, Utah Occupational Disease Act, and notwithstanding Subsection (1)(c), the commission may approve a full and final settlement of an employee's claim for compensation under this chapter or Chapter 3, Utah Occupational Disease Act, including the payment of medical and disability benefits, if:
    - (i)
      - (A) the employee's claim for medical benefits is allowed under Subsection 34A-2-417(1), but the payment of disability benefits associated with the medical benefits and resulting treatment is barred pursuant to Subsection 34A-2-417(2); and
      - (B) the full and final settlement is presented to the commission for approval; or
    - (ii) an employee's claim for compensation under this chapter or Chapter 3, Utah Occupational Disease Act, is the liability of the Employers' Reinsurance Fund created in Section 34A-2-702 or the Uninsured Employers' Fund created in Section 34A-2-704.
- (2) A record pertaining to a case that has been closed and inactive for 10 years, other than a case of total permanent disability or a case in which a claim has been filed as in Section 34A-2-417, may be destroyed at the discretion of the commission.
- (3) An award made by a final order of the commission shall include interest at the rate of 8% per annum from the date when each benefit payment would have otherwise become due and payable.
- (4) Notwithstanding Subsection (1) and Section 34A-2-108, an administrative law judge shall review and may approve the agreement of the parties to enter into a full and final settlement by means of a:
  - (a) compromise settlement of disputed medical, disability, or death benefit entitlements under this chapter or Chapter 3, Utah Occupational Disease Act; or
  - (b) commutation and settlement of reasonable future medical, disability, or death benefit entitlements under this chapter or Chapter 3, Utah Occupational Disease Act, by means of a lump sum payment, structured settlement, or other appropriate payout.
- (5) A full and final settlement approved under this section shall extinguish the employer's liability to the employee under this chapter and Chapter 3, Utah Occupational Disease Act, except for an issue that is expressly preserved.
- (6) A full and final settlement effectuating a compromise or commutation may provide for payment of benefits:
  - (a) in cash or cash equivalents; or
  - (b) through an insurance contract or by a third party if the commission determines that the payment provisions:

- (i) are secure and assign, transfer, or reinsure the financial obligation to make benefit payments to a qualified third party in compliance with commission rules; or
- (ii) do not relieve the parties of their underlying liability for payments required by the full and final settlement agreement.

Amended by Chapter 82, 2014 General Session

**34A-2-421 Lump-sum payments.**

An administrative law judge, under special circumstances and when the same is deemed advisable, may commute periodic benefits to one or more lump-sum payments.

Renumbered and Amended by Chapter 375, 1997 General Session

**34A-2-422 Compensation exempt from execution -- Transfer of payment rights.**

(1) For purposes of this section:

(a) "Payment rights under workers' compensation" means the right to receive compensation under this chapter or Chapter 3, Utah Occupational Disease Act, including the payment of a workers' compensation claim, award, benefit, or settlement.

(b)

(i) Subject to Subsection (1)(b)(ii), "transfer" means:

- (A) a sale;
- (B) an assignment;
- (C) a pledge;
- (D) an hypothecation; or
- (E) other form of encumbrance or alienation for consideration.

(ii) "Transfer" does not include the creation or perfection of a security interest in a right to receive a payment under a blanket security agreement entered into with an insured depository institution, in the absence of any action to:

- (A) redirect the payments to:
  - (I) the insured depository institution; or
  - (II) an agent or successor in interest to the insured depository institution; or
- (B) otherwise enforce a blanket security interest against the payment rights.

(2) Compensation before payment:

(a) is exempt from:

- (i) all claims of creditors; and
- (ii) attachment or execution; and

(b) shall be paid only to employees or their dependents, except as provided in Sections 26-19-5 and 34A-2-417.

(3)

(a) Subject to Subsection (3)(b), beginning April 30, 2007, a person may not:

- (i) transfer payment rights under workers' compensation; or
- (ii) accept or take any action to provide for a transfer of payment rights under workers' compensation.

(b) A person may take an action prohibited under Subsection (3)(a) if the commission approves the transfer of payment rights under workers' compensation:

- (i) before the transfer of payment rights under workers' compensation takes effect; and
- (ii) upon a determination by the commission that:

- (A) the person transferring the payment rights under workers' compensation received before executing an agreement to transfer those payment rights:
  - (I) adequate notice that the transaction involving the transfer of payment rights under workers' compensation involves the transfer of those payment rights; and
  - (II) an explanation of the financial consequences of and alternatives to the transfer of payment rights under workers' compensation in sufficient detail that the person transferring the payment rights under workers' compensation made an informed decision to transfer those payment rights; and
- (B) the transfer of payment rights under workers' compensation is in the best interest of the person transferring the payment rights under workers' compensation taking into account the welfare and support of that person's dependents.
- (c) The approval by the commission of the transfer of a person's payment rights under workers' compensation is a full and final resolution of the person's payment rights under workers' compensation that are transferred:
  - (i) if the commission approves the transfer of the payment rights under workers' compensation in accordance with Subsection (3)(b); and
  - (ii) once the person no longer has a right to appeal the decision in accordance with this title.

Amended by Chapter 63, 2007 General Session

**34A-2-423 Survival of claim in case of death.**

- (1) As used in this section:
  - (a) "Estate" is as defined in Section 75-1-201.
  - (b) "Personal representative" is as defined in Section 75-1-201.
- (2) The personal representative of the estate of an employee may adjudicate an employee's claim for compensation under this chapter if in accordance with this chapter, the employee files a claim:
  - (a) before the employee dies; and
  - (b) for compensation for an industrial accident or occupational disease for which compensation is payable under this chapter or Chapter 3, Utah Occupational Disease Act.
- (3) If the commission finds that the employee is entitled to compensation under this chapter for the claim described in Subsection (2)(a), the commission shall order that compensation be paid for the period:
  - (a) beginning on the day on which the employee is entitled to receive compensation under this chapter; and
  - (b) ending on the day on which the employee dies.
- (4)
  - (a) Compensation awarded under Subsection (3) shall be paid to:
    - (i) if the employee has one or more dependents on the day on which the employee dies, to the dependents of the employee; or
    - (ii) if the employee has no dependents on the day on which the employee dies, to the estate of the employee.
  - (b) The commission may apportion any compensation paid to dependents under this Subsection (4) in the manner that the commission considers just and equitable.
- (5) If an employee that files a claim under this chapter dies from the industrial accident or occupational disease that is the basis of the employee's claim, the compensation awarded under this section shall be in addition to death benefits awarded in accordance with Section 34A-2-414.

Enacted by Chapter 67, 2003 General Session

## Part 5 Industrial Noise

### 34A-2-501 Definitions.

(1) "Harmful industrial noise" means:

- (a) sound that results in acoustic trauma such as sudden instantaneous temporary noise or impulsive or impact noise exceeding 140 dB peak sound pressure levels; or
- (b) the sound emanating from equipment and machines during employment exceeding the following permissible sound levels, dBA slow response, and corresponding durations per day, in hours:

	Sound level	Duration
	90	8
	92	6
	95	4
	97	3
	100	2
	102	1.5
	105	1.0
	110	0.5
	115	0.25 or less

(2) "Loss of hearing" means binaural hearing loss measured in decibels with frequencies of 500, 1,000, 2,000, and 3,000 cycles per second (Hertz). If the average decibel loss at 500, 1,000, 2,000, and 3,000 cycles per second (Hertz) is 25 decibels or less, usually no hearing impairment exists.

Renumbered and Amended by Chapter 375, 1997 General Session

### 34A-2-502 Intensity tests.

- (1) The commission may conduct tests to determine the intensity of noise at places of employment.
- (2) An administrative law judge may consider tests conducted by the commission, and any other tests taken by authorities in the field of sound engineering, as evidence of harmful industrial noise.

Renumbered and Amended by Chapter 375, 1997 General Session

**34A-2-503 Loss of hearing -- Occupational hearing loss due to noise to be compensated.**

- (1) Permanent hearing loss caused by exposure to harmful industrial noise or by direct head injury shall be compensated according to the terms and conditions of this chapter or Chapter 3, Utah Occupational Disease Act.
- (2) A claim for compensation for hearing loss for harmful industrial noise may not be paid under this chapter or Chapter 3, Utah Occupational Disease Act, unless it can be demonstrated by a professionally controlled sound test that the employee has been exposed to harmful industrial noise as defined in Section 34A-2-501 while employed by the employer against whom the claim is made.

Renumbered and Amended by Chapter 375, 1997 General Session

**34A-2-504 Loss of hearing -- Extent of employer's liability.**

- (1) An employer is liable only for the hearing loss of an employee that arises out of and in the course of the employee's employment for that employer.
- (2) If previous occupational hearing loss or nonoccupational hearing impairment is established by competent evidence, the employer may not be liable for the prior hearing loss so established, whether or not compensation has previously been paid or awarded. The employer is liable only for the difference between the percentage of hearing loss presently established and that percentage of prior hearing loss established by preemployment audiogram or other competent evidence.
- (3) The date for compensation for occupational hearing loss shall be determined by the date of direct head injury or the last date when harmful industrial noise contributed substantially in causing the hearing loss.

Renumbered and Amended by Chapter 375, 1997 General Session

**34A-2-505 Loss of hearing -- Compensation for permanent partial disability.**

- (1) Compensation for permanent partial disability for binaural hearing loss shall be determined by multiplying the percentage of binaural hearing loss by 109 weeks of compensation benefits as provided in this chapter or Chapter 3, Utah Occupational Disease Act.
- (2) When an employee files one or more claims for hearing loss the percentage of hearing loss previously found to exist shall be deducted from any subsequent award by the commission.
- (3) In no event shall compensation benefits be paid for total or 100% binaural hearing loss exceeding 109 weeks of compensation benefits.

Renumbered and Amended by Chapter 375, 1997 General Session

**34A-2-506 Loss of hearing -- Time for filing claim.**

An employee's occupational hearing loss shall be reported to the employer pursuant to Section 34A-2-407 within 180 days of the date the employee:

- (1) first suffered altered hearing; and
- (2) knew, or in the exercise of reasonable diligence should have known, that the hearing loss was caused by employment.

Renumbered and Amended by Chapter 375, 1997 General Session

**34A-2-507 Measuring hearing loss.**

- (1) The degree of hearing loss shall be established, no sooner than six weeks after termination of exposure to the harmful industrial noise, by audiometric determination of hearing threshold level performed by medical or paramedical professionals recognized by the commission, as measured from 0 decibels on an audiometer calibrated to ANSI-S3.6-1969, American National Standard "Specifications for Audiometers" (1969).
- (2)
  - (a) In any evaluation of occupational hearing loss, only hearing levels at frequencies of 500, 1,000, 2,000, and 3,000 cycles per second (Hertz) shall be considered. The individual measurements for each ear shall be added together and then shall be divided by four to determine the average decibel loss in each ear.
  - (b) To determine the percentage of hearing loss in each ear, the average decibel loss for each decibel of loss exceeding 25 decibels shall be multiplied by 1.5% up to the maximum of 100% which is reached at 91.7 decibels.
- (3) Binaural hearing loss or the percentage of binaural hearing loss is determined by:
  - (a) multiplying the percentage of hearing loss in the better ear by five;
  - (b) adding the amount under Subsection (3)(a) with the percentage of hearing loss in the poorer ear; and
  - (c) dividing the number calculated under Subsection (3)(b) by six.

Renumbered and Amended by Chapter 375, 1997 General Session

## **Part 6 Medical Evaluations**

### **34A-2-601 Medical panel, director, or consultant -- Findings and reports -- Objections to report -- Hearing -- Expenses.**

- (1)
  - (a) The Division of Adjudication may refer the medical aspects of a case described in this Subsection (1)(a) to a medical panel appointed by an administrative law judge:
    - (i) upon the filing of a claim for compensation arising out of and in the course of employment for:
      - (A) disability by accident; or
      - (B) death by accident; and
    - (ii) if the employer or the employer's insurance carrier denies liability.
  - (b) An administrative law judge may appoint a medical panel upon the filing of a claim for compensation based upon disability or death due to an occupational disease.
  - (c) A medical panel appointed under this section shall consist of one or more physicians specializing in the treatment of the disease or condition involved in the claim.
  - (d) As an alternative method of obtaining an impartial medical evaluation of the medical aspects of a controverted case, the division may employ a medical director or one or more medical consultants:
    - (i) on a full-time or part-time basis; and
    - (ii) for the purpose of:
      - (A) evaluating medical evidence; and
      - (B) advising an administrative law judge with respect to the administrative law judge's ultimate fact-finding responsibility.

- (e) If all parties agree to the use of a medical director or one or more medical consultants, the medical director or one or more medical consultants is allowed to function in the same manner and under the same procedures as required of a medical panel.
- (2)
  - (a) A medical panel, medical director, or medical consultant may do the following to the extent the medical panel, medical director, or medical consultant determines that it is necessary or desirable:
    - (i) conduct a study;
    - (ii) take an x-ray;
    - (iii) perform a test; or
    - (iv) if authorized by an administrative law judge, conduct a post-mortem examination.
  - (b) A medical panel, medical director, or medical consultant shall make:
    - (i) a report in writing to the administrative law judge in a form prescribed by the Division of Adjudication; and
    - (ii) additional findings as the administrative law judge may require.
  - (c) In an occupational disease case, in addition to the requirements of Subsection (2)(b), a medical panel, medical director, or medical consultant shall certify to the administrative law judge:
    - (i) the extent, if any, of the disability of the claimant from performing work for remuneration or profit;
    - (ii) whether the sole cause of the disability or death, in the opinion of the medical panel, medical director, or medical consultant results from the occupational disease; and
    - (iii)
      - (A) whether any other cause aggravated, prolonged, accelerated, or in any way contributed to the disability or death; and
      - (B) if another cause contributed to the disability or death, the extent in percentage to which the other cause contributed to the disability or death.
  - (d)
    - (i) An administrative law judge shall promptly distribute full copies of a report submitted to the administrative law judge under this Subsection (2) by mail to:
      - (A) the applicant;
      - (B) the employer;
      - (C) the employer's insurance carrier; and
      - (D) an attorney employed by a person listed in Subsections (2)(d)(i)(A) through (C).
    - (ii) Within 20 days after the report described in Subsection (2)(d)(i) is deposited in the United States post office, the following may file with the administrative law judge a written objection to the report:
      - (A) the applicant;
      - (B) the employer; or
      - (C) the employer's insurance carrier.
    - (iii) If no written objection is filed within the period described in Subsection (2)(d)(ii), the report is considered admitted in evidence.
  - (e)
    - (i) An administrative law judge may base the administrative law judge's finding and decision on the report of:
      - (A) a medical panel;
      - (B) the medical director; or
      - (C) one or more medical consultants.

- (ii) Notwithstanding Subsection (2)(e)(i), an administrative law judge is not bound by a report described in Subsection (2)(e)(i) if other substantial conflicting evidence in the case supports a contrary finding.
- (f)
- (i) If a written objection to a report is filed under Subsection (2)(d), the administrative law judge may set the case for hearing to determine the facts and issues involved.
  - (ii) At a hearing held pursuant to this Subsection (2)(f), any party may request the administrative law judge to have any of the following present at the hearing for examination and cross-examination:
    - (A) the chair of the medical panel;
    - (B) the medical director; or
    - (C) the one or more medical consultants.
  - (iii) For good cause shown, an administrative law judge may order the following to be present at the hearing for examination and cross-examination:
    - (A) a member of a medical panel, with or without the chair of the medical panel;
    - (B) the medical director; or
    - (C) a medical consultant.
- (g)
- (i) A written report of a medical panel, medical director, or one or more medical consultants may be received as an exhibit at a hearing described in Subsection (2)(f).
  - (ii) Notwithstanding Subsection (2)(g)(i), a report received as an exhibit under Subsection (2)(g) (i) may not be considered as evidence in the case except as far as the report is sustained by the testimony admitted.
- (h) For a claim referred under Subsection (1) to a medical panel, medical director, or medical consultant before July 1, 1997, the commission shall pay out of the Employers' Reinsurance Fund established in Section 34A-2-702:
- (i) expenses of a study or report of the medical panel, medical director, or medical consultant; and
  - (ii) the expenses of the medical panel's, medical director's, or medical consultant's appearance before an administrative law judge.
- (i)
- (i) For a claim referred under Subsection (1) to a medical panel, medical director, or medical consultant on or after July 1, 1997, the commission shall pay out of the Uninsured Employers' Fund established in Section 34A-2-704 the expenses of:
    - (A) a study or report of the medical panel, medical director, or medical consultant; and
    - (B) the medical panel's, medical director's, or medical consultant's appearance before an administrative law judge.
  - (ii) Notwithstanding Section 34A-2-704, the expenses described in Subsection (2)(i)(i) shall be paid from the Uninsured Employers' Fund whether or not the employment relationship during which the industrial accident or occupational disease occurred is localized in Utah as described in Subsection 34A-2-704(20).
- (3)
- (a) The commission may employ a qualified physician as medical panel director who, in addition to the other duties outlined in this section for a medical director, is responsible for:
    - (i) assisting the commission in creating and enforcing standards for medical panels and medical consultants;
    - (ii) training members of medical panels or medical consultants;
    - (iii) increasing the number of physicians who participate on medical panels;

- (iv) ensuring medical panels include appropriate specialists; and
- (v) monitoring the quality of medical panel and medical consultant reports.
- (b) The commission shall pay the expenses of employing a medical panel director described in this Subsection (3) out of the Uninsured Employers' Fund established in Section 34A-2-704.

Amended by Chapter 428, 2013 General Session

**34A-2-602 Physical examinations.**

- (1) The division or an administrative law judge may require an employee claiming the right to receive compensation under this chapter to submit to a medical examination at any time, and from time to time, at a place reasonably convenient for the employee, and as may be provided by the rules of the commission.
- (2) If an employee refuses to submit to an examination under Subsection (1), or obstructs the examination, the employee's right to have the employee's claim for compensation considered, if the employee's claim is pending before an administrative law judge, commissioner, or Appeals Board, or to receive any payments for compensation theretofore granted by a final order of the commission, shall be suspended during the period of the refusal or obstruction.

Renumbered and Amended by Chapter 375, 1997 General Session

**34A-2-603 Autopsy in death cases -- Certified pathologist -- Attending physicians -- Penalty for refusal to permit -- Liability.**

- (1)
  - (a) On the filing of a claim for compensation for death under this chapter or Chapter 3, Utah Occupational Disease Act, when, in the opinion of the commissioner or the commissioner's designee it is necessary to accurately and scientifically ascertain the cause of death, an autopsy may be ordered by the commissioner or the commissioner's designee.
  - (b) The commissioner or the commissioner's designee shall:
    - (i) designate the certified pathologist to make the autopsy; and
    - (ii) determine who shall pay the charge of the certified pathologist making the autopsy.
- (2) Any person interested may designate a duly licensed physician to attend the autopsy ordered under Subsection (1).
- (3) The findings of the certified pathologist performing the autopsy shall be filed with the commission.
- (4) All proceedings for compensation shall be suspended upon refusal of a claimant or claimants to permit such autopsy when ordered under Subsection (1).
- (5) When an autopsy has been performed pursuant to an order of the commissioner or the commissioner's designee no cause of action shall lie against any person, firm, or corporation for participating in or requesting the autopsy.

Renumbered and Amended by Chapter 375, 1997 General Session

**34A-2-604 Employee leaving place of treatment.**

- (1) An injured employee who desires to leave the locality in which the employee has been employed during the treatment of the employee's injury, or to leave this state, shall:
  - (a) report to the employee's attending physician for examination;
  - (b) notify the division in writing of the intention to leave; and
  - (c) accompany the notice with a certificate from the attending physician setting forth:

- (i) the exact nature of the injury;
  - (ii) the condition of the employee; and
  - (iii) a statement of the probable length of time disability will continue.
- (2) An employee may leave the locality in which the employee was employed only after:
- (a) complying with Subsection (1); and
  - (b) receiving the written consent of the division.
- (3) If an employee does not comply with this section, compensation may not be allowed during the absence.

Renumbered and Amended by Chapter 375, 1997 General Session

## **Part 7 Funds**

### **34A-2-701 Premium assessment restricted account for safety.**

- (1) There is created in the General Fund a restricted account known as the "Workplace Safety Account."
- (2)
- (a) An amount equal to 0.25% of the premium income remitted to the state treasurer pursuant to Subsection 59-9-101(2)(c)(ii) shall be deposited in the Workplace Safety Account in the General Fund for use as provided in this section.
  - (b) Beginning with fiscal year 2008-09, if the balance in the Workplace Safety Account exceeds \$500,000 at the close of a fiscal year, the excess shall be transferred to the Employers' Reinsurance Fund, created under Subsection 34A-2-702(1).
- (3) The Legislature shall appropriate from the restricted account money to one or both of the following:
- (a) money to the commission for use by the commission to:
    - (i) improve safety consultation services available to Utah employers; or
    - (ii) provide for electronic or print media advertising campaigns designed to promote workplace safety; and
  - (b) subject to Subsection (7), money known as the "Eddie P. Mayne Workplace Safety and Occupational Health Funding Program":
    - (i) to an institution within the state system of higher education, as defined in Section 53B-1-102; and
    - (ii) to be expended by an education and research center that is:
      - (A) affiliated with the institution described in Subsection (3)(b)(i); and
      - (B) designated as an education and research center by the National Institute for Occupational Safety and Health.
- (4) From money appropriated by the Legislature from the restricted account to the commission for use by the commission, the commission may fund other safety programs or initiatives recommended to it by its state workers' compensation advisory council created under Section 34A-2-107.
- (5)
- (a) The commission shall annually report to the governor, the Legislature, and its state council regarding:
    - (i) the use of the money appropriated to the commission under Subsection (3) or (4); and

- (ii) the impact of the use of the money on the safety of Utah's workplaces.
- (b) By no later than August 15 following a fiscal year in which an education and research center receives money from an appropriation under Subsection (3)(b), the education and research center shall report:
  - (i) to:
    - (A) the governor;
    - (B) the Legislature;
    - (C) the commission; and
    - (D) the state workers' compensation advisory council created under Section 34A-2-107; and
  - (ii) regarding:
    - (A) the use of the money appropriated under Subsection (3)(b); and
    - (B) the impact of the use of the money on the safety of Utah's workplaces.
- (6) The money deposited in the restricted account:
  - (a) shall be:
    - (i) used only for the activities described in Subsection (3) or (4); and
    - (ii) expended according to processes that can be verified by audit; and
  - (b) may not be used by the commission for:
    - (i) administrative costs unrelated to the restricted account; or
    - (ii) any activity of the commission other than the activities of the commission described in Subsection (3) or (4).
- (7) The total of appropriations under Subsection (3)(b) may not exceed for a fiscal year an amount equal to 20% of the premium income remitted to the state treasurer pursuant to Subsection 59-9-101(2)(c) and deposited in the Workplace Safety Account during the previous fiscal year.

Amended by Chapter 85, 2009 General Session

**34A-2-702 Employers' Reinsurance Fund -- Injury causing death -- Burial expenses -- Payments to dependents.**

- (1)
  - (a) There is created an Employers' Reinsurance Fund for the purpose of making a payment for an industrial accident or occupational disease occurring on or before June 30, 1994. A payment made under this section shall be made in accordance with this chapter or Chapter 3, Utah Occupational Disease Act. The Employers' Reinsurance Fund has no liability for an industrial accident or occupational disease occurring on or after July 1, 1994.
  - (b) The Employers' Reinsurance Fund succeeds to all money previously held in the "Special Fund," the "Combined Injury Fund," or the "Second Injury Fund."
  - (c) The commissioner shall appoint an administrator of the Employers' Reinsurance Fund.
  - (d) The state treasurer shall be the custodian of the Employers' Reinsurance Fund.
  - (e) The administrator shall make provisions for and direct a distribution from the Employers' Reinsurance Fund.
  - (f) Reasonable costs of administering the Employers' Reinsurance Fund or other fees may be paid from the Employers' Reinsurance Fund.
- (2) The state treasurer shall:
  - (a) receive workers' compensation premium assessments from the State Tax Commission; and
  - (b) invest the Employers' Reinsurance Fund to ensure maximum investment return for both long and short term investments in accordance with Section 51-7-12.5.
- (3)

- (a) The administrator may employ, retain, or appoint counsel to represent the Employers' Reinsurance Fund in a proceeding brought to enforce a claim against or on behalf of the Employers' Reinsurance Fund.
  - (b) If requested by the commission, the attorney general shall aid in representation of the Employers' Reinsurance Fund.
- (4) The liability of the state, its departments, agencies, instrumentalities, elected or appointed officials, or other duly authorized agents, with respect to payment of compensation benefits, expenses, fees, medical expenses, or disbursement properly chargeable against the Employers' Reinsurance Fund, is limited to the cash or assets in the Employers' Reinsurance Fund, and they are not otherwise, in any way, liable for the operation, debts, or obligations of the Employers' Reinsurance Fund.
- (5)
- (a) If injury causes death within a period of 312 weeks from the date of the accident, the employer or insurance carrier shall pay:
    - (i) the burial expenses of the deceased as provided in Section 34A-2-418; and
    - (ii) benefits in the amount and to a person provided for in this Subsection (5).
  - (b)
    - (i) If there is a wholly dependent person at the time of the death, the payment by the employer or its insurance carrier shall be:
      - (A) subject to Subsections (5)(b)(i)(B) and (C), 66-2/3% of the decedent's average weekly wage at the time of the injury;
      - (B) not more than a maximum of 85% of the state average weekly wage at the time of the injury per week; and
    - (C)
      - (I) not less than a minimum of \$45 per week, plus:
        - (Aa) \$5 for a dependent spouse; and
        - (Bb) \$5 for each dependent minor child under the age of 18 years, up to a maximum of four such dependent minor children; and
      - (II) not exceeding:
        - (Aa) the average weekly wage of the employee at the time of the injury; and
        - (Bb) 85% of the state average weekly wage at the time of the injury per week.
    - (ii) Compensation shall continue during dependency for the remainder of the period between the date of the death and the expiration of 312 weeks after the date of the injury.
  - (iii)
    - (A) The payment by the employer or its insurance carrier to a wholly dependent person during dependency following the expiration of the first 312-week period described in Subsection (5)(b)(ii) shall be an amount equal to the weekly benefits paid to the wholly dependent person during the initial 312-week period, reduced by 50% of the federal Social Security death benefits the wholly dependent person:
      - (I) is eligible to receive for a week as of the first day the employee is eligible to receive a Social Security death benefit; and
      - (II) receives.
    - (B) An employer or its insurance carrier may not reduce compensation payable under this Subsection (5)(b)(iii) on or after May 5, 2008, to a wholly dependent person by an amount related to a cost-of-living increase to the Social Security death benefits that the wholly dependent person is first eligible to receive for a week, notwithstanding whether the employee is injured on or before May 4, 2008.

- (C) For purposes of a wholly dependent person whose compensation payable is reduced under this Subsection (5)(b)(iii) on or before May 4, 2008, the reduction is limited to the amount of the reduction as of May 4, 2008.
- (iv) The issue of dependency is subject to review at the end of the initial 312-week period and annually after the initial 312-week period. If in a review it is determined that, under the facts and circumstances existing at that time, the applicant is no longer a wholly dependent person, the applicant:
  - (A) may be considered a partly dependent or nondependent person; and
  - (B) shall be paid the benefits as may be determined under Subsection (5)(d)(iii).
- (c)
  - (i) For purposes of a dependency determination, a surviving spouse of a deceased employee is conclusively presumed to be wholly dependent for a 312-week period from the date of death of the employee. This presumption does not apply after the initial 312-week period.
  - (ii)
    - (A) In determining the annual income of the surviving spouse after the initial 312-week period, there shall be excluded 50% of a federal Social Security death benefit that the surviving spouse:
      - (I) is eligible to receive for a week as of the first day the surviving spouse is eligible to receive a Social Security death benefit; and
      - (II) receives.
    - (B) An employer or its insurance carrier may not reduce compensation payable under this Subsection (5)(c)(ii) on or after May 5, 2008, to a surviving spouse by an amount related to a cost-of-living increase to the Social Security death benefits that the surviving spouse is first eligible to receive for a week, notwithstanding whether the employee is injured on or before May 4, 2008.
    - (C) For purposes of a surviving spouse whose compensation payable is reduced under this Subsection (5)(c)(ii) on or before May 4, 2008, the reduction is limited to the amount of the reduction as of May 4, 2008.
- (d)
  - (i) If there is a partly dependent person at the time of the death, the payment shall be:
    - (A) subject to Subsections (5)(d)(i)(B) and (C), 66-2/3% of the decedent's average weekly wage at the time of the injury;
    - (B) not more than a maximum of 85% of the state average weekly wage at the time of the injury per week; and
    - (C) not less than a minimum of \$45 per week.
  - (ii) Compensation shall continue during dependency for the remainder of the period between the date of death and the expiration of 312 weeks after the date of injury. Compensation may not amount to more than a maximum of \$30,000.
  - (iii) The benefits provided for in this Subsection (5)(d) shall be in keeping with the circumstances and conditions of dependency existing at the date of injury, and any amount paid under this Subsection (5)(d) shall be consistent with the general provisions of this chapter and Chapter 3, Utah Occupational Disease Act.
  - (iv) Benefits to a person determined to be partly dependent under Subsection (5)(c):
    - (A) shall be determined in keeping with the circumstances and conditions of dependency existing at the time of the dependency review; and
    - (B) may be paid in an amount not exceeding the maximum weekly rate that a partly dependent person would receive if wholly dependent.

- (v) A payment under this section shall be paid to a person during a person's dependency by the employer or its insurance carrier.
- (e)
  - (i) Subject to Subsection (5)(e)(ii), if there is a wholly dependent person and also a partly dependent person at the time of death, the benefits may be apportioned in a manner consistent with Section 34A-2-414.
  - (ii) The total benefits awarded to all parties concerned may not exceed the maximum provided for by law.
- (6) The Employers' Reinsurance Fund:
  - (a) shall be:
    - (i) used only in accordance with Subsection (1) for:
      - (A) the purpose of making a payment for an industrial accident or occupational disease occurring on or before June 30, 1994, in accordance with this section and Section 34A-2-703; and
      - (B) payment of:
        - (I) reasonable costs of administering the Employers' Reinsurance Fund; or
        - (II) fees required to be paid by the Employers' Reinsurance Fund;
    - (ii) expended according to processes that can be verified by audit; and
  - (b) may not be used for:
    - (i) administrative costs unrelated to the Employers' Reinsurance Fund; or
    - (ii) an activity of the commission other than an activity described in Subsection (6)(a).

Amended by Chapter 27, 2008 General Session

Amended by Chapter 90, 2008 General Session

### **34A-2-703 Payments from Employers' Reinsurance Fund.**

If an employee, who has at least a 10% whole person permanent impairment from any cause or origin, subsequently incurs an additional impairment by an accident arising out of and in the course of the employee's employment during the period of July 1, 1988, to June 30, 1994, inclusive, and if the additional impairment results in permanent total disability, the employer or its insurance carrier and the Employers' Reinsurance Fund are liable for the payment of benefits as follows:

- (1) The employer or its insurance carrier is liable for the first \$20,000 of medical benefits and the initial 156 weeks of permanent total disability compensation as provided in this chapter or Chapter 3, Utah Occupational Disease Act.
- (2) Reasonable medical benefits in excess of the first \$20,000 shall be paid in the first instance by the employer or its insurance carrier. Then, as provided in Subsection (5), the Employers' Reinsurance Fund shall reimburse the employer or its insurance carrier for 50% of those expenses.
- (3) After the initial 156-week period under Subsection (1), permanent total disability compensation payable to an employee under this chapter or Chapter 3, Utah Occupational Disease Act, becomes the liability of and shall be paid by the Employers' Reinsurance Fund.
- (4) If it is determined that the employee is permanently and totally disabled, the employer or its insurance carrier shall be given credit for all prior payments of temporary total, temporary partial, and permanent partial disability compensation made as a result of the industrial accident. An overpayment by the employer or its insurance carrier shall be reimbursed by the Employers' Reinsurance Fund under Subsection (5).
- (5)
  - (a)

- (i) Upon receipt of a duly verified petition, the Employers' Reinsurance Fund shall reimburse the employer or its insurance carrier for the Employers' Reinsurance Fund's share of medical benefits and compensation paid to or on behalf of an employee.
- (ii) A request for Employers' Reinsurance Fund reimbursements shall be accompanied by satisfactory evidence of payment of the medical or disability compensation for which the reimbursement is requested.
- (iii) A request is subject to review as to reasonableness by the administrator. The administrator may determine the manner of reimbursement.
- (b) A decision of the administrator under Subsection (5)(a) may be appealed in accordance with Part 8, Adjudication.
- (c) An employer or its insurance carrier shall submit to the Employers' Reinsurance Fund, by June 30, 2018, a request for reimbursement related to medical benefits or compensation paid on or before July 1, 2016.
- (d) An employer or its insurance carrier shall submit to the Employers' Reinsurance Fund a request for reimbursement related to medical benefits or compensation paid after July 1, 2016, within 24 months of the later of:
  - (i) the date the benefits or compensation are paid by the employer or its insurance carrier; or
  - (ii) the date the Employers' Reinsurance Fund is determined to be liable.
- (e) Requests for reimbursement not submitted in accordance with Subsection (5)(c) or (5)(d) are considered untimely and the Employers' Reinsurance Fund may not reimburse the benefits or compensation paid.
- (6) If, at the time an employee is determined to have a permanent, total disability, the employee has other actionable workers' compensation claims, the employer or insurance carrier that is liable for the last industrial accident resulting in permanent total disability shall be liable for the benefits payable by the employer as provided in this section and Section 34A-2-413. The employee's entitlement to benefits for prior actionable claims shall then be determined separately on the facts of those claims. A previous permanent partial disability arising out of those claims shall then be considered to be impairments that may give rise to Employers' Reinsurance Fund liability under this section.

Amended by Chapter 235, 2016 General Session

**34A-2-704 Uninsured Employers' Fund.**

- (1)
  - (a) There is created an Uninsured Employers' Fund. The Uninsured Employers' Fund has the purpose of assisting in the payment of workers' compensation benefits to a person entitled to the benefits, if:
    - (i) that person's employer:
      - (A) is individually, jointly, or severally liable to pay the benefits; and
      - (B)
        - (I) becomes or is insolvent;
        - (II) appoints or has appointed a receiver; or
        - (III) otherwise does not have sufficient funds, insurance, sureties, or other security to cover workers' compensation liabilities; and
    - (ii) the employment relationship between that person and the person's employer is localized within the state as provided in Subsection (20).
  - (b) The Uninsured Employers' Fund succeeds to money previously held in the Default Indemnity Fund.

- (c) If it becomes necessary to pay benefits, the Uninsured Employers' Fund is liable for the obligations of the employer set forth in this chapter and Chapter 3, Utah Occupational Disease Act, with the exception of a penalty on those obligations.
- (2)
  - (a) Money for the Uninsured Employers' Fund shall be deposited into the Uninsured Employers' Fund in accordance with this chapter, Subsection 59-9-101(2), and Subsection 34A-2-213(3).
  - (b) The commissioner shall appoint an administrator of the Uninsured Employers' Fund.
  - (c)
    - (i) The state treasurer is the custodian of the Uninsured Employers' Fund.
    - (ii) The administrator shall make provisions for and direct distribution from the Uninsured Employers' Fund.
- (3) Reasonable costs of administering the Uninsured Employers' Fund or other fees required to be paid by the Uninsured Employers' Fund may be paid from the Uninsured Employers' Fund.
- (4) The state treasurer shall:
  - (a) receive workers' compensation premium assessments from the State Tax Commission; and
  - (b) invest the Uninsured Employers' Fund to ensure maximum investment return for both long and short term investments in accordance with Section 51-7-12.5.
- (5)
  - (a) The administrator may employ, retain, or appoint counsel to represent the Uninsured Employers' Fund in a proceeding brought to enforce a claim against or on behalf of the Uninsured Employers' Fund.
  - (b) If requested by the commission, the following shall aid in the representation of the Uninsured Employers' Fund:
    - (i) the attorney general; or
    - (ii) the city attorney, or county attorney of the locality in which:
      - (A) an investigation, hearing, or trial under this chapter or Chapter 3, Utah Occupational Disease Act, is pending;
      - (B) the employee resides; or
      - (C) an employer:
        - (I) resides; or
        - (II) is doing business.
  - (c)
    - (i) Notwithstanding Title 63A, Chapter 3, Part 5, Office of State Debt Collection, the administrator shall provide for the collection of money required to be deposited in the Uninsured Employers' Fund under this chapter and Chapter 3, Utah Occupational Disease Act.
    - (ii) To comply with Subsection (5)(c)(i), the administrator may:
      - (A) take appropriate action, including docketing an award in a manner consistent with Section 34A-2-212; and
      - (B) employ counsel and other personnel necessary to collect the money described in Subsection (5)(c)(i).
- (6) To the extent of the compensation and other benefits paid or payable to or on behalf of an employee or the employee's dependents from the Uninsured Employers' Fund, the Uninsured Employers' Fund, by subrogation, has the rights, powers, and benefits of the employee or the employee's dependents against the employer failing to make the compensation payments.
- (7)

- (a) The receiver, trustee, liquidator, or statutory successor of an employer meeting a condition listed in Subsection (1)(a)(i)(B) is bound by a settlement of a covered claim by the Uninsured Employers' Fund.
  - (b) A court with jurisdiction shall grant a payment made under this section a priority equal to that to which the claimant would have been entitled in the absence of this section against the assets of the employer meeting a condition listed in Subsection (1)(a)(i)(B).
  - (c) The expenses of the Uninsured Employers' Fund in handling a claim shall be accorded the same priority as the liquidator's expenses.
- (8)
- (a) The administrator shall periodically file the information described in Subsection (8)(b) with the receiver, trustee, or liquidator of:
    - (i) an employer that meets a condition listed in Subsection (1)(a)(i)(B);
    - (ii) a public agency insurance mutual, as defined in Section 31A-1-103, that meets a condition listed in Subsection (1)(a)(i)(B); or
    - (iii) an insolvent insurance carrier.
  - (b) The information required to be filed under Subsection (8)(a) is:
    - (i) a statement of the covered claims paid by the Uninsured Employers' Fund; and
    - (ii) an estimate of anticipated claims against the Uninsured Employers' Fund.
  - (c) A filing under this Subsection (8) preserves the rights of the Uninsured Employers' Fund for claims against the assets of the employer that meets a condition listed in Subsection (1)(a)(i)(B).
- (9) When an injury or death for which compensation is payable from the Uninsured Employers' Fund has been caused by the wrongful act or neglect of another person not in the same employment, the Uninsured Employers' Fund has the same rights as allowed under Section 34A-2-106.
- (10) The Uninsured Employers' Fund, subject to approval of the administrator, shall discharge its obligations by:
- (a) adjusting its own claims; or
  - (b) contracting with an adjusting company, risk management company, insurance company, or other company that has expertise and capabilities in adjusting and paying workers' compensation claims.
- (11)
- (a) For the purpose of maintaining the Uninsured Employers' Fund, an administrative law judge, upon rendering a decision with respect to a claim for workers' compensation benefits in which an employer that meets a condition listed in Subsection (1)(a)(i)(B) is duly joined as a party, shall:
    - (i) order the employer that meets a condition listed in Subsection (1)(a)(i)(B) to reimburse the Uninsured Employers' Fund for the benefits paid to or on behalf of an injured employee by the Uninsured Employers' Fund along with interest, costs, and attorney fees; and
    - (ii) impose a penalty against the employer that meets a condition listed in Subsection (1)(a)(i)(B):
      - (A) of 15% of the value of the total award in connection with the claim; and
      - (B) that shall be deposited into the Uninsured Employers' Fund.
  - (b) An award under this Subsection (11) shall be collected by the administrator in accordance with Subsection (5)(c).
- (12) The state, the commission, and the state treasurer, with respect to payment of compensation benefits, expenses, fees, or disbursement properly chargeable against the Uninsured Employers' Fund:

- (a) are liable only to the assets in the Uninsured Employers' Fund; and
  - (b) are not otherwise in any way liable for the making of a payment.
- (13) The commission may make reasonable rules for the processing and payment of a claim for compensation from the Uninsured Employers' Fund.
- (14)
- (a)
    - (i) If it becomes necessary for the Uninsured Employers' Fund to pay benefits under this section to an employee described in Subsection (14)(a)(ii), the Uninsured Employers' Fund may assess all other self-insured employers amounts necessary to pay:
      - (A) the obligations of the Uninsured Employers' Fund subsequent to a condition listed in Subsection (1)(a)(i)(B) occurring;
      - (B) the expenses of handling covered a claim subsequent to a condition listed in Subsection (1)(a)(i)(B) occurring;
      - (C) the cost of an examination under Subsection (15); and
      - (D) other expenses authorized by this section.
    - (ii) This Subsection (14) applies to benefits paid to an employee of:
      - (A) a self-insured employer, as defined in Section 34A-2-201.5, that meets a condition listed in Subsection (1)(a)(i)(B); or
      - (B) if the self-insured employer that meets a condition described in Subsection (1)(a)(i)(B) is a public agency insurance mutual, a member of the public agency insurance mutual.
  - (b) The assessments of a self-insured employer shall be in the proportion that the manual premium of the self-insured employer for the preceding calendar year bears to the manual premium of all self-insured employers for the preceding calendar year.
  - (c) A self-insured employer shall be notified of the self-insured employer's assessment not later than 30 days before the day on which the assessment is due.
  - (d)
    - (i) A self-insured employer may not be assessed in any year an amount greater than 2% of that self-insured employer's manual premium for the preceding calendar year.
    - (ii) If the maximum assessment does not provide in a year an amount sufficient to make all necessary payments from the Uninsured Employers' Fund for one or more self-insured employers that meet a condition listed in Subsection (1)(a)(i)(B), the unpaid portion shall be paid as soon as money becomes available.
  - (e) A self-insured employer is liable under this section for a period not to exceed three years after the day on which the Uninsured Employers' Fund first pays benefits to an employee described in Subsection (14)(a)(ii) for the self-insured employer that meets a condition listed in Subsection (1)(a)(i)(B).
  - (f) This Subsection (14) does not apply to a claim made against a self-insured employer that meets a condition listed in Subsection (1)(a)(i)(B) if the condition listed in Subsection (1)(a)(i)(B) occurred before July 1, 1986.
- (15)
- (a) The following shall notify the division of any information indicating that any of the following may be insolvent or in a financial condition hazardous to its employees or the public:
    - (i) a self-insured employer; or
    - (ii) if the self-insured employer is a public agency insurance mutual, a member of the public agency insurance mutual.
  - (b) Upon receipt of the notification described in Subsection (15)(a) and with good cause appearing, the division may order an examination of:
    - (i) that self-insured employer; or

- (ii) if the self-insured employer is a public agency insurance mutual, a member of the public agency mutual.
  - (c) The cost of the examination ordered under Subsection (15)(b) shall be assessed against all self-insured employers as provided in Subsection (14).
  - (d) The results of the examination ordered under Subsection (15)(b) shall be kept confidential.
- (16)
- (a) In a claim against an employer by the Uninsured Employers' Fund, or by or on behalf of the employee to whom or to whose dependents compensation and other benefits are paid or payable from the Uninsured Employers' Fund, the burden of proof is on the employer or other party in interest objecting to the claim.
  - (b) A claim described in Subsection (16)(a) is presumed to be valid up to the full amount of workers' compensation benefits claimed by the employee or the employee's dependents.
  - (c) This Subsection (16) applies whether the claim is filed in court or in an adjudicative proceeding under the authority of the commission.
- (17) A partner in a partnership or an owner of a sole proprietorship may not recover compensation or other benefits from the Uninsured Employers' Fund if:
- (a) the person is not included as an employee under Subsection 34A-2-104(3); or
  - (b) the person is included as an employee under Subsection 34A-2-104(3), but:
    - (i) the person's employer fails to insure or otherwise provide adequate payment of direct compensation; and
    - (ii) the failure described in Subsection (17)(b)(i) is attributable to an act or omission over which the person had or shared control or responsibility.
- (18) A director or officer of a corporation may not recover compensation or other benefits from the Uninsured Employers' Fund if the director or officer is excluded from coverage under Subsection 34A-2-104(4).
- (19) The Uninsured Employers' Fund:
- (a) shall be:
    - (i) used in accordance with this section only for:
      - (A) the purpose of assisting in the payment of workers' compensation benefits in accordance with Subsection (1); and
      - (B) in accordance with Subsection (3), payment of:
        - (I) reasonable costs of administering the Uninsured Employers' Fund; or
        - (II) fees required to be paid by the Uninsured Employers' Fund; and
    - (ii) expended according to processes that can be verified by audit; and
  - (b) may not be used for:
    - (i) administrative costs unrelated to the Uninsured Employers' Fund; or
    - (ii) an activity of the commission other than an activity described in Subsection (19)(a).
- (20)
- (a) For purposes of Subsection (1), an employment relationship is localized in the state if:
    - (i)
      - (A) the employer who is liable for the benefits has a business premise in the state; and
      - (B)
        - (I) the contract for hire is entered into in the state; or
        - (II) the employee regularly performs work duties in the state for the employer who is liable for the benefits; or
    - (ii) the employee is:
      - (A) a resident of the state; and
      - (B) regularly performs work duties in the state for the employer who is liable for the benefits.

- (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission shall by rule define what constitutes regularly performing work duties in the state.

Amended by Chapter 417, 2013 General Session

**34A-2-705 Industrial Accident Restricted Account.**

- (1) As used in this section:
  - (a) "Account" means the Industrial Accident Restricted Account created by this section.
  - (b) "Advisory council" means the state workers' compensation advisory council created under Section 34A-2-107.
- (2) There is created in the General Fund a restricted account known as the "Industrial Accident Restricted Account."
- (3)
  - (a) The account is funded from:
    - (i) .5% of the premium income remitted to the state treasurer and credited to the account pursuant to Subsection 59-9-101(2)(c)(iv); and
    - (ii) amounts deposited under Section 34A-2-1003.
  - (b) If the balance in the account exceeds \$500,000 at the close of a fiscal year, the excess shall be transferred to the Uninsured Employers' Fund created under Section 34A-2-704.
- (4)
  - (a) From money appropriated by the Legislature from the account to the commission and subject to the requirements of this section, the commission may fund:
    - (i) the activities of the Division of Industrial Accidents described in Section 34A-1-202;
    - (ii) the activities of the Division of Adjudication described in Section 34A-1-202; and
    - (iii) the activities of the commission described in Section 34A-2-1005.
  - (b) The money deposited in the account may not be used for a purpose other than a purpose described in this Subsection (4), including an administrative cost or another activity of the commission unrelated to the account.
- (5)
  - (a) Each year before the public hearing required by Subsection 59-9-101(2)(d)(i), the commission shall report to the advisory council regarding:
    - (i) the commission's budget request to the governor for the next fiscal year related to:
      - (A) the Division of Industrial Accidents; and
      - (B) the Division of Adjudication;
    - (ii) the expenditures of the commission for the fiscal year in which the commission is reporting related to:
      - (A) the Division of Industrial Accidents; and
      - (B) the Division of Adjudication;
    - (iii) revenues generated from the premium assessment under Section 59-9-101 on an admitted insurer writing workers' compensation insurance in this state and on a self-insured employer under Section 34A-2-202; and
    - (iv) money deposited under Section 34A-2-1003.
  - (b) The commission shall annually report to the governor and the Legislature regarding:
    - (i) the use of the money appropriated to the commission under this section;
    - (ii) revenues generated from the premium assessment under Section 59-9-101 on an admitted insurer writing workers' compensation insurance in this state and on a self-insured employer under Section 34A-2-202; and
    - (iii) money deposited under Section 34A-2-1003.

Amended by Chapter 328, 2011 General Session

## **Part 8 Adjudication**

### **34A-2-801 Initiating adjudicative proceedings -- Procedure for review of administrative action.**

- (1)
- (a) To contest an action of the employee's employer or its insurance carrier concerning a compensable industrial accident or occupational disease alleged by the employee or a dependent any of the following shall file an application for hearing with the Division of Adjudication:
    - (i) the employee;
    - (ii) a representative of the employee, the qualifications of whom are defined in rule by the commission; or
    - (iii) a dependent as described in Section 34A-2-403.
  - (b) To appeal the imposition of a penalty or other administrative act imposed by the division on the employer or its insurance carrier for failure to comply with this chapter or Chapter 3, Utah Occupational Disease Act, any of the following shall file an application for hearing with the Division of Adjudication:
    - (i) the employer;
    - (ii) the insurance carrier; or
    - (iii) a representative of either the employer or the insurance carrier, the qualifications of whom are defined in rule by the commission.
  - (c) A person providing goods or services described in Subsections 34A-2-407(12) and 34A-3-108(13) may file an application for hearing in accordance with Section 34A-2-407 or 34A-3-108.
  - (d) An attorney may file an application for hearing in accordance with Section 34A-1-309.
- (2)
- (a) Unless all parties agree to the assignment in writing, the Division of Adjudication may not assign the same administrative law judge to hear a claim under this section by an injured employee if the administrative law judge previously heard a claim by the same injured employee for a different injury or occupational disease.
  - (b) Unless all parties agree to the appointment in writing, an administrative law judge may not appoint the same medical panel or individual panel member to evaluate a claim by an injured employee if the medical panel or individual panel member previously evaluated a claim by the same injured employee for a different injury or occupational disease.
- (3) Unless a party in interest appeals the decision of an administrative law judge in accordance with Subsection (4), the decision of an administrative law judge on an application for hearing filed under Subsection (1) is a final order of the commission 30 days after the day on which the decision is issued. An administrative law judge shall issue a decision by no later than 60 days from the day on which the hearing is held under this part unless:
- (a) the parties agree to a longer period of time; or
  - (b) a decision within the 60-day period is impracticable.
- (4)

- (a) A party in interest may appeal the decision of an administrative law judge by filing a motion for review with the Division of Adjudication within 30 days of the date the decision is issued.
- (b) Unless a party in interest to the appeal requests under Subsection (4)(c) that the appeal be heard by the Appeals Board, the commissioner shall hear the review.
- (c) A party in interest may request that an appeal be heard by the Appeals Board by filing the request with the Division of Adjudication:
  - (i) as part of the motion for review; or
  - (ii) if requested by a party in interest who did not file a motion for review, within 20 days of the day on which the motion for review is filed with the Division of Adjudication.
- (d) A case appealed to the Appeals Board shall be decided by the majority vote of the Appeals Board.
- (5) The Division of Adjudication shall maintain a record on appeal, including an appeal docket showing the receipt and disposition of the appeals on review.
- (6) Upon appeal, the commissioner or Appeals Board shall make its decision in accordance with Section 34A-1-303. The commissioner or Appeals Board shall issue a decision under this part by no later than 90 days from the day on which the motion for review is filed unless:
  - (a) the parties agree to a longer period of time; or
  - (b) a decision within the 90-day period is impracticable.
- (7) The commissioner or Appeals Board shall promptly notify the parties to a proceeding before it of its decision, including its findings and conclusions.
- (8)
  - (a) Subject to Subsection (8)(b), the decision of the commissioner or Appeals Board is final unless within 30 days after the date the decision is issued further appeal is initiated under the provisions of this section or Title 63G, Chapter 4, Administrative Procedures Act.
  - (b) In the case of an award of permanent total disability benefits under Section 34A-2-413, the decision of the commissioner or Appeals Board is a final order of the commission unless set aside by the court of appeals.
- (9)
  - (a) Within 30 days after the day on which the decision of the commissioner or Appeals Board is issued, an aggrieved party may secure judicial review by commencing an action in the court of appeals against the commissioner or Appeals Board for the review of the decision of the commissioner or Appeals Board.
  - (b) In an action filed under Subsection (9)(a):
    - (i) any other party to the proceeding before the commissioner or Appeals Board shall be made a party; and
    - (ii) the commission shall be made a party.
  - (c) A party claiming to be aggrieved may seek judicial review only if the party exhausts the party's remedies before the commission as provided by this section.
  - (d) At the request of the court of appeals, the commission shall certify and file with the court all documents and papers and a transcript of all testimony taken in the matter together with the decision of the commissioner or Appeals Board.
- (10)
  - (a) The commission shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to facilitate timely completion of administrative actions under this part.
  - (b) The commission shall monitor the time from filing of an application for a hearing to issuance of a final order of the commission for cases brought under this part.

Amended by Chapter 187, 2016 General Session

Amended by Chapter 242, 2016 General Session

**34A-2-802 Rules of evidence and procedure before commission -- Admissible evidence.**

- (1) The commission, the commissioner, an administrative law judge, or the Appeals Board, is not bound by the usual common law or statutory rules of evidence, or by any technical or formal rules or procedure, other than as provided in this section or as adopted by the commission pursuant to this chapter and Chapter 3, Utah Occupational Disease Act. The commission may make its investigation in such manner as in its judgment is best calculated to ascertain the substantial rights of the parties and to carry out justly the spirit of the chapter.
- (2) The commission may receive as evidence and use as proof of any fact in dispute all evidence considered material and relevant including the following:
  - (a) depositions and sworn testimony presented in open hearings;
  - (b) reports of attending or examining physicians, or of pathologists;
  - (c) reports of investigators appointed by the commission;
  - (d) reports of employers, including copies of time sheets, book accounts, or other records; or
  - (e) hospital records in the case of an injured or diseased employee.

Amended by Chapter 297, 2011 General Session

**34A-2-803 Violation of judgments, orders, decrees, or provisions of chapter -- Grade of offense.**

- (1) An employer, employee, or other person is guilty of a misdemeanor if that employer, employee, or other person violates this chapter or Chapter 3, Utah Occupational Disease Act, including:
  - (a) doing any act prohibited by this chapter or Chapter 3, Utah Occupational Disease Act;
  - (b) failing or refusing to perform any duty lawfully imposed under this chapter or Chapter 3, Utah Occupational Disease Act;
  - (c) failing, neglecting, or refusing to obey any lawful order given or made by the commission, or any judgment or decree made by any court in connection with the provisions of this chapter or Chapter 3, Utah Occupational Disease Act.
- (2) Every day during which any person fails to observe and comply with any order of the commission, or to perform any duty imposed by this chapter or Chapter 3, Utah Occupational Disease Act, shall constitute a separate and distinct offense.

Renumbered and Amended by Chapter 375, 1997 General Session

**Part 9**  
**Presumptions For Emergency Medical Services Providers**

**34A-2-901 Workers' compensation presumption for emergency medical services providers.**

- (1) An emergency medical services provider who claims to have contracted a disease, as defined by Section 78B-8-401, as a result of a significant exposure in the performance of his duties as an emergency medical services provider, is presumed to have contracted the disease by accident during the course of his duties as an emergency medical services provider if:
  - (a) his employment or service as an emergency medical services provider in this state commenced prior to July 1, 1988, and he tests positive for a disease during the tenure of his

employment or service, or within three months after termination of his employment or service;  
or

- (b) the individual's employment or service as an emergency medical services provider in this state commenced on or after July 1, 1988, and he tests negative for any disease at the time his employment or service commenced, and again three months later, and he subsequently tests positive during the tenure of his employment or service, or within three months after termination of his employment or service.
- (2) Each emergency medical services agency shall inform the emergency medical services providers that it employs or utilizes of the provisions and benefits of this section at commencement of and termination of employment or service.

Amended by Chapter 3, 2008 General Session

**34A-2-902 Workers' compensation claims by emergency medical services providers -- Time limits.**

- (1) For all purposes of establishing a workers' compensation claim, the "date of accident" is presumed to be the date on which an emergency medical services provider first tests positive for a disease, as defined in Section 78B-8-401. However, for purposes of establishing the rate of workers' compensation benefits under Subsection 34A-2-702(5), if a positive test for a disease occurs within three months after termination of employment, the last date of employment is presumed to be the "date of accident."
- (2) The time limits prescribed by Section 34A-2-417 do not apply to an employee whose disability is due to a disease, so long as the employee who claims to have suffered a significant exposure in the service of his employer gives notice, as required by Section 34A-3-108, of the "date of accident."
- (3) Any claim for workers' compensation benefits or medical expenses shall be filed with the Division of Adjudication of the Labor Commission within one year after the date on which the employee first acquires a disability or requires medical treatment for a disease, or within one year after the termination of employment as an emergency medical services provider, whichever occurs later.

Amended by Chapter 366, 2011 General Session

**34A-2-903 Failure to be tested -- Time limit for death benefits.**

- (1) An emergency medical services provider who refuses or fails to be tested in accordance with Section 34A-2-901 is not entitled to any of the presumptions provided by this part.
- (2) Death benefits payable under Section 34A-2-702 are payable only if it can be established by competent evidence that death was a consequence of or result of the disease and, notwithstanding Subsection 34A-2-702(5), that death occurred within six years from the date the employee first acquired a disability or required medical treatment for the disease that caused the employee's death.

Amended by Chapter 366, 2011 General Session

**34A-2-904 Volunteer emergency medical services providers -- Workers' compensation premiums.**

- (1) For purposes of receiving workers' compensation benefits, any person performing the services of an emergency medical services provider is considered an employee of the entity for whom it provides those services.
- (2)
  - (a) With regard to emergency medical services providers who perform those services for minimal or no compensation on a volunteer basis, and who are primarily employed other than as emergency medical services providers, the amount of workers' compensation benefits shall be based on that primary employment. Any excess premiums necessary for workers' compensation shall be paid by the entity that utilized that individual as an emergency medical services provider.
  - (b) With regard to emergency medical services providers who perform those services for minimal or no compensation or on a volunteer basis, and who have no other employment, the amount of workers' compensation benefits shall be the minimum benefit. Any premium necessary for workers' compensation shall be paid by the entity that utilizes that individual as an emergency medical services provider.
- (3) Workers' compensation benefits are the exclusive remedy for all injuries and occupational diseases, as provided by Title 34A, Chapter 2, Workers' Compensation Act, and Chapter 3, Utah Occupational Disease Act. However, emergency medical services providers described in Subsection (2) are not precluded from utilizing insurance benefits provided by a primary employer, or any other insurance benefits, in addition to workers' compensation benefits.

Renumbered and Amended by Chapter 243, 2005 General Session

**34A-2-905 Rulemaking authority -- Rebuttable presumption.**

- (1) The Labor Commission has authority to establish rules necessary for the purposes of this part.
- (2) The presumption provided by this part is a rebuttable presumption.

Renumbered and Amended by Chapter 243, 2005 General Session

**Part 10**  
**Workers' Compensation Coverage Waivers Act**

**34A-2-1001 Title.**

This part is known as the "Workers' Compensation Coverage Waivers Act."

Enacted by Chapter 328, 2011 General Session

**34A-2-1002 Definitions.**

As used in this part:

- (1) "Business entity" means:
  - (a) a sole proprietorship;
  - (b) a corporation;
  - (c) a partnership;
  - (d) a limited liability company; or
  - (e) an entity similar to one described in Subsections (1)(a) through (d).
- (2) "Waiver" means a workers' compensation coverage waiver issued under this part.

Enacted by Chapter 328, 2011 General Session

**34A-2-1003 Issuance of a waiver.**

- (1) The commission shall issue a workers' compensation coverage waiver to a business entity that:
  - (a) elects not to include an owner, partner, or corporate officer or director as an employee under a workers' compensation policy in accordance with Section 34A-2-103 and Subsection 34A-2-104(4);
  - (b) employs no other employee on the day on which the commission issues the waiver to the business entity;
  - (c) provides to the commission the information required by Section 34A-2-1004; and
  - (d) pays a fee established by the commission in accordance with Section 63J-1-504, except that the fee may not exceed \$50.
- (2)
  - (a) A waiver issued under this section expires one year from the day on which it is issued unless renewed by the holder of the waiver.
  - (b) To renew a waiver issued under this part, the holder of the waiver shall:
    - (i) employ no other employee on the day on which the commission renews the waiver;
    - (ii) provide to the commission the information required by Section 34A-2-1004; and
    - (iii) pay a fee established by the commission in accordance with Section 63J-1-504, except that the fee may not exceed \$50.
- (3) As of the day on which a business entity described in Subsection (1) employs an employee other than an owner, partner, or corporate officer or director described in Subsection (1)(a):
  - (a) the business entity's waiver is invalid; and
  - (b) the business entity is required to provide workers' compensation coverage for that employee in accordance with Section 34A-2-201.
- (4) The commission shall deposit a fee collected under this section in the Industrial Accident Restricted Account created in Section 34A-2-705.
- (5) Unless invalidated under Section 34A-2-1005, notwithstanding the other provisions of this section, a waiver issued by an insurer that is valid on June 30, 2011, remains valid until its expiration date.

Enacted by Chapter 328, 2011 General Session

**34A-2-1004 Information required to obtain a waiver.**

- To obtain or renew a waiver, a business entity shall submit to the commission:
- (1) a copy of two or more of the following:
    - (a) the business entity's federal or state income tax return that shows business income for the complete taxable year that immediately precedes the day on which the business entity submits the information;
    - (b) a valid business license;
    - (c) a license to engage in an occupation or profession, including a license under Title 58, Occupations and Professions; or
    - (d) documentation of an active liability insurance policy that covers the business entity's activities; or
  - (2) a copy of one item listed in Subsection (1) and a copy of two or more of the following:
    - (a) proof of a bank account for the business entity;
    - (b) proof that for the business entity there is:

- (i) a telephone number; and
- (ii) a physical location; or
- (c) an advertisement of services in a newspaper of general circulation or telephone directory showing the business entity's:
  - (i) name; and
  - (ii) contact information.

Enacted by Chapter 328, 2011 General Session

**34A-2-1005 Enforcement.**

- (1) The commission may investigate a business entity to determine whether the business entity validly elects to not cover an owner, partner, or corporate officer or director as an employee under a workers' compensation policy in accordance with Section 34A-2-103.
- (2) If the commission determines that a business entity's election as provided in this section is invalid, the commission may:
  - (a) prohibit a business entity from using a waiver obtained under this part; and
  - (b) take any action provided for under this chapter or Chapter 3, Utah Occupational Disease Act, for failure to obtain workers' compensation coverage for an employee.

Enacted by Chapter 328, 2011 General Session

### **Chapter 3 Utah Occupational Disease Act**

**34A-3-101 Title -- Definitions.**

- (1) This chapter is known as the "Utah Occupational Disease Act."
- (2) For purposes of this chapter, "division" means the Division of Industrial Accidents.

Renumbered and Amended by Chapter 375, 1997 General Session

**34A-3-102 Chapter to be administered by commission -- Exclusive remedy.**

- (1) The commission shall administer this chapter through the division, the Division of Adjudication, and the Appeals Board in accordance with Section 34A-2-112.
- (2) Subject to the limitations provided in this chapter and, unless otherwise noted, all provisions of Chapter 2, Workers' Compensation Act, are incorporated into this chapter and shall be applied to occupational disease claims.
- (3) The right to recover compensation under this chapter for diseases or injuries to health sustained by a Utah employee is the exclusive remedy as outlined in Section 34A-2-105.

Amended by Chapter 286, 2014 General Session

**34A-3-103 Occupational diseases.**

For purposes of this chapter, a compensable occupational disease means any disease or illness that arises out of and in the course of employment and is medically caused or aggravated by that employment.

Renumbered and Amended by Chapter 375, 1997 General Session

**34A-3-104 Employer liability for compensation.**

- (1) Every employer is liable for the payment of disability and medical benefits to every employee who acquires a disability, or death benefits to the dependents of any employee who dies, by reason of an occupational disease under the terms of this chapter.
- (2) Compensation may not be paid when the last day of injurious exposure of the employee to the hazards of the occupational disease occurred before 1941.

Amended by Chapter 297, 2011 General Session

Amended by Chapter 366, 2011 General Session

**34A-3-105 Last employer liable -- Exception.**

- (1) To the extent compensation is payable under this chapter for an occupational disease which arises out of and in the course of an employee's employment for more than one employer, the only employer liable shall be the employer in whose employment the employee was last injuriously exposed to the hazards of the disease if:
  - (a) the employee's exposure in the course of employment with that employer was a substantial contributing medical cause of the alleged occupational disease; and
  - (b) the employee was employed by that employer for at least 12 consecutive months.
- (2) Should the conditions of Subsection (1) not be met, liability for disability, death, and medical benefits shall be apportioned between employers based on the involved employers' causal contribution to the occupational disease.

Renumbered and Amended by Chapter 375, 1997 General Session

**34A-3-106 Mental stress claims.**

- (1) Physical, mental, or emotional diseases related to mental stress arising out of and in the course of employment shall be compensable under this chapter only when there is a sufficient legal and medical causal connection between the employee's disease and employment.
- (2)
  - (a) Legal causation requires proof of extraordinary mental stress arising predominantly and directly from employment.
  - (b) The extraordinary nature of the alleged mental stress is judged according to an objective standard in comparison with contemporary national employment and nonemployment life.
- (3) Medical causation requires proof that the physical, mental, or emotional disease was medically caused by the mental stress that is the legal cause of the physical, mental, or emotional disease.
- (4) Good faith employer personnel actions including disciplinary actions, work evaluations, job transfers, layoffs, demotions, promotions, terminations, or retirements, may not form the basis of compensable mental stress claims under this chapter.
- (5) Alleged discrimination, harassment, or unfair labor practices otherwise actionable at law may not form the basis of compensable mental stress claims under this chapter.
- (6) An employee who alleges a compensable occupational disease involving mental stress bears the burden of proof to establish legal and medical causation by a preponderance of the evidence.

Renumbered and Amended by Chapter 375, 1997 General Session

**34A-3-107 Benefits -- Disability compensation, death, medical, hospital, and burial expenses -- Procedure and payments.**

- (1) The benefits to which an employee with a disability or the employee's dependents are entitled under this chapter shall be based upon the employee's average weekly wage at the time the cause of action arises and shall be computed in accordance with and in all ways shall be equivalent to the benefits for disability and death provided in Chapter 2, Workers' Compensation Act.
- (2) The employee with a disability is entitled to medical, hospital, and burial expenses equivalent to those provided in Chapter 2, Workers' Compensation Act.
- (3) The procedure and payment of benefits under this chapter shall be equivalent to and consistent with Chapter 2, Workers' Compensation Act, including Section 34A-2-703.

Amended by Chapter 366, 2011 General Session

**34A-3-108 Reporting of occupational diseases -- Regulation of health care providers.**

- (1) An employee sustaining an occupational disease, as defined in this chapter, arising out of and in the course of employment shall provide notification to the employee's employer promptly of the occupational disease. If the employee is unable to provide notification, the employee's next of kin or attorney may provide notification of the occupational disease to the employee's employer.
- (2)
  - (a) An employee who fails to notify the employee's employer or the division within 180 days after the cause of action arises is barred from a claim of benefits arising from the occupational disease.
  - (b) The cause of action is considered to arise on the date the employee first:
    - (i) suffers disability from the occupational disease; and
    - (ii) knows, or in the exercise of reasonable diligence should have known, that the occupational disease is caused by employment.
- (3) The following constitute notification of an occupational disease:
  - (a) an employer's report filed with the:
    - (i) division; or
    - (ii) workers' compensation insurance carrier;
  - (b) a physician's injury report filed with the:
    - (i) division;
    - (ii) employer; or
    - (iii) workers' compensation insurance carrier;
  - (c) a workers' compensation insurance carrier's report to the division; or
  - (d) the payment of any medical or disability benefit by the employer or the employer's workers' compensation insurance carrier.
- (4)
  - (a) An employer and the employer's workers' compensation insurance carrier, if any, shall file a report in accordance with the rules described in Subsection (4)(b) of any occupational disease resulting in:
    - (i) medical treatment;
    - (ii) loss of consciousness;
    - (iii) loss of work;

- (iv) restriction of work; or
- (v) transfer to another job.
- (b) An employer or the employer's workers' compensation insurance carrier, if any, shall file a report required under Subsection (4)(a) and any subsequent reports of a previously reported occupational disease as may be required by the commission within the time limits and in the manner established by rule by the commission made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, under Subsection 34A-2-407(5).
- (c) A report is not required:
  - (i) for a minor injury that requires first aid treatment only, unless a treating physician files, or is required to file, the Physician's Initial Report of Work Injury or Occupational Disease with the division;
  - (ii) for occupational diseases that manifest after the employee is no longer employed by the employer with which the exposure occurred; or
  - (iii) when the employer is not aware of an exposure occasioned by the employment that results in an occupational disease as defined by Section 34A-3-103.
- (5) An employer or its workers' compensation insurance carrier, if any, shall provide the employee with:
  - (a) a copy of the report submitted to the division; and
  - (b) a statement, as prepared by the division, of the employee's rights and responsibilities related to the occupational disease.
- (6) An employer shall maintain a record in a manner prescribed by the division of occupational diseases resulting in:
  - (a) medical treatment;
  - (b) loss of consciousness;
  - (c) loss of work;
  - (d) restriction of work; or
  - (e) transfer to another job.
- (7) An employer or a workers' compensation insurance carrier who refuses or neglects to make a report, maintain a record, or file a report with the division as required by this section is subject to citation and civil assessment in accordance with Subsection 34A-2-407(8).
- (8)
  - (a) Except as provided in Subsection (8)(c), a physician, surgeon, or other health care provider attending an occupationally diseased employee shall:
    - (i) comply with the rules, including the schedule of fees, for services as adopted by the commission;
    - (ii) make reports to the division at any and all times as required as to the condition and treatment of an occupationally diseased employee or as to any other matter concerning industrial cases being treated; and
    - (iii) comply with rules made under Section 34A-2-407.5.
  - (b) A physician, as defined in Section 34A-2-111, who is associated with, employed by, or bills through a hospital is subject to Subsection (8)(a).
  - (c) A hospital is not subject to the requirements of Subsection (8)(a) except a hospital is subject to rules made by the commission under Subsections 34A-2-407(9)(a)(ii) and (iii) and Section 34A-2-407.5.
  - (d) The commission's schedule of fees may reasonably differentiate remuneration to be paid to providers of health services based on:
    - (i) the severity of the employee's condition;
    - (ii) the nature of the treatment necessary; and

- (iii) the facilities or equipment specially required to deliver that treatment.
- (e) This Subsection (8) does not prohibit a contract with a provider of health services relating to the pricing of goods and services.
- (9) A copy of the physician's initial report shall be furnished to the:
  - (a) division;
  - (b) employee; and
  - (c) employer or its workers' compensation insurance carrier.
- (10) A person subject to reporting under Subsection (8)(a)(ii) or Subsection 34A-2-407(9)(a) (iii) who refuses or neglects to make a report or comply with this section is subject to a civil assessment in accordance with Subsection 34A-2-407(8).
- (11)
  - (a) As used in this Subsection (11):
    - (i) "Balance billing" means charging a person, on whose behalf a workers' compensation insurance carrier or self-insured employer is obligated to pay medical benefits under this chapter or Chapter 2, Workers' Compensation Act, for the difference between what the workers' compensation insurance carrier or self-insured employer reimburses the hospital for covered medical services and what the hospital charges for those covered medical services.
    - (ii) "Covered medical services" means medical services provided by a hospital that are covered by workers' compensation medical benefits under this chapter or Chapter 2, Workers' Compensation Act.
    - (iii) "Health benefit plan" means the same as that term is defined in Section 31A-22-619.6.
    - (iv) "Self-insured employer" means the same as that term is defined in Section 34A-2-201.5.
  - (b) Subject to Subsection (11)(d), a workers' compensation insurance carrier or self-insured employer may contract, either in writing or by mutual oral agreement, with a hospital to establish reimbursement rates.
  - (c) Subject to Subsection (11)(d), for the time period beginning on May 10, 2016, and ending on July 1, 2018, a workers' compensation insurance carrier or self-insured employer that is reimbursing a hospital that has not entered into a contract described in Subsection (11)(b), shall reimburse the hospital for covered medical services at 85% of the billed hospital fees for the covered medical services.
  - (d) A hospital may not engage in balance billing.
  - (e) Covered services paid under a health benefit plan are subject to coordination of benefits in accordance with Sections 31A-22-619.6 and 34A-2-213.
- (12)
  - (a) An application for a hearing to resolve a dispute regarding an occupational disease claim shall be filed with the Division of Adjudication.
  - (b) After the filing, a copy shall be forwarded by mail to:
    - (i)
      - (A) the employer; or
      - (B) the employer's workers' compensation insurance carrier;
    - (ii) the applicant; and
    - (iii) the attorneys for the parties.
- (13)
  - (a) Subject to appellate review under Section 34A-1-303, the commission has exclusive jurisdiction to hear and determine:
    - (i) whether goods provided to or services rendered to an employee is compensable pursuant to this chapter and Chapter 2, Workers' Compensation Act, including the following:

- (A) medical, nurse, or hospital services;
- (B) medicines; and
- (C) artificial means, appliances, or prosthesis;
- (ii) except for amounts charged or paid under Subsection (11), the reasonableness of the amounts charged or paid for a good or service described in Subsection (13)(a)(i); and
- (iii) collection issues related to a good or service described in Subsection (13)(a)(i).
- (b) Except as provided in Subsection (13)(a), Subsection 34A-2-211(6), or Section 34A-2-212, a person may not maintain a cause of action in any forum within this state other than the commission for collection or payment of goods or services described in Subsection (13)(a) that are compensable under this chapter or Chapter 2, Workers' Compensation Act.

Amended by Chapter 242, 2016 General Session

**34A-3-109 Limitations -- Rights barred if not filed within limits -- Burden of proof.**

- (1) The limitation of rights regarding medical benefits provided in Subsection 34A-2-417(1) does not apply to compensable occupational diseases under the terms of this chapter.
- (2)
  - (a) A claim described in Subsection (2)(b) is barred, unless the employee:
    - (i) files an application for hearing with the Division of Adjudication no later than six years from the date the employee's cause of action arose; and
    - (ii) by no later than 12 years from the date on which the employee's cause of action arose, is able to meet the employee's burden of proving that the employee is due the compensation claimed under this chapter.
  - (b) Subsection (2)(a) applies to a claim for compensation for:
    - (i) temporary total disability benefits;
    - (ii) temporary partial disability benefits;
    - (iii) permanent partial disability benefits; or
    - (iv) permanent total disability benefits.
  - (c) The commission may enter an order awarding or denying an employee's claim for compensation under this chapter within a reasonable time period beyond 12 years from the date on which the employee's cause of action arose, if:
    - (i) the employee complies with Subsections (2)(a)(i) and (ii); and
    - (ii) 12 years from the date on which the employee's cause of action arose:
      - (A)
        - (I) the employee is fully cooperating in a commission approved reemployment plan; and
        - (II) the results of that commission approved reemployment plan are not known; or
      - (B) the employee is actively adjudicating issues of compensability before the commission.
- (3)
  - (a) Subject to Subsection (3)(b), a claim for death benefits is barred unless an application for hearing is filed within one year of the date the deceased employee's dependents knew, or in the exercise of reasonable diligence should have known, that the employee's death was caused by an occupational disease.
  - (b) A dependents' claim for death benefits may not be actionable more than six years after the employee's cause of action arises.
- (4)
  - (a)
    - (i) Subject to Subsections (2)(c) and (4)(b), after an employee files an application for hearing within six years from the date on which the cause of action arose, the Division of

Adjudication may enter an order to show cause why the employee's claim should not be dismissed because the employee has failed to meet the employee's burden of proof to establish an entitlement to compensation claimed in the application for hearing.

- (ii) The order described in Subsection (4)(a)(i) may be entered on the motion of the:
  - (A) Division of Adjudication;
  - (B) employee's employer; or
  - (C) employer's insurance carrier.
- (b) Under Subsection (4)(a), the Division of Adjudication may dismiss a claim in an application for hearing:
  - (i) without prejudice; or
  - (ii) with prejudice only if:
    - (A) the Division of Adjudication adjudicates the merits of the employee's entitlement to the compensation claimed in the application for hearing; or
    - (B) the employee fails to comply with Subsection (2)(a)(ii).
- (c) If a claim is dismissed without prejudice under Subsection (4)(b), the employee is subject to the time limits under Subsection (2)(a) to claim compensation under this chapter.

Amended by Chapter 261, 1999 General Session

**34A-3-110 Occupational disease aggravated by other diseases.**

The compensation payable under this chapter shall be reduced and limited to the proportion of the compensation that would be payable if the occupational disease were the sole cause of disability or death, as the occupational disease as a causative factor bears to all the causes of the disability or death when the occupational disease, or any part of the disease:

- (1) is causally related to employment with a non-Utah employer not subject to commission jurisdiction;
- (2) is of a character to which the employee may have had substantial exposure outside of employment or to which the general public is commonly exposed;
- (3) is aggravated by any other disease or infirmity not itself compensable; or
- (4) when disability or death from any other cause not itself compensable is aggravated, prolonged, accelerated, or in any way contributed to by an occupational disease.

Renumbered and Amended by Chapter 375, 1997 General Session

**34A-3-111 Compensation not additional to that provided for accidents.**

The compensation provided under this chapter is not in addition to compensation that may be payable under Chapter 2, Workers' Compensation Act, and in all cases when injury results by reason of an accident arising out of and in the course of employment and compensation is payable for the injury under Chapter 2, Workers' Compensation Act, compensation under this chapter may not be payable.

Renumbered and Amended by Chapter 375, 1997 General Session

**34A-3-112 Employee's willful misconduct.**

- (1) Notwithstanding anything contained in this chapter, an employee or dependent of any employee is not entitled to receive compensation for disability or death from an occupational disease when the disability or death, wholly or in part, was caused by the purposeful self-exposure of the employee.

- (2) Except in cases resulting in death:
- (a) Compensation provided for in this chapter shall be reduced 15% when the occupational disease is caused by the willful failure of the employee:
    - (i) to use safety devices when provided by the employer; or
    - (ii) to obey any order or reasonable rule adopted by the employer for the safety of the employee.
  - (b) Except when the employer permitted, encouraged, or had actual knowledge of the conduct described in Subsections (2)(b)(i) through (iii), disability compensation may not be awarded under this chapter to an employee when the major contributing cause of the employee's disease is the employee's:
    - (i) use of illegal substances;
    - (ii) intentional abuse of drugs in excess of prescribed therapeutic amounts; or
    - (iii) intoxication from alcohol with a blood or breath alcohol concentration of .08 grams or greater as shown by a chemical test.

Renumbered and Amended by Chapter 375, 1997 General Session

**34A-3-113 Presumption of workers' compensation benefits for firefighters.**

- (1) As used in this section:
- (a)
    - (i) "Firefighter" means a member, including a volunteer member, as described in Subsection 67-20-2(5)(b)(ii), or a member paid on call, of a fire department or other organization that provides fire suppression and other fire-related service who is responsible for or is in a capacity that includes responsibility for the extinguishment of fires.
    - (ii) "Firefighter" does not include a person whose job description, duties, or responsibilities do not include direct involvement in fire suppression.
  - (b) "Presumptive cancer" means one or more of the following cancers:
    - (i) pharynx;
    - (ii) esophagus;
    - (iii) lung; and
    - (iv) mesothelioma.
- (2) If a firefighter who contracts a presumptive cancer meets the requirements of Subsection (3), there is a rebuttable presumption that:
- (a) the presumptive cancer was contracted arising out of and in the course of employment; and
  - (b) the presumptive cancer was not contracted by a willful act of the firefighter.
- (3) To be entitled to the rebuttable presumption described in Subsection (2):
- (a) during the time of employment as a firefighter, the firefighter undergoes annual physical examinations;
  - (b) the firefighter shall have been employed as a firefighter for eight years or more and regularly responded to firefighting or emergency calls within the eight-year period; and
  - (c) if a firefighter has used tobacco, the firefighter provides documentation from a physician that indicates that the firefighter has not used tobacco for the eight years preceding reporting the presumptive cancer to the employer or division.
- (4) A presumption established under this section may be rebutted by a preponderance of the evidence.
- (5) If a firefighter who contracts a presumptive cancer is employed as a firefighter by more than one employer and qualifies for the presumption under Subsection (2), and that presumption has

not been rebutted, the employer and insurer at the time of the last substantial exposure to risk of the presumptive cancer are liable under this chapter pursuant to Section 34A-3-105.

- (6) A cause of action subject to the presumption under this section is considered to arise on the date after May 12, 2015, that the employee:
- (a) suffers disability from the occupational disease;
  - (b) knows, or in the exercise of reasonable diligence should have known, that the occupational disease is caused by employment; and
  - (c) files a claim as provided in Section 34A-3-108.

Enacted by Chapter 433, 2015 General Session

## **Chapter 4**

### **Hospital and Medical Service for Miners with a Disability**

#### **34A-4-101 Who entitled.**

- (1) Certain miners with a disability meeting the requirements of Section 34A-4-102 shall be entitled to, and shall receive, the free hospital and medical service provided for in this chapter.
- (2) Notwithstanding Subsection (1), in the event occupational diseases are made compensable under Chapter 2, Workers' Compensation Act, or Chapter 3, Utah Occupational Disease Act, no employer or insurance carrier shall be permitted to evade payment under Chapter 2, Workers' Compensation Act, or Chapter 3, Utah Occupational Disease Act, by compelling a miner with a disability to avail the miner of the benefits provided for in this chapter.

Amended by Chapter 366, 2011 General Session

#### **34A-4-102 Application for benefits.**

To be entitled to the free hospital and medical service provided for in Section 34A-4-101, a miner with a disability applying for benefits shall be required to establish under oath the following facts, which shall be conditions precedent to the granting of the free service provided for in this chapter:

- (1) that the miner is and has been a resident of this state for a period of two years immediately preceding the filing of the miner's application;
- (2) that the miner has been employed in the mines of this state for a period of at least five years and that the disability from which the miner is suffering and for which the miner is in need of hospital and medical treatment is due to such employment;
- (3) that the miner is physically incapable of entering remunerative employment and holding a job;
- (4) that the miner's disability is such that hospital and medical attention is necessary; and
- (5) that the miner is financially unable to secure and pay for hospital and medical service.

Amended by Chapter 366, 2011 General Session

## **Chapter 5**

### **Utah Antidiscrimination Act**

#### **34A-5-101 Title.**

This chapter shall be known as the "Utah Antidiscrimination Act."

Renumbered and Amended by Chapter 375, 1997 General Session

**34A-5-102 Definitions -- Unincorporated entities -- Joint employers -- Franchisors.**

(1) As used in this chapter:

- (a) "Affiliate" means the same as that term is defined in Section 16-6a-102.
- (b) "Apprenticeship" means a program for the training of apprentices including a program providing the training of those persons defined as apprentices by Section 35A-6-102.
- (c) "Bona fide occupational qualification" means a characteristic applying to an employee that:
  - (i) is necessary to the operation; or
  - (ii) is the essence of the employee's employer's business.
- (d) "Court" means:
  - (i) the district court in the judicial district of the state in which the asserted unfair employment practice occurs; or
  - (ii) if the district court is not in session at that time, a judge of the court described in Subsection (1)(d)(i).
- (e) "Director" means the director of the division.
- (f) "Disability" means a physical or mental disability as defined and covered by the Americans with Disabilities Act of 1990, 42 U.S.C. Sec. 12102.
- (g) "Division" means the Division of Antidiscrimination and Labor.
- (h) "Employee" means a person applying with or employed by an employer.
- (i)
  - (i) "Employer" means:
    - (A) the state;
    - (B) a political subdivision;
    - (C) a board, commission, department, institution, school district, trust, or agent of the state or a political subdivision of the state; or
    - (D) a person employing 15 or more employees within the state for each working day in each of 20 calendar weeks or more in the current or preceding calendar year.
  - (ii) "Employer" does not include:
    - (A) a religious organization, a religious corporation sole, a religious association, a religious society, a religious educational institution, or a religious leader, when that individual is acting in the capacity of a religious leader;
    - (B) any corporation or association constituting an affiliate, a wholly owned subsidiary, or an agency of any religious organization, religious corporation sole, religious association, or religious society; or
    - (C) the Boy Scouts of America or its councils, chapters, or subsidiaries.
- (j) "Employment agency" means a person:
  - (i) undertaking to procure employees or opportunities to work for any other person; or
  - (ii) holding the person out to be equipped to take an action described in Subsection (1)(j)(i).
- (k) "Federal executive agency" means an executive agency, as defined in 5 U.S.C. Sec. 105, of the federal government.
- (l) "Franchise" means the same as that term is defined in 16 C.F.R. Sec. 436.1.
- (m) "Franchisee" means the same as that term is defined in 16 C.F.R. Sec. 436.1.
- (n) "Franchisor" means the same as that term is defined in 16 C.F.R. Sec. 436.1.
- (o) "Gender identity" has the meaning provided in the Diagnostic and Statistical Manual (DSM-5). A person's gender identity can be shown by providing evidence, including, but not limited to,

medical history, care or treatment of the gender identity, consistent and uniform assertion of the gender identity, or other evidence that the gender identity is sincerely held, part of a person's core identity, and not being asserted for an improper purpose.

- (p) "Joint apprenticeship committee" means an association of representatives of a labor organization and an employer providing, coordinating, or controlling an apprentice training program.
- (q) "Labor organization" means an organization that exists for the purpose in whole or in part of:
  - (i) collective bargaining;
  - (ii) dealing with employers concerning grievances, terms or conditions of employment; or
  - (iii) other mutual aid or protection in connection with employment.
- (r) "National origin" means the place of birth, domicile, or residence of an individual or of an individual's ancestors.
- (s) "On-the-job-training" means a program designed to instruct a person who, while learning the particular job for which the person is receiving instruction:
  - (i) is also employed at that job; or
  - (ii) may be employed by the employer conducting the program during the course of the program, or when the program is completed.
- (t) "Person" means:
  - (i) one or more individuals, partnerships, associations, corporations, legal representatives, trusts or trustees, or receivers;
  - (ii) the state; and
  - (iii) a political subdivision of the state.
- (u) "Pregnancy, childbirth, or pregnancy-related conditions" includes breastfeeding or medical conditions related to breastfeeding.
- (v) "Presiding officer" means the same as that term is defined in Section 63G-4-103.
- (w) "Prohibited employment practice" means a practice specified as discriminatory, and therefore unlawful, in Section 34A-5-106.
- (x) "Religious leader" means an individual who is associated with, and is an authorized representative of, a religious organization or association or a religious corporation sole, including a member of clergy, a minister, a pastor, a priest, a rabbi, an imam, or a spiritual advisor.
- (y) "Retaliate" means the taking of adverse action by an employer, employment agency, labor organization, apprenticeship program, on-the-job training program, or vocational school against one of its employees, applicants, or members because the employee, applicant, or member:
  - (i) opposes an employment practice prohibited under this chapter; or
  - (ii) files charges, testifies, assists, or participates in any way in a proceeding, investigation, or hearing under this chapter.
- (z) "Sexual orientation" means an individual's actual or perceived orientation as heterosexual, homosexual, or bisexual.
- (aa) "Undue hardship" means an action that requires significant difficulty or expense when considered in relation to factors such as the size of the entity, the entity's financial resources, and the nature and structure of the entity's operation.
- (bb) "Unincorporated entity" means an entity organized or doing business in the state that is not:
  - (i) an individual;
  - (ii) a corporation; or
  - (iii) publicly traded.

- (cc) "Vocational school" means a school or institution conducting a course of instruction, training, or retraining to prepare individuals to follow an occupation or trade, or to pursue a manual, technical, industrial, business, commercial, office, personal services, or other nonprofessional occupations.
- (2)
  - (a) For purposes of this chapter, an unincorporated entity that is required to be licensed under Title 58, Chapter 55, Utah Construction Trades Licensing Act, is presumed to be the employer of each individual who, directly or indirectly, holds an ownership interest in the unincorporated entity.
  - (b) Pursuant to rules made by the commission in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, an unincorporated entity may rebut the presumption under Subsection (2)(a) for an individual by establishing by clear and convincing evidence that the individual:
    - (i) is an active manager of the unincorporated entity;
    - (ii) directly or indirectly holds at least an 8% ownership interest in the unincorporated entity; or
    - (iii) is not subject to supervision or control in the performance of work by:
      - (A) the unincorporated entity; or
      - (B) a person with whom the unincorporated entity contracts.
  - (c) As part of the rules made under Subsection (2)(b), the commission may define:
    - (i) "active manager";
    - (ii) "directly or indirectly holds at least an 8% ownership interest"; and
    - (iii) "subject to supervision or control in the performance of work."
- (3) For purposes of determining whether two or more persons are considered joint employers under this chapter, an administrative ruling of a federal executive agency may not be considered a generally applicable law unless that administrative ruling is determined to be generally applicable by a court of law, or adopted by statute or rule .
- (4)
  - (a) For purposes of this chapter, a franchisor is not considered to be an employer of:
    - (i) a franchisee; or
    - (ii) a franchisee's employee.
  - (b) With respect to a specific claim for relief under this chapter made by a franchisee or a franchisee's employee, this Subsection (4) does not apply to a franchisor under a franchise that exercises a type or degree of control over the franchisee or the franchisee's employee not customarily exercised by a franchisor for the purpose of protecting the franchisor's trademarks and brand.

Amended by Chapter 330, 2016 General Session  
Amended by Chapter 370, 2016 General Session

**34A-5-102.5 Supremacy over local regulations -- No special class created for other purposes.**

- (1) Consistent with the requirements of Subsection 34A-5-107(15), this chapter supersedes and preempts any ordinance, regulation, standard, or other legal action by a local government entity, a state entity, or the governing body of a political subdivision that relates to the prohibition of discrimination in employment.
- (2) This chapter shall not be construed to create a special or protected class for any purpose other than employment.

Enacted by Chapter 13, 2015 General Session

**34A-5-102.7 Nonseverability.**

Laws of Utah 2015, Chapter 13, is the result of the Legislature's balancing of competing interests. Accordingly, if any phrase, clause, sentence, provision, or subsection enacted or amended in this chapter by Laws of Utah 2015, Chapter 13, is held invalid in a final judgment by a court of last resort, the remainder of the enactments and amendments of Laws of Utah 2015, Chapter 13, affecting this chapter shall be thereby rendered without effect and void.

Revisor instructions Chapter 13, 2015 General Session

Enacted by Chapter 13, 2015 General Session

**34A-5-104 Powers.**

- (1)
  - (a) The commission has jurisdiction over the subject of employment practices and discrimination made unlawful by this chapter.
  - (b) The commission may adopt, publish, amend, and rescind rules, consistent with, and for the enforcement of this chapter.
- (2) The division may:
  - (a) appoint and prescribe the duties of an investigator, other employee, or agent of the commission that the commission considers necessary for the enforcement of this chapter;
  - (b) receive, reject, investigate, and pass upon complaints alleging:
    - (i) discrimination in:
      - (A) employment;
      - (B) an apprenticeship program;
      - (C) an on-the-job training program; or
      - (D) a vocational school; or
    - (ii) the existence of a discriminatory or prohibited employment practice by:
      - (A) a person;
      - (B) an employer;
      - (C) an employment agency;
      - (D) a labor organization;
      - (E) an employee or member of an employment agency or labor organization;
      - (F) a joint apprenticeship committee; and
      - (G) a vocational school;
  - (c) investigate and study the existence, character, causes, and extent of discrimination in employment, apprenticeship programs, on-the-job training programs, and vocational schools in this state by:
    - (i) employers;
    - (ii) employment agencies;
    - (iii) labor organizations;
    - (iv) joint apprenticeship committees; and
    - (v) vocational schools;
  - (d) formulate plans for the elimination of discrimination by educational or other means;
  - (e) hold hearings upon complaint made against:
    - (i) a person;
    - (ii) an employer;
    - (iii) an employment agency;

- (iv) a labor organization;
  - (v) an employee or member of an employment agency or labor organization;
  - (vi) a joint apprenticeship committee; or
  - (vii) a vocational school;
  - (f) issue publications and reports of investigations and research that:
    - (i) promote good will among the various racial, religious, and ethnic groups of the state; and
    - (ii) minimize or eliminate discrimination in employment because of race, color, sex, religion, national origin, age, disability, sexual orientation, or gender identity;
  - (g) prepare and transmit to the governor, at least once each year, reports describing:
    - (i) the division's proceedings, investigations, and hearings;
    - (ii) the outcome of those hearings;
    - (iii) decisions the division renders; and
    - (iv) the other work performed by the division;
  - (h) recommend policies to the governor, and submit recommendation to employers, employment agencies, and labor organizations to implement those policies;
  - (i) recommend legislation to the governor that the division considers necessary concerning discrimination because of:
    - (i) race;
    - (ii) sex;
    - (iii) color;
    - (iv) national origin;
    - (v) religion;
    - (vi) age;
    - (vii) disability;
    - (viii) sexual orientation; or
    - (ix) gender identity; and
  - (j) within the limits of appropriations made for its operation, cooperate with other agencies or organizations, both public and private, in the planning and conducting of educational programs designed to eliminate discriminatory practices prohibited under this chapter.
- (3) The division shall investigate an alleged discriminatory practice involving an officer or employee of state government if requested to do so by the Career Service Review Office.
- (4)
- (a) In a hearing held under this chapter, the division may:
    - (i) subpoena witnesses and compel their attendance at the hearing;
    - (ii) administer oaths and take the testimony of a person under oath; and
    - (iii) compel a person to produce for examination a book, paper, or other information relating to the matters raised by the complaint.
  - (b) The division director or a hearing examiner appointed by the division director may conduct a hearing.
  - (c) If a witness fails or refuses to obey a subpoena issued by the division, the division may petition the district court to enforce the subpoena.
  - (d) If a witness asserts a privilege against self-incrimination, testimony and evidence from the witness may be compelled pursuant to Title 77, Chapter 22b, Grants of Immunity.
- (5) In 2018, before November 1, the division shall report to the Business and Labor Interim Committee on the effectiveness of the commission and state law in addressing discrimination in matters of compensation.

Amended by Chapter 132, 2016 General Session

**34A-5-106 Discriminatory or prohibited employment practices -- Permitted practices.**

- (1) It is a discriminatory or prohibited employment practice to take an action described in Subsections (1)(a) through (g).
- (a)
- (i) An employer may not refuse to hire, promote, discharge, demote, or terminate a person, or to retaliate against, harass, or discriminate in matters of compensation or in terms, privileges, and conditions of employment against a person otherwise qualified, because of:
    - (A) race;
    - (B) color;
    - (C) sex;
    - (D) pregnancy, childbirth, or pregnancy-related conditions;
    - (E) age, if the individual is 40 years of age or older;
    - (F) religion;
    - (G) national origin;
    - (H) disability;
    - (I) sexual orientation; or
    - (J) gender identity.
  - (ii) A person may not be considered "otherwise qualified," unless that person possesses the following required by an employer for any particular job, job classification, or position:
    - (A) education;
    - (B) training;
    - (C) ability, with or without reasonable accommodation;
    - (D) moral character;
    - (E) integrity;
    - (F) disposition to work;
    - (G) adherence to reasonable rules and regulations; and
    - (H) other job related qualifications required by an employer.
  - (iii)
    - (A) As used in this chapter, "to discriminate in matters of compensation" means the payment of differing wages or salaries to employees having substantially equal experience, responsibilities, and skill for the particular job.
    - (B) Notwithstanding Subsection (1)(a)(iii)(A):
      - (I) nothing in this chapter prevents an increase in pay as a result of longevity with the employer, if the salary increase is uniformly applied and available to all employees on a substantially proportional basis; and
      - (II) nothing in this section prohibits an employer and employee from agreeing to a rate of pay or work schedule designed to protect the employee from loss of Social Security payment or benefits if the employee is eligible for those payments.
- (b) An employment agency may not:
- (i) refuse to list and properly classify for employment, or refuse to refer an individual for employment, in a known available job for which the individual is otherwise qualified, because of:
    - (A) race;
    - (B) color;
    - (C) sex;
    - (D) pregnancy, childbirth, or pregnancy-related conditions;
    - (E) religion;

- (F) national origin;
- (G) age, if the individual is 40 years of age or older;
- (H) disability;
- (I) sexual orientation; or
- (J) gender identity; or
- (ii) comply with a request from an employer for referral of an applicant for employment if the request indicates either directly or indirectly that the employer discriminates in employment on account of:
  - (A) race;
  - (B) color;
  - (C) sex;
  - (D) pregnancy, childbirth, or pregnancy-related conditions;
  - (E) religion;
  - (F) national origin;
  - (G) age, if the individual is 40 years of age or older;
  - (H) disability;
  - (I) sexual orientation; or
  - (J) gender identity.
- (c)
  - (i) A labor organization may not for a reason listed in Subsection (1)(c)(ii):
    - (A) exclude an individual otherwise qualified from full membership rights in the labor organization;
    - (B) expel the individual from membership in the labor organization; or
    - (C) otherwise discriminate against or harass a member of the labor organization in full employment of work opportunity, or representation.
  - (ii) A labor organization may not take an action listed in this Subsection (1)(c) because of:
    - (A) race;
    - (B) sex;
    - (C) pregnancy, childbirth, or pregnancy-related conditions;
    - (D) religion;
    - (E) national origin;
    - (F) age, if the individual is 40 years of age or older;
    - (G) disability;
    - (H) sexual orientation; or
    - (I) gender identity.
- (d)
  - (i) Unless based upon a bona fide occupational qualification, or required by and given to an agency of government for a security reason, an employer, employment agency, or labor organization may not do the following if the statement, advertisement, publication, form, or inquiry violates Subsection (1)(d)(ii):
    - (A) print, circulate, or cause to be printed or circulated a statement, advertisement, or publication;
    - (B) use a form of application for employment or membership; or
    - (C) make any inquiry in connection with prospective employment or membership.
  - (ii) This Subsection (1)(d) applies to a statement, advertisement, publication, form, or inquiry that directly expresses a limitation, specification, or discrimination as to:
    - (A) race;
    - (B) color;

- (C) religion;
  - (D) sex;
  - (E) pregnancy, childbirth, or pregnancy-related conditions;
  - (F) national origin;
  - (G) age, if the individual is 40 years of age or older;
  - (H) disability;
  - (I) sexual orientation; or
  - (J) gender identity.
- (e) A person, whether or not an employer, an employment agency, a labor organization, or an employee or member of an employer, employment agency, or labor organization, may not:
- (i) aid, incite, compel, or coerce the doing of an act defined in this section to be a discriminatory or prohibited employment practice;
  - (ii) obstruct or prevent a person from complying with this chapter, or any order issued under this chapter; or
  - (iii) attempt, either directly or indirectly, to commit an act prohibited in this section.
- (f)
- (i) An employer, labor organization, joint apprenticeship committee, or vocational school providing, coordinating, or controlling an apprenticeship program or providing, coordinating, or controlling an on-the-job-training program, instruction, training, or retraining program may not:
    - (A) deny to, or withhold from, any qualified person the right to be admitted to or participate in an apprenticeship training program, on-the-job-training program, or other occupational instruction, training, or retraining program because of:
      - (I) race;
      - (II) color;
      - (III) sex;
      - (IV) pregnancy, childbirth, or pregnancy-related conditions;
      - (V) religion;
      - (VI) national origin;
      - (VII) age, if the individual is 40 years of age or older;
      - (VIII) disability;
      - (IX) sexual orientation; or
      - (X) gender identity;
    - (B) discriminate against or harass a qualified person in that person's pursuit of a program described in Subsection (1)(f)(i)(A) because of:
      - (I) race;
      - (II) color;
      - (III) sex;
      - (IV) pregnancy, childbirth, or pregnancy-related conditions;
      - (V) religion;
      - (VI) national origin;
      - (VII) age, if the individual is 40 years of age or older;
      - (VIII) disability;
      - (IX) sexual orientation; or
      - (X) gender identity;
    - (C) discriminate against a qualified person in the terms, conditions, or privileges of a program described in Subsection (1)(f)(i)(A), because of:
      - (I) race;

- (II) color;
- (III) sex;
- (IV) pregnancy, childbirth, or pregnancy-related conditions;
- (V) religion;
- (VI) national origin;
- (VII) age, if the individual is 40 years of age or older;
- (VIII) disability;
- (IX) sexual orientation; or
- (X) gender identity; or

(D) except as provided in Subsection (1)(f)(ii), print, publish, or cause to be printed or published, a notice or advertisement relating to employment by the employer, or membership in or a classification or referral for employment by a labor organization, or relating to a classification or referral for employment by an employment agency, indicating a preference, limitation, specification, or discrimination based on:

- (I) race;
- (II) color;
- (III) sex;
- (IV) pregnancy, childbirth, or pregnancy-related conditions;
- (V) religion;
- (VI) national origin;
- (VII) age, if the individual is 40 years of age or older;
- (VIII) disability;
- (IX) sexual orientation; or
- (X) gender identity.

(ii) Notwithstanding Subsection (1)(f)(i)(D), if the following is a bona fide occupational qualification for employment, a notice or advertisement described in Subsection (1)(f)(i)(D) may indicate a preference, limitation, specification, or discrimination based on:

- (A) race;
- (B) color;
- (C) religion;
- (D) sex;
- (E) pregnancy, childbirth, or pregnancy-related conditions;
- (F) age;
- (G) national origin;
- (H) disability;
- (I) sexual orientation; or
- (J) gender identity.

(g) Subject to Subsection (7), an employer may not:

(i) refuse to provide reasonable accommodations for an employee related to pregnancy, childbirth, breastfeeding, or related conditions:

- (A) if the employee requests a reasonable accommodation; and
- (B) unless the employer demonstrates that the accommodation would create an undue hardship on the operations of the employer;

(ii) require an employee to terminate employment if another reasonable accommodation can be provided for the employee's pregnancy, childbirth, breastfeeding, or related conditions unless the employer demonstrates that the accommodation would create an undue hardship on the operations of the employer; or

- (iii) deny employment opportunities to an employee, if the denial is based on the need of the employer to make reasonable accommodations related to the pregnancy, childbirth, breastfeeding, or related conditions of an employee unless the employer demonstrates that the accommodation would create an undue hardship on the operations of the employer.
- (2) Subsections (1)(a) through (1)(g) may not be construed to prevent:
- (a) the termination of employment of an individual who, with or without reasonable accommodation, is physically, mentally, or emotionally unable to perform the duties required by that individual's employment;
  - (b) the variance of insurance premiums or coverage on account of age; or
  - (c) a restriction on the activities of a person licensed in accordance with Title 32B, Alcoholic Beverage Control Act, with respect to an individual who is under 21 years of age.
- (3)
- (a) It is not a discriminatory or prohibited employment practice:
    - (i) for an employer to hire and employ an employee, for an employment agency to classify or refer for employment an individual, for a labor organization to classify its membership or to classify or refer for employment an individual, or for an employer, labor organization, or joint labor-management committee controlling an apprenticeship or other training or retraining program to admit or employ an individual in the program on the basis of religion, sex, pregnancy, childbirth, or pregnancy-related conditions, age, national origin, disability, sexual orientation, or gender identity in those certain instances when religion, sex, pregnancy, childbirth, or pregnancy-related conditions, age, if the individual is 40 years of age or older, national origin, disability, sexual orientation, or gender identity is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise;
    - (ii) for a school, college, university, or other educational institution to hire and employ an employee of a particular religion if:
      - (A) the school, college, university, or other educational institution is, in whole or in substantial part, owned, supported, controlled, or managed by a particular religious corporation, association, or society; or
      - (B) the curriculum of the school, college, university, or other educational institution is directed toward the propagation of a particular religion;
    - (iii) for an employer to give preference in employment to:
      - (A) the employer's:
        - (I) spouse;
        - (II) child; or
        - (III) son-in-law or daughter-in-law;
      - (B) a person for whom the employer is or would be liable to furnish financial support if the person were unemployed;
      - (C) a person to whom the employer during the preceding six months furnishes more than one-half of total financial support regardless of whether or not the employer was or is legally obligated to furnish support; or
      - (D) a person whose education or training is substantially financed by the employer for a period of two years or more.
  - (b) Nothing in this chapter applies to a business or enterprise on or near an Indian reservation with respect to a publicly announced employment practice of the business or enterprise under which preferential treatment is given to an individual because that individual is a native American Indian living on or near an Indian reservation.

- (c) Nothing in this chapter may be interpreted to require an employer, employment agency, labor organization, vocational school, joint labor-management committee, or apprenticeship program subject to this chapter to grant preferential treatment to an individual or to a group because of the race, color, religion, sex, age, national origin, disability, sexual orientation, or gender identity of the individual or group on account of an imbalance that may exist with respect to the total number or percentage of persons of a race, color, religion, sex, age, national origin, disability, sexual orientation, or gender identity employed by an employer, referred or classified for employment by an employment agency or labor organization, admitted to membership or classified by a labor organization, or admitted to or employed in, any apprenticeship or other training program, in comparison with the total number or percentage of persons of that race, color, religion, sex, age, national origin, disability, sexual orientation, or gender identity in any community or county or in the available work force in any community or county.
- (4) It is not a discriminatory or prohibited practice with respect to age to observe the terms of a bona fide seniority system or any bona fide employment benefit plan such as a retirement, pension, or insurance plan that is not a subterfuge to evade the purposes of this chapter, except that an employee benefit plan may not excuse the failure to hire an individual.
- (5) Notwithstanding Subsection (4), or another statute to the contrary, a person may not be subject to involuntary termination or retirement from employment on the basis of age alone, if the individual is 40 years of age or older, except:
  - (a) under Subsection (6); and
  - (b) when age is a bona fide occupational qualification.
- (6) Nothing in this section prohibits compulsory retirement of an employee who has attained at least 65 years of age, and who, for the two-year period immediately before retirement, is employed in a bona fide executive or a high policymaking position, if:
  - (a) that employee is entitled to an immediate nonforfeitable annual retirement benefit from the employee's employer's pension, profit-sharing, savings, or deferred compensation plan, or any combination of those plans; and
  - (b) the benefit described in Subsection (6)(a) equals, in the aggregate, at least \$44,000.
- (7)
  - (a) For purposes of Subsection (1)(g), an employer may require an employee to provide a certification from the employee's health care provider concerning the medical advisability of a reasonable accommodation.
  - (b) A certification under Subsection (7)(a) shall include:
    - (i) the date the reasonable accommodation becomes medically advisable;
    - (ii) the probable duration of the reasonable accommodation; and
    - (iii) an explanatory statement as to the medical advisability of the reasonable accommodation.
  - (c) Notwithstanding Subsections (1)(g) and (7)(a), an employer may not require an employee to obtain a certification from the employee's health care provider for more frequent restroom, food, or water breaks.
  - (d) An employer is not required under Subsection (1)(g) or this Subsection (7) to permit an employee to have the employee's child at the workplace for purposes of accommodating pregnancy, childbirth, breastfeeding, or related conditions.
  - (e) An employer shall include in an employee handbook, or post in a conspicuous place in the employer's place of business, written notice concerning an employee's rights to reasonable accommodations for pregnancy, childbirth, breastfeeding, or related conditions.

Amended by Chapter 330, 2016 General Session

**34A-5-107 Procedure for aggrieved person to file claim -- Investigations -- Adjudicative proceedings -- Settlement -- Reconsideration -- Determination.**

- (1)
  - (a) A person claiming to be aggrieved by a discriminatory or prohibited employment practice may, or that person's attorney or agent may, make, sign, and file with the division a request for agency action.
  - (b) A request for agency action shall be verified under oath or affirmation.
  - (c) A request for agency action made under this section shall be filed within 180 days after the alleged discriminatory or prohibited employment practice occurs.
  - (d) The division may transfer a request for agency action filed with the division pursuant to this section to the federal Equal Employment Opportunity Commission in accordance with a work-share agreement that is:
    - (i) between the division and the Equal Employment Opportunity Commission; and
    - (ii) in effect on the day on which the request for agency action is transferred.
- (2) An employer, labor organization, joint apprenticeship committee, or vocational school who has an employee or member who refuses or threatens to refuse to comply with this chapter may file with the division a request for agency action asking the division for assistance to obtain the employee's or member's compliance by conciliation or other remedial action.
- (3)
  - (a) Before a hearing is set or held as part of any adjudicative proceeding, the division shall promptly assign an investigator to attempt a settlement between the parties by conference, conciliation, or persuasion.
  - (b) If no settlement is reached, the investigator shall make a prompt impartial investigation of all allegations made in the request for agency action.
  - (c) The division and its staff, agents, and employees:
    - (i) shall conduct every investigation in fairness to all parties and agencies involved; and
    - (ii) may not attempt a settlement between the parties if it is clear that no discriminatory or prohibited employment practice has occurred.
  - (d) An aggrieved party may withdraw the request for agency action prior to the issuance of a final order.
- (4)
  - (a) If the initial attempts at settlement are unsuccessful, and the investigator uncovers insufficient evidence during the investigation to support the allegations of a discriminatory or prohibited employment practice set out in the request for agency action, the investigator shall formally report these findings to the director or the director's designee.
  - (b) Upon receipt of the investigator's report described in Subsection (4)(a), the director or the director's designee may issue a determination and order for dismissal of the adjudicative proceeding.
  - (c) A party may make a written request to the Division of Adjudication for an evidentiary hearing to review de novo the director's or the director's designee's determination and order within 30 days of the date the determination and order for dismissal is issued.
  - (d) If the director or the director's designee receives no timely request for a hearing, the determination and order issued by the director or the director's designee becomes the final order of the commission.
- (5)
  - (a) If the initial attempts at settlement are unsuccessful and the investigator uncovers sufficient evidence during the investigation to support the allegations of a discriminatory or prohibited

employment practice set out in the request for agency action, the investigator shall formally report these findings to the director or the director's designee.

- (b)
- (i) Upon receipt of the investigator's report described in Subsection (5)(a), the director or the director's designee may issue a determination and order based on the investigator's report.
  - (ii) A determination and order issued under this Subsection (5)(b) shall:
    - (A) direct the respondent to cease any discriminatory or prohibited employment practice; and
    - (B) provide relief to the aggrieved party as the director or the director's designee determines is appropriate.
- (c) A party may file a written request to the Division of Adjudication for an evidentiary hearing to review de novo the director's or the director's designee's determination and order within 30 days of the date the determination and order is issued.
- (d) If the director or the director's designee receives no timely request for a hearing, the determination and order issued by the director or the director's designee in accordance with Subsection (5)(b) becomes the final order of the commission.
- (6) In an adjudicative proceeding to review the director's or the director's designee's determination that a prohibited employment practice has occurred, the division shall present the factual and legal basis of the determination or order issued under Subsection (5).
- (7)
- (a) Before the commencement of an evidentiary hearing:
    - (i) the party filing the request for agency action may reasonably and fairly amend any allegation; and
    - (ii) the respondent may amend its answer.
  - (b) An amendment permitted under this Subsection (7) may be made:
    - (i) during or after a hearing; and
    - (ii) only with permission of the presiding officer.
- (8)
- (a) If, upon reviewing all the evidence at a hearing, the presiding officer finds that a respondent has not engaged in a discriminatory or prohibited employment practice, the presiding officer shall issue an order dismissing the request for agency action containing the allegation of a discriminatory or prohibited employment practice.
  - (b) The presiding officer may order that the respondent be reimbursed by the complaining party for the respondent's attorneys' fees and costs.
- (9) If, upon reviewing all the evidence at the hearing, the presiding officer finds that a respondent has engaged in a discriminatory or prohibited employment practice, the presiding officer shall issue an order requiring the respondent to:
- (a) cease any discriminatory or prohibited employment practice;
  - (b) provide relief to the complaining party, including:
    - (i) reinstatement;
    - (ii) back pay and benefits;
    - (iii) attorney fees; and
    - (iv) costs.
- (10) If a discriminatory practice described in Subsection (9) includes discrimination in matters of compensation, the presiding officer may provide, to the complaining party, in addition to the amount available to the complaining party under Subsection (9)(b), an additional amount equal to the amount of back pay available to the complaining party under Subsection (9)(b)(ii) unless a respondent shows that:
- (a) the act or omission that gave rise to the order was in good faith; and

- (b) the respondent had reasonable grounds to believe that the act or omission was not discrimination in matters of compensation under this chapter.
- (11) Conciliation between the parties is to be urged and facilitated at all stages of the adjudicative process.
- (12)
  - (a) Either party may file with the Division of Adjudication a written request for review before the commissioner or Appeals Board of the order issued by the presiding officer in accordance with:
    - (i) Section 63G-4-301; and
    - (ii) Chapter 1, Part 3, Adjudicative Proceedings.
  - (b) If there is no timely request for review, the order issued by the presiding officer becomes the final order of the commission.
- (13) An order of the commission under Subsection (12)(a) is subject to judicial review as provided in:
  - (a) Section 63G-4-403; and
  - (b) Chapter 1, Part 3, Adjudicative Proceedings.
- (14) The commission may make rules concerning procedures under this chapter in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- (15) The commission and its staff may not divulge or make public information gained from an investigation, settlement negotiation, or proceeding before the commission except as provided in Subsections (15)(a) through (d).
  - (a) Information used by the director or the director's designee in making a determination may be provided to all interested parties for the purpose of preparation for and participation in proceedings before the commission.
  - (b) General statistical information may be disclosed provided the identities of the individuals or parties are not disclosed.
  - (c) Information may be disclosed for inspection by the attorney general or other legal representatives of the state or the commission.
  - (d) Information may be disclosed for information and reporting requirements of the federal government.
- (16) The procedures contained in this section are the exclusive remedy under state law for employment discrimination based upon:
  - (a) race;
  - (b) color;
  - (c) sex;
  - (d) retaliation;
  - (e) pregnancy, childbirth, or pregnancy-related conditions;
  - (f) age;
  - (g) religion;
  - (h) national origin;
  - (i) disability;
  - (j) sexual orientation; or
  - (k) gender identity.
- (17)
  - (a) The commencement of an action under federal law for relief based upon an act prohibited by this chapter bars the commencement or continuation of an adjudicative proceeding before the commission in connection with the same claim under this chapter.

- (b) The transfer of a request for agency action to the Equal Employment Opportunity Commission in accordance with Subsection (1)(d) is considered the commencement of an action under federal law for purposes of Subsection (17)(a).
- (c) Nothing in this Subsection (17) is intended to alter, amend, modify, or impair the exclusive remedy provision set forth in Subsection (16).

Amended by Chapter 132, 2016 General Session

**34A-5-108 Judicial enforcement of division findings.**

- (1) The commission or the attorney general at the request of the commission shall commence an action under Section 63G-4-501 for civil enforcement of a final order of the commission issued under Subsection 34A-5-107(11) if:
  - (a) the order finds that there is reasonable cause to believe that a respondent has engaged or is engaging in discriminatory or prohibited employment practices made unlawful by this chapter;
  - (b) counsel to the commission or the attorney general determines after reasonable inquiry that the order is well grounded in fact and is warranted by existing law;
  - (c) the respondent has not received an order of automatic stay or discharge from the United States Bankruptcy Court; and
  - (d)
    - (i) the commission has not accepted a conciliation agreement to which the aggrieved party and respondent are parties; or
    - (ii) the respondent has not conciliated or complied with the final order of the commission within 30 days from the date the order is issued.
- (2) If the respondent seeks judicial review of the final order under Section 63G-4-403, pursuant to Section 63G-4-405 the commission may stay seeking civil enforcement pending the completion of the judicial review.

Amended by Chapter 382, 2008 General Session

**34A-5-109 Application to employee dress and grooming standards.**

This chapter may not be interpreted to prohibit an employer from adopting reasonable dress and grooming standards not prohibited by other provisions of federal or state law, provided that the employer's dress and grooming standards afford reasonable accommodations based on gender identity to all employees.

Enacted by Chapter 13, 2015 General Session

**34A-5-110 Application to sex-specific facilities.**

This chapter may not be interpreted to prohibit an employer from adopting reasonable rules and policies that designate sex-specific facilities, including restrooms, shower facilities, and dressing facilities, provided that the employer's rules and policies adopted under this section afford reasonable accommodations based on gender identity to all employees.

Enacted by Chapter 13, 2015 General Session

**34A-5-111 Application to the freedom of expressive association and the free exercise of religion.**

This chapter may not be interpreted to infringe upon the freedom of expressive association or the free exercise of religion protected by the First Amendment of the United States Constitution and Article I, Sections 1, 4, and 15 of the Utah Constitution.

Enacted by Chapter 13, 2015 General Session

**34A-5-112 Religious liberty protections -- Expressing beliefs and commitments in workplace -- Prohibition on employment actions against certain employee speech.**

- (1) An employee may express the employee's religious or moral beliefs and commitments in the workplace in a reasonable, non-disruptive, and non-harassing way on equal terms with similar types of expression of beliefs or commitments allowed by the employer in the workplace, unless the expression is in direct conflict with the essential business-related interests of the employer.
- (2) An employer may not discharge, demote, terminate, or refuse to hire any person, or retaliate against, harass, or discriminate in matters of compensation or in terms, privileges, and conditions of employment against any person otherwise qualified, for lawful expression or expressive activity outside of the workplace regarding the person's religious, political, or personal convictions, including convictions about marriage, family, or sexuality, unless the expression or expressive activity is in direct conflict with the essential business-related interests of the employer.

Enacted by Chapter 13, 2015 General Session

**Chapter 6**  
**Utah Occupational Safety and Health Act**  
  
**Part 1**  
**General Provisions**

**34A-6-101 Title.**

This chapter is known as the "Utah Occupational Safety and Health Act."

Renumbered and Amended by Chapter 375, 1997 General Session

**34A-6-102 Legislative intent.**

The intent of this chapter is:

- (1) to preserve human resources by providing for the safety and health of workers; and
- (2) to provide a coordinated state plan to implement, establish, and enforce occupational safety and health standards as effective as the standards under the Williams-Steiger Occupational Safety and Health Act of 1970, 29 U.S.C. Sec. 651 et seq.

Renumbered and Amended by Chapter 375, 1997 General Session

**34A-6-103 Definitions -- Unincorporated entities -- Joint employers -- Franchisors.**

(1) As used in this chapter:

- (a) "Administrator" means the director of the Division of Occupational Safety and Health.

- (b) "Amendment" means such modification or change in a code, standard, rule, or order intended for universal or general application.
  - (c) "Commission" means the Labor Commission.
  - (d) "Division" means the Division of Occupational Safety and Health.
  - (e) "Employee" includes any person suffered or permitted to work by an employer.
  - (f) "Employer" means:
    - (i) the state;
    - (ii) a county, city, town, and school district in the state; and
    - (iii) a person, including a public utility, having one or more workers or operatives regularly employed in the same business, or in or about the same establishment, under any contract of hire.
  - (g) "Federal executive agency" means an executive agency, as defined in 5 U.S.C. Sec. 105, of the federal government.
  - (h) "Franchise" means the same as that term is defined in 16 C.F.R. Sec. 436.1.
  - (i) "Franchisee" means the same as that term is defined in 16 C.F.R. Sec. 436.1.
  - (j) "Franchisor" means the same as that term is defined in 16 C.F.R. Sec. 436.1.
  - (k) "Hearing" means a proceeding conducted by the commission.
  - (l) "Imminent danger" means a danger exists which reasonably could be expected to cause an occupational disease, death, or serious physical harm immediately, or before the danger could be eliminated through enforcement procedures under this chapter.
  - (m) "National consensus standard" means any occupational safety and health standard or modification:
    - (i) adopted by a nationally recognized standards-producing organization under procedures where it can be determined by the administrator and division that persons interested and affected by the standard have reached substantial agreement on its adoption;
    - (ii) formulated in a manner which affords an opportunity for diverse views to be considered; and
    - (iii) designated as such a standard by the secretary of the United States Department of Labor.
  - (n) "Person" means the general public, one or more individuals, partnerships, associations, corporations, legal representatives, trustees, receivers, and the state and its political subdivisions.
  - (o) "Publish" means publication in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
  - (p) "Secretary" means the secretary of the United States Department of Labor.
  - (q) "Standard" means an occupational health and safety standard or group of standards which requires conditions, or the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary to provide safety and healthful employment and places of employment.
  - (r) "Unincorporated entity" means an entity organized or doing business in the state that is not:
    - (i) an individual;
    - (ii) a corporation; or
    - (iii) publicly traded.
  - (s) "Variance" means a special, limited modification or change in the code or standard applicable to the particular establishment of the employer or person petitioning for the modification or change.
  - (t) "Workplace" means any place of employment.
- (2)
- (a) For purposes of this chapter, an unincorporated entity that is required to be licensed under Title 58, Chapter 55, Utah Construction Trades Licensing Act, is presumed to be the employer

- of each individual who, directly or indirectly, holds an ownership interest in the unincorporated entity.
- (b) Pursuant to rules made by the commission in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, an unincorporated entity may rebut the presumption under Subsection (2)(a) for an individual by establishing by clear and convincing evidence that the individual:
- (i) is an active manager of the unincorporated entity;
  - (ii) directly or indirectly holds at least an 8% ownership interest in the unincorporated entity; or
  - (iii) is not subject to supervision or control in the performance of work by:
    - (A) the unincorporated entity; or
    - (B) a person with whom the unincorporated entity contracts.
- (c) As part of the rules made under Subsection (2)(b), the commission may define:
- (i) "active manager";
  - (ii) "directly or indirectly holds at least an 8% ownership interest"; and
  - (iii) "subject to supervision or control in the performance of work."
- (3) For purposes of determining whether two or more persons are considered joint employers under this chapter, an administrative ruling of a federal executive agency may not be considered a generally applicable law unless that administrative ruling is determined to be generally applicable by a court of law, or adopted by statute or rule .
- (4)
- (a) For purposes of this chapter, a franchisor is not considered to be an employer of:
    - (i) a franchisee; or
    - (ii) a franchisee's employee.
  - (b) With respect to a specific claim for relief under this chapter made by a franchisee or a franchisee's employee, this Subsection (4) does not apply to a franchisor under a franchise that exercises a type or degree of control over the franchisee or the franchisee's employee not customarily exercised by a franchisor for the purpose of protecting the franchisor's trademarks and brand.

Amended by Chapter 370, 2016 General Session

**34A-6-104 Administration of chapter -- Selection of administrator -- Powers and duties of commission -- Application of chapter and exceptions.**

- (1) Administration of this chapter is vested in the commission and the division. The commission:
- (a) is vested with jurisdiction and supervision over every workplace in this state and is empowered to administer all laws and lawful orders to ensure that every employee in this state has a workplace free of recognized hazards;
  - (b) through the administrator, shall carry out the state plan and this chapter, provided that the administrator is a person with at least five years experience or training in the field of industrial safety and health;
  - (c) shall make, establish, promulgate and enforce all necessary and reasonable rules and provisions to carry this chapter into effect except when the division is authorized by this chapter to make rules; and
  - (d) may in its discretion administer oaths, take depositions, subpoena witnesses, compel production of documents, books, and accounts in any inquiry, investigation, hearing, or proceeding in any part of this state.
- (2) This chapter shall apply to all workplaces in the state except that nothing in this chapter shall apply to:

- (a) working conditions of employees with respect to which federal agencies and other state agencies acting under section 274 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2021, exercise statutory authority to prescribe or enforce standards or regulations affecting occupational safety or health; or
- (b) any workplace or employer not subject to the provisions of the federal Williams-Steiger Occupational Safety and Health Act of 1970 and any amendments to that act or any regulations promulgated under that act.

Amended by Chapter 13, 1998 General Session

**34A-6-105 Procedures -- Adjudicative proceedings.**

The commission, the division, and the administrator shall comply with the procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act, in any adjudicative proceedings that they conduct under this chapter.

Amended by Chapter 382, 2008 General Session

**34A-6-107 Research and related activities.**

- (1)
  - (a) The division, after consultation with other appropriate agencies, shall conduct, directly or by grants or contracts, whether federal or otherwise, research, experiments, and demonstrations in the area of occupational safety and health, including studies of psychological factors involved in innovative methods, techniques, and approaches for dealing with occupational safety and health problems.
  - (b)
    - (i) The division, to comply with its responsibilities under this section, and to develop needed information regarding toxic substances or harmful physical agents, may make rules requiring employers to measure, record, and make reports on the exposure of employees to substances or physical agents reasonably believed to endanger the health or safety of employees.
    - (ii) The division may establish programs for medical examinations and tests necessary for determining the incidence of occupational diseases and the susceptibility of employees to the diseases.
    - (iii) Nothing in this chapter authorizes or requires a medical examination, immunization, or treatment for persons who object on religious grounds, except when necessary for the protection of the health or safety of others.
    - (iv) Any employer who is required to measure and record employee exposure to substances or physical agents as provided under Subsection (1)(b) may receive full or partial financial or other assistance to defray additional expense incurred by measuring and recording as provided in this Subsection (1)(b).
  - (c)
    - (i) Following a written request by any employer or authorized representative of employees, specifying with reasonable particularity the grounds on which the request is made, the division shall determine whether any substance normally found in a workplace has toxic effects in the concentrations used or found, and shall submit its determination both to employers and affected employees as soon as possible.
    - (ii) The division shall immediately take action necessary under Section 34A-6-202 or 34A-6-305 if the division determines that:

- (A) any substance is toxic at the concentrations used or found in a workplace; and
  - (B) the substance is not covered by an occupational safety or health standard promulgated under Section 34A-6-202.
- (2) The division may inspect and question employers and employees as provided in Section 34A-6-301, to carry out its functions and responsibilities under this section.
  - (3) The division is authorized to enter into contracts, agreements, or other arrangements with appropriate federal or state agencies, or private organizations to conduct studies about its responsibilities under this chapter. In carrying out its responsibilities under this subsection, the division shall cooperate with the Department of Health and the Department of Environmental Quality to avoid any duplication of efforts under this section.
  - (4) Information obtained by the division under this section shall be disseminated to employers and employees and organizations of them.

Renumbered and Amended by Chapter 375, 1997 General Session

**34A-6-108 Collection, compilation, and analysis of statistics.**

- (1) The division shall develop and maintain an effective program of collection, compilation, and analysis of occupational safety and health statistics. The program may cover all employments whether subject to this chapter but may not cover employments excluded by Subsection 34A-6-104(2). The division shall compile accurate statistics on work injuries and occupational diseases.
- (2) The division may use the functions imposed by Subsection (1) to:
  - (a) promote, encourage, or directly engage in programs of studies, information, and communication concerning occupational safety and health statistics;
  - (b) assist agencies or political subdivisions in developing and administering programs dealing with occupational safety and health statistics; and
  - (c) arrange, through assistance, for the conduct of research and investigations which give promise of furthering the objectives of this section.
- (3) The division may, with the consent of any state agency or political subdivision of the state, accept and use the services, facilities, and employees of state agencies or political subdivisions of the state, with or without reimbursement, to assist it in carrying out its functions under this section.
- (4) On the basis of the records made and kept under Subsection 34A-6-301(3), employers shall file reports with the division in the form and manner prescribed by the division.
- (5) Agreements between the United States Department of Labor and Utah pertaining to the collection of occupational safety and health statistics already in effect on July 1, 1973, remain in effect until superseded.

Amended by Chapter 297, 2011 General Session

**34A-6-109 Educational and training programs.**

- (1) The division, after consultation with other appropriate agencies, shall conduct, directly or by assistance:
  - (a) educational programs to provide an adequate supply of qualified personnel to carry out the purpose of this chapter; and
  - (b) informational programs on the importance of adequate safety and health equipment.
- (2) The division is authorized to conduct, directly or by assistance, training for personnel engaged in work related to its responsibilities under this chapter.

(3) The division shall:

- (a) establish and supervise programs for the education and training of employers and employees for recognition, avoidance, and prevention of unsafe or unhealthful working conditions;
- (b) consult and advise employers and employees about effective means for prevention of any work-related injury or occupational disease; and
- (c) provide safety and health workplace surveys.

Renumbered and Amended by Chapter 375, 1997 General Session

**34A-6-110 Requirements of other laws not limited or repealed -- Worker's compensation or rights under other laws with respect to employment injuries not affected.**

- (1) Nothing in this chapter is deemed to limit or repeal requirements imposed by statute or otherwise recognized by law.
- (2) Nothing in this chapter shall be construed or held to supersede or in any manner affect workers' compensation or enlarge or diminish or affect the common-law or statutory rights, duties, or liabilities of employers and employees under any law with respect to injuries, occupational or other diseases, or death of employees arising out of, or in the course of employment.

Renumbered and Amended by Chapter 375, 1997 General Session

**34A-6-111 Federal aid.**

The commission may make application for, receive, administer, and expend any federal aid for the administration of any of the provisions of this chapter.

Renumbered and Amended by Chapter 375, 1997 General Session

**Part 2  
Duties and Standards**

**34A-6-201 Duties of employers and employees.**

- (1) Each employer shall:
  - (a) furnish to each of its employees employment and a place of employment that are free from recognized hazards that are causing or are likely to cause death or serious physical harm to its employees; and
  - (b) comply with occupational safety and health standards promulgated under this chapter.
- (2) Each employee shall comply with occupational safety and health standards and the rules and orders issued pursuant to this chapter that are applicable to the employee's own actions and conduct.
- (3) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules that are necessary to implement this section for a workplace with multiple employers.

Amended by Chapter 229, 2015 General Session

**34A-6-202 Standards -- Procedure for issuance, modification, or revocation by division --  
Emergency temporary standard -- Variances from standards -- Statement of reasons for  
administrator's actions -- Judicial review -- Priority for establishing standards.**

- (1)
- (a) The division, as soon as practicable, shall issue as standards any national consensus standard, any adopted federal standard, or any adopted Utah standard, unless it determines that issuance of the standard would not result in improved safety or health.
  - (b) All codes, standards, and rules adopted under Subsection (1)(a) shall take effect 30 days after publication unless otherwise specified.
  - (c) If any conflict exists between standards, the division shall issue the standard that assures the greatest protection of safety or health for affected employees.
- (2) The division may issue, modify, or revoke any standard as follows:
- (a) The division shall publish a proposed rule issuing, modifying, or revoking an occupational safety or health standard and shall afford interested parties an opportunity to submit written data or comments as prescribed by Title 63G, Chapter 3, Utah Administrative Rulemaking Act. When the administrator determines that a rule should be issued, the division shall publish the proposed rule after the expiration of the period prescribed by the administrator for submission.
  - (b) The administrator, in issuing standards for toxic materials or harmful physical agents under this subsection, shall set the standard which most adequately assures, to the extent feasible, on the basis of the best available evidence, that no employee will suffer material impairment of health or functional capacity even if the employee has regular exposure to the hazard during an employee's working life. Development of standards under this subsection shall be based upon research, demonstrations, experiments, and other information deemed appropriate. In addition to the attainment of the highest degree of health and safety protection for the employee, other considerations shall be the latest available scientific data in the field, the feasibility of the standards, and experience under this and other health and safety laws. Whenever practicable, the standard shall be expressed in terms of objective criteria and of the performance desired.
  - (c)
    - (i) Any employer may apply to the administrator for a temporary order granting a variance from a standard issued under this section. Temporary orders shall be granted only if the employer:
      - (A) files an application which meets the requirements of Subsection (2)(c)(iv);
      - (B) establishes that the employer is unable to comply with a standard by its effective date because of unavailability of professional or technical personnel or of materials and equipment needed for compliance with the standard or because necessary construction or alteration of facilities cannot be completed by the effective date;
      - (C) establishes that the employer is taking all available steps to safeguard the employer's employees against hazards; and
      - (D) establishes that the employer has an effective program for compliance as quickly as practicable.
    - (ii) Any temporary order shall prescribe the practices, means, methods, operations, and processes which the employer shall adopt and use while the order is in effect and state in detail the employer's program for compliance with the standard. A temporary order may be granted only after notice to employees and an opportunity for a public hearing; provided, that the administrator may issue one interim order effective until a decision is made after public hearing.

- (iii) A temporary order may not be in effect longer than the period reasonably required by the employer to achieve compliance. In no case shall the period of a temporary order exceed one year.
  - (iv) An application for a temporary order under Subsection (2)(c) shall contain:
    - (A) a specification of the standard or part from which the employer seeks a variance;
    - (B) a representation by the employer, supported by representations from qualified persons having first-hand knowledge of the facts represented, that the employer is unable to comply with the standard or some part of the standard;
    - (C) a detailed statement of the reasons the employer is unable to comply;
    - (D) a statement of the measures taken and anticipated with specific dates, to protect employees against the hazard;
    - (E) a statement of when the employer expects to comply with the standard and what measures the employer has taken and those anticipated, giving specific dates for compliance; and
    - (F) a certification that the employer has informed the employer's employees of the application by:
      - (I) giving a copy to their authorized representative;
      - (II) posting a statement giving a summary of the application and specifying where a copy may be examined at the place or places where notices to employees are normally posted; and
      - (III) by other appropriate means.
  - (v) The certification required under Subsection (2)(c)(iv) shall contain a description of how employees have been informed.
  - (vi) The information to employees required under Subsection (2)(c)(v) shall inform the employees of their right to petition the division for a hearing.
  - (vii) The administrator is authorized to grant a variance from any standard or some part of the standard when the administrator determines that it is necessary to permit an employer to participate in a research and development project approved by the administrator to demonstrate or validate new and improved techniques to safeguard the health or safety of workers.
- (d)
- (i) Any standard issued under this subsection shall prescribe the use of labels or other forms of warning necessary to ensure that employees are apprised of all hazards, relevant symptoms and emergency treatment, and proper conditions and precautions of safe use or exposure. When appropriate, a standard shall prescribe suitable protective equipment and control or technological procedures for use in connection with such hazards and provide for monitoring or measuring employee exposure at such locations and intervals, and in a manner necessary for the protection of employees. In addition, any such standard shall prescribe the type and frequency of medical examinations or other tests which shall be made available by the employer, or at the employer's cost, to employees exposed to hazards in order to most effectively determine whether the health of employees is adversely affected by exposure. If medical examinations are in the nature of research as determined by the division, the examinations may be furnished at division expense. The results of such examinations or tests shall be furnished only to the division; and, at the request of the employee, to the employee's physician.
  - (ii) The administrator may by rule make appropriate modifications in requirements for the use of labels or other forms of warning, monitoring or measuring, and medical examinations

warranted by experience, information, or medical or technological developments acquired subsequent to the promulgation of the relevant standard.

- (e) Whenever a rule issued by the administrator differs substantially from an existing national consensus standard, the division shall publish a statement of the reasons why the rule as adopted will better effectuate the purposes of this chapter than the national consensus standard.
  - (f) Whenever a rule, standard, or national consensus standard is modified by the secretary so as to make less restrictive the federal Williams-Steiger Occupational Safety and Health Act of 1970, the less restrictive modification shall be immediately applicable to this chapter and shall be immediately implemented by the division.
- (3)
- (a) The administrator shall provide an emergency temporary standard to take immediate effect upon publication if the administrator determines that:
    - (i) employees are exposed to grave danger from exposure to substances or agents determined to be toxic or physically harmful or from new hazards; and
    - (ii) that the standard is necessary to protect employees from danger.
  - (b) An emergency standard shall be effective until superseded by a standard issued in accordance with the procedures prescribed in Subsection (3)(c).
  - (c) Upon publication of an emergency standard the division shall commence a proceeding in accordance with Subsection (2) and the standard as published shall serve as a proposed rule for the proceedings. The division shall issue a standard under Subsection (3) no later than 120 days after publication of the emergency standard.
- (4)
- (a) Any affected employer may apply to the division for a rule or order for a variance from a standard issued under this section. Affected employees shall be given notice of each application and may participate in a hearing. The administrator shall issue a rule or order if the administrator determines on the record, after opportunity for an inspection where appropriate and a hearing, that the proponent of the variance has demonstrated by a preponderance of the evidence that the conditions, practices, means, methods, operations, or processes used or proposed to be used by an employer will provide employment and a workplace to the employer's employees that are as safe and healthful as those which would prevail if the employer complied with the standard.
  - (b) The rule or order issued under Subsection (4)(a) shall prescribe the conditions the employer must maintain, and the practices, means, methods, operations and processes that the employer must adopt and use to the extent they differ from the standard in question.
  - (c) A rule or order issued under Subsection (4)(a) may be modified or revoked upon application by an employer, employees, or by the administrator on its own motion, in the manner prescribed for its issuance under Subsection (4) at any time after six months from its issuance.
- (5) The administrator shall include a statement of reasons for the administrator's actions when the administrator:
- (a) issues any code, standard, rule, or order;
  - (b) grants any exemption or extension of time; or
  - (c) compromises, mitigates, or settles any penalty assessed under this chapter.
- (6) Any person adversely affected by a standard issued under this section, at any time prior to 60 days after a standard is issued, may file a petition challenging its validity with the district court having jurisdiction for judicial review. A copy of the petition shall be served upon the division by the petitioner. The filing of a petition may not, unless otherwise ordered by the court, operate

as a stay of the standard. The determinations of the division shall be conclusive if supported by substantial evidence on the record as a whole.

- (7) In determining the priority for establishing standards under this section, the division shall give due regard to the urgency of the need for mandatory safety and health standards for particular industries, trades, crafts, occupations, businesses, workplaces or work environments. The administrator shall also give due regard to the recommendations of the Department of Health about the need for mandatory standards in determining the priority for establishing the standards.

Amended by Chapter 413, 2013 General Session

**34A-6-203 Discharge or retaliation against employee prohibited.**

- (1) A person may not discharge or in any way retaliate against an employee because the employee:
- (a) files a complaint or institutes or causes to be instituted a proceeding under or related to this chapter;
  - (b) testifies or is about to testify in any proceeding under or related to this chapter; or
  - (c) exercises a right granted by this chapter on behalf of the employee or others.
- (2)
- (a) An employee who believes that the employee has been discharged or otherwise retaliated against by any person in violation of this section may, within 30 days after the violation occurs, file a complaint with the division alleging discharge or retaliation in violation of this section.
  - (b)
    - (i) Upon receipt of the complaint, the division shall cause an investigation to be made.
    - (ii) The division may employ investigators as necessary to carry out the purpose of this Subsection (2).
  - (c) Upon completion of the investigation, the division shall issue an order:
    - (i)
      - (A) finding a violation of this section has occurred;
      - (B) requiring that the violation cease; and
      - (C) which may include other appropriate relief, such as reinstatement of the employee to the employee's former position with back pay; or
    - (ii) finding that a violation of the section has not occurred.
  - (d) An order issued under Subsection (2)(c) is the final order of the commission unless a party to the claim of a violation of this section seeks further review as provided in Subsection (3).
- (3)
- (a) A party to a claim of a violation of this section may seek review of the order issued under Subsection (2)(c) within 30 days from the date the order is issued by filing a request for review with the Division of Adjudication.
  - (b) The request for review shall comply with Subsection 63G-4-301(1).
  - (c) If the request for review is made, the Division of Adjudication shall conduct a de novo review of the underlying order.
  - (d) If the request for review is based on a finding that a violation of this section occurred, the division shall appear in the review proceeding to defend the division's finding.
  - (e) If the request for review is based on a finding that a violation of this section did not occur, the division may not participate in the review proceeding.
  - (f)

- (i) If the Division of Adjudication determines a violation of this section has occurred, it may order relief as provided in Subsection (2)(c).
  - (ii) If the Division of Adjudication determines that a violation of this section has not occurred, it shall issue an order stating the determination.
- (4) A party may appeal an order issued by the Division of Adjudication under Subsection (3)(f) in accordance with Subsection 34A-6-304(1).

Amended by Chapter 67, 2016 General Session

**34A-6-204 State agencies and political subdivisions to establish programs.**

The head of each state agency and each political subdivision of the state shall establish and maintain an occupational safety and health program equivalent to the program for other employments in the state. The commission may not assess monetary penalties against any state agency or political subdivision under Section 34A-6-307.

Renumbered and Amended by Chapter 375, 1997 General Session

**Part 3  
Enforcement**

**34A-6-301 Inspection and investigation of workplace, worker injury, illness, or complaint -- Warrants -- Attendance of witnesses -- Recordkeeping by employers -- Employer and employee representatives -- Request for inspection -- Compilation and publication of reports and information -- Rules.**

- (1)
- (a) The division or its representatives, upon presenting appropriate credentials to the owner, operator, or agent in charge, may:
    - (i) enter without delay at reasonable times any workplace where work is performed by an employee of an employer;
    - (ii) inspect and investigate during regular working hours and at other reasonable times in a reasonable manner any workplace, worker injury, occupational disease, or complaint and all pertinent methods, operations, processes, conditions, structures, machines, apparatus, devices, equipment, and materials in the workplace; and
    - (iii) question privately any such employer, owner, operator, agent, or employee.
  - (b) The division, upon an employer's refusal to permit an inspection, may seek a warrant pursuant to the Utah Rules of Criminal Procedure.
- (2)
- (a) The division or its representatives may require the attendance and testimony of witnesses and the production of evidence under oath.
  - (b) Witnesses shall receive fees and mileage in accordance with Section 78B-1-119.
- (c)
- (i) If any person fails or refuses to obey an order of the division to appear, any district court within the jurisdiction of which such person is found, or resides or transacts business, upon the application by the division, shall have jurisdiction to issue to any person an order requiring that person to:
    - (A) appear to produce evidence if, as, and when so ordered; and

- (B) give testimony relating to the matter under investigation or in question.
  - (ii) Any failure to obey an order of the court described in this Subsection (2)(c) may be punished by the court as a contempt.
- (3)
- (a) The commission shall make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, requiring employers:
    - (i) to keep records regarding activities related to this chapter considered necessary for enforcement or for the development of information about the causes and prevention of occupational accidents and diseases; and
    - (ii) through posting of notices or other means, to inform employees of their rights and obligations under this chapter including applicable standards.
  - (b) The commission shall make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, requiring employers to keep records regarding any work-related death and injury and any occupational disease as provided in this Subsection (3)(b).
    - (i) Each employer shall investigate or cause to be investigated all work-related injuries and occupational diseases and any sudden or unusual occurrence or change of conditions that pose an unsafe or unhealthful exposure to employees.
    - (ii) Each employer shall, within eight hours of occurrence, notify the division of any:
      - (A) work-related fatality;
      - (B) disabling, serious, or significant injury; or
      - (C) occupational disease incident.
    - (iii)
      - (A) Each employer shall file a report with the Division of Industrial Accidents in accordance with Sections 34A-2-407 and 34A-3-108, after the employer's first knowledge of the occurrence, or after the employee's notification of the same, in the form prescribed by the Division of Industrial Accidents, of any work-related fatality or any work-related injury or occupational disease resulting in:
        - (I) medical treatment;
        - (II) loss of consciousness;
        - (III) loss of work;
        - (IV) restriction of work; or
        - (V) transfer to another job.
      - (B)
        - (I) Each employer shall file a subsequent report with the Division of Industrial Accidents of any previously reported injury or occupational disease that later resulted in death.
        - (II) The subsequent report shall be filed with the Division of Industrial Accidents in accordance with Sections 34A-2-407 and 34A-3-108.
    - (iv) A report is not required for minor injuries, such as cuts or scratches that require first aid treatment only, unless a treating physician files, or is required to file, the Physician's Initial Report of Work Injury or Occupational Disease with the Division of Industrial Accidents.
    - (v) A report is not required:
      - (A) for occupational diseases that manifest after the employee is no longer employed by the employer with which the exposure occurred; or
      - (B) where the employer is not aware of an exposure occasioned by the employment which results in a compensable occupational disease as defined by Section 34A-3-103.
    - (vi) Each employer shall provide the employee with:
      - (A) a copy of the report submitted to the Division of Industrial Accidents; and

- (B) a statement, as prepared by the Division of Industrial Accidents, of the employee's rights and responsibilities related to the industrial injury or occupational disease.
- (vii) Each employer shall maintain a record in a manner prescribed by the commission of all work-related fatalities or work-related injuries and of all occupational diseases resulting in:
  - (A) medical treatment;
  - (B) loss of consciousness;
  - (C) loss of work;
  - (D) restriction of work; or
  - (E) transfer to another job.
- (viii) The commission shall make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to implement this Subsection (3)(b) consistent with nationally recognized rules or standards on the reporting and recording of work-related injuries and occupational diseases.
- (c)
  - (i) The commission shall make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, requiring employers to keep records regarding exposures to potentially toxic materials or harmful physical agents required to be measured or monitored under Section 34A-6-202.
  - (ii)
    - (A) The rules made under Subsection (3)(c)(i) shall provide for employees or their representatives:
      - (I) to observe the measuring or monitoring; and
      - (II) to have access to the records of the measuring or monitoring, and to records that indicate their exposure to toxic materials or harmful agents.
    - (B) Each employer shall promptly notify employees being exposed to toxic materials or harmful agents in concentrations that exceed prescribed levels and inform any such employee of the corrective action being taken.
- (4) Information obtained by the division shall be obtained with a minimum burden upon employers, especially those operating small businesses.
- (5) A representative of the employer and a representative authorized by employees shall be given an opportunity to accompany the division's authorized representative during the physical inspection of any workplace. If there is no authorized employee representative, the division's authorized representative shall consult with a reasonable number of employees concerning matters of health and safety in the workplace.
- (6)
  - (a)
    - (i)
      - (A) Any employee or representative of employees who believes that a violation of an adopted safety or health standard exists that threatens physical harm, or that an imminent danger exists, may request an inspection by giving notice to the division's authorized representative of the violation or danger. The notice shall be:
        - (I) in writing, setting forth with reasonable particularity the grounds for notice; and
        - (II) signed by the employee or representative of employees.
      - (B) A copy of the notice shall be provided the employer or the employer's agent no later than at the time of inspection.
      - (C) Upon request of the person giving notice, the person's name and the names of individual employees referred to in the notice may not appear in the copy or on any record published, released, or made available pursuant to Subsection (7).

- (ii)
  - (A) If upon receipt of the notice the division's authorized representative determines there are reasonable grounds to believe that a violation or danger exists, the authorized representative shall make a special inspection in accordance with this section as soon as practicable to determine if a violation or danger exists.
  - (B) If the division's authorized representative determines there are no reasonable grounds to believe that a violation or danger exists, the authorized representative shall notify the employee or representative of the employees in writing of that determination.
- (b)
  - (i) Prior to or during any inspection of a workplace, any employee or representative of employees employed in the workplace may notify the division or its representative of any violation of a standard that they have reason to believe exists in the workplace.
  - (ii) The division shall:
    - (A) by rule, establish procedures for informal review of any refusal by a representative of the division to issue a citation with respect to any alleged violation; and
    - (B) furnish the employees or representative of employees requesting review a written statement of the reasons for the division's final disposition of the case.
- (7)
  - (a) The division may compile, analyze, and publish, either in summary or detailed form, all reports or information obtained under this section, subject to the limitations set forth in Section 34A-6-306.
  - (b) The commission shall make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, necessary to carry out its responsibilities under this chapter, including rules for information obtained under this section, subject to the limitations set forth in Section 34A-6-306.
- (8) Any employer who refuses or neglects to make reports, to maintain records, or to file reports with the commission as required by this section is guilty of a class C misdemeanor and subject to citation under Section 34A-6-302 and a civil assessment as provided under Section 34A-6-307, unless the commission finds that the employer has shown good cause for submitting a report later than required by this section.

Amended by Chapter 72, 2013 General Session

**34A-6-302 Citations issued by division -- Grounds -- Posting -- Limitation.**

- (1)
  - (a) If upon inspection or investigation, the division or its authorized representative believes that an employer has violated a requirement of Section 34A-6-201, of any standard, rule, or order issued under Section 34A-6-202, or any rules under this chapter, it shall with reasonable promptness issue a citation to the employer.
  - (b) Each citation shall:
    - (i) be in writing; and
    - (ii) describe with particularity the nature of the violation, including a reference to the provision of the chapter, standard, rule, or order alleged to have been violated.
  - (c) The citation shall fix a reasonable time for the abatement of the violation. In the case of a review proceeding initiated by the employer in good faith, not for the purpose of delay or avoidance of the penalties, the time for abatement begins to run on the date of the final order of the commission.

- (d) The commission may prescribe procedures for the issuance of a notice in lieu of a citation with respect to violations that have no direct or immediate relationship to safety or health.
- (2) Each citation issued under this section or a copy shall be prominently posted by the employer, as required by rule, at or near each place a violation referred to in the citation occurred.
- (3) A citation may not be issued under this section after the expiration of six months following the occurrence of any violation.

Renumbered and Amended by Chapter 375, 1997 General Session

**34A-6-303 Enforcement procedures -- Notification to employer of proposed assessment -- Notification to employer of failure to correct violation -- Contest by employer of citation or proposed assessment -- Procedure.**

- (1)
  - (a) If the division issues a citation under Subsection 34A-6-302(1), it shall within a reasonable time after inspection or investigation, notify the employer by certified mail of the assessment, if any, proposed to be assessed under Section 34A-6-307 and that the employer has 30 days to notify the Division of Adjudication that the employer intends to contest the citation, abatement, or proposed assessment.
  - (b) If, within 30 days from the receipt of the notice issued by the division, the employer fails to notify the Division of Adjudication that the employer intends to contest the citation, abatement, or proposed assessment, and no notice is filed by any employee or representative of employees under Subsection (3) within 30 days, the citation, abatement, and assessment, as proposed, is final and not subject to review by any court or agency.
- (2)
  - (a) If the division has reason to believe that an employer has failed to correct a violation for which a citation has been issued within the time period permitted, the division shall notify the employer by certified mail:
    - (i) of the failure;
    - (ii) of the assessment proposed to be assessed under Section 34A-6-307; and
    - (iii) that the employer has 30 days to notify the Division of Adjudication that the employer intends to contest the division's notification or the proposed assessment.
  - (b) The period for corrective action does not begin to run until entry of a final order by the commission.
  - (c) If the employer fails to notify the Division of Adjudication, in writing, within 30 days from the receipt of notification issued by the division, that the employer intends to contest the notification or proposed assessment, the notification and assessment, as proposed, is final and not subject to review by any court or agency.
- (3)
  - (a) If an employer notifies the Division of Adjudication that the employer intends to contest a citation issued under Subsection 34A-6-302(1), or notification issued under Subsection (1) or (2), or if, within 30 days of the issuance of a citation under Subsection 34A-6-302(1), any employee or representative of employees files a notice with the division alleging that the period of time fixed in the citation for the abatement of the violation is unreasonable, the division shall advise the commissioner of the notification, and the commissioner shall provide an opportunity for a hearing.
  - (b) Upon a showing by an employer of a good faith effort to comply with the abatement requirements of a citation, and that the abatement has not been completed because of factors beyond the employer's reasonable control, the division, after an opportunity for discussion

and consideration, shall issue an order affirming or modifying the abatement requirements in any citation.

Renumbered and Amended by Chapter 375, 1997 General Session

**34A-6-304 Procedure for review of order entered by administrative law judge -- Continuing jurisdiction of commission.**

- (1)
  - (a) Administrative law judges assigned by the director of the Division of Adjudication shall hear and determine any proceeding assigned to them by the Division of Adjudication.
  - (b) The administrative law judge shall enter the administrative law judge's findings of fact, conclusions of law, and order not later than 30 days after final receipt of all matters concerned in the hearing.
  - (c) The findings of fact, conclusions of law, and order of the administrative law judge shall become the final order of the commission unless objections are made in accordance with Subsection (2).
- (2)
  - (a) Any party of interest who is dissatisfied with the order entered by an administrative law judge may obtain a review by appealing the decision in accordance with Section 63G-4-301 and Chapter 1, Part 3, Adjudicative Proceedings.
  - (b) The commissioner or Appeals Board shall make its decision in accordance with Section 34A-1-303.
  - (c) The decision of the commission is final unless judicial review is requested in accordance with Chapter 1, Part 3, Adjudicative Proceedings.
  - (d) To the extent that new facts are provided, the commission has continuing jurisdiction to amend, reverse, or enhance prior orders.

Amended by Chapter 382, 2008 General Session

**34A-6-305 Injunction proceedings.**

- (1) The district courts shall have jurisdiction, upon petition of the administrator to restrain any conditions or practices in any place of employment where danger exists which could reasonably be expected to cause death or physical harm immediately or before the imminence of such danger can be eliminated through enforcement procedures provided by this chapter. Any order issued under this section may require that necessary steps be taken to avoid, correct, or remove imminent danger or prohibit the employment or presence of any individual in locations or under conditions where imminent danger exists, except individuals whose presence is necessary to avoid, correct, or remove imminent danger or maintain the capacity of a continuous process operation so that normal operations can be resumed without a complete cessation of operations, or where cessation of operations is necessary, to permit such to be accomplished in a safe and orderly manner.
- (2) The district courts shall have jurisdiction upon petition to grant injunctive relief or temporary restraining orders pending the outcome of any enforcement proceeding pursuant to this act pursuant to Rule 65A, Utah Rules of Civil Procedure; provided, that no temporary restraining order issued without notice shall be effective for more than five days.
- (3) Whenever an inspector concludes that imminent danger exists in any place of employment, the inspector shall inform the affected employees and employers of the danger and that the inspector is recommending to the administrator that relief be sought.

- (4) If the administrator arbitrarily or capriciously fails to seek relief under this section, any employee who may be injured by reason of such failure, or the representative of such employees, may bring an action against the administrator in the district court of the county in which the imminent danger is alleged to exist or the employer has its principal office, for a writ of mandamus and for further appropriate relief.

Renumbered and Amended by Chapter 375, 1997 General Session

**34A-6-306 Disclosure of trade secrets -- Protective orders.**

- (1) All information reported to or otherwise obtained by the administrator or the administrator's representatives or any employee in connection with any inspection or proceeding under this chapter which contains or which might reveal a trade secret shall be considered confidential except that the information may be disclosed to other officers or employees concerned with carrying out this chapter or when relevant, in any proceeding under this chapter.
- (2) In any such proceeding, the commission or the court shall issue appropriate orders to protect the trade secret.

Renumbered and Amended by Chapter 375, 1997 General Session

**34A-6-307 Civil and criminal penalties.**

- (1) The commission may assess civil penalties against any employer who has received a citation under Section 34A-6-302 as follows:
  - (a) Except as provided in Subsections (1)(b) through (d), the commission may assess up to \$7,000 for each cited violation.
  - (b) The commission may not assess less than \$250 nor more than \$7,000 for each cited serious violation. A violation is serious only if:
    - (i) it arises from a condition, practice, method, operation, or process in the workplace of which the employer knows or should know through the exercise of reasonable diligence; and
    - (ii) there is a substantial possibility that the condition, practice, method, operation, or process could result in death or serious physical harm.
  - (c) The commission may not assess less than \$5,000 nor more than \$70,000 for each cited willful violation.
  - (d) The commission may assess up to \$70,000 for each cited violation if the employer has previously been found to have violated the same standards, code, rule, or order.
  - (e) After the expiration of the time permitted to an employer to correct a cited violation, the commission may assess up to \$7,000 for each day the violation continues uncorrected.
- (2) The commission may assess a civil penalty of up to \$7,000 for each violation of any posting requirement under this chapter.
- (3) In deciding the amount to assess for a civil penalty, the commission shall consider all relevant factors, including:
  - (a) the size of the employer's business;
  - (b) the nature of the violation;
  - (c) the employer's good faith or lack of good faith; and
  - (d) the employer's previous record of compliance or noncompliance with this chapter.
- (4) Any civil penalty collected under this chapter shall be paid into the General Fund.
- (5) Criminal penalties under this chapter are as follows:
  - (a) Any employer who willfully violates any standard, code, rule, or order issued under Section 34A-6-202, or any rule made under this chapter, is guilty of a class A misdemeanor if the

violation caused the death of an employee. If the violation causes the death of more than one employee, each death is considered a separate offense.

- (b) Any person who gives advance notice of any inspection conducted under this chapter without authority from the administrator or the administrator's representatives is guilty of a class A misdemeanor.
- (c) Any person who knowingly makes a false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this chapter is guilty of a class A misdemeanor.
- (6) After a citation issued under this chapter and an opportunity for a hearing under Title 63G, Chapter 4, Administrative Procedures Act, the division may file an abstract for any uncollected citation penalty in the district court. The filed abstract shall have the effect of a judgment of that court. The abstract shall state the amount of the uncollected citation penalty, reasonable attorneys' fees as set by commission rule, and court costs.

Amended by Chapter 382, 2008 General Session

## **Chapter 7 Safety**

### **Part 1 Boilers and Pressure Vessels**

#### **34A-7-101 Scope of chapter -- Exemptions.**

- (1) Except as provided in Subsection (2), this part applies to any boiler or pressure vessel used in:
  - (a) industrial or manufacturing establishments;
  - (b) business establishments;
  - (c) sawmills;
  - (d) construction jobs; and
  - (e) any place where workers or the public may be exposed to risks from the operation of boilers or pressure vessels.
- (2) This part does not apply to:
  - (a) a boiler or pressure vessel subject to inspection, control, or regulation under the terms of any law or regulation of the federal government or any of its agencies;
  - (b) an air tank located on a vehicle used for transporting passengers or freight; or
  - (c) a boiler or pressure vessel that is excluded from the Boiler and Pressure Vessel Code published by the American Society of Mechanical Engineers.

Amended by Chapter 53, 1999 General Session

#### **34A-7-102 Standards for construction and design -- Special approved designs -- Maintenance requirements.**

- (1) For the purposes of this part, the standards for the design and construction of a new boiler and new pressure vessel shall be the latest applicable provisions of the Boiler and Pressure Vessel Code published by the American Society of Mechanical Engineers.

- (2) This part may not be construed as preventing the construction and use of a boiler or pressure vessel of special design:
  - (a) subject to approval of the Division of Boiler and Elevator Safety; and
  - (b) if the special design provides a level of safety equivalent to that contemplated by the Boiler and Pressure Vessel Code of the American Society of Mechanical Engineers.
- (3) A boiler and pressure vessel, including an existing boiler and pressure vessel, shall be maintained in safe operating condition for the service involved.

Amended by Chapter 297, 2011 General Session

**34A-7-103 Inspection requirements -- Inspection certificate -- Standards of inspectors.**

- (1) On and after July 1, 1967, each boiler used or proposed to be used within this state, except boilers exempt under Section 34A-7-101, shall be thoroughly inspected:
  - (a) internally and externally;
  - (b) annually, except as otherwise provided by this part;
  - (c) while not under pressure;
  - (d) by:
    - (i) the Division of Boiler and Elevator Safety; or
    - (ii) an inspector approved and deputized by the Division of Boiler and Elevator Safety; and
  - (e) as to its safety of construction, installation, condition, and operation.
- (2) If at any time a hydrostatic test shall be considered necessary by the Division of Boiler and Elevator Safety to determine the safety of a boiler, the hydrostatic test shall be made at the direction of the Division of Boiler and Elevator Safety allowing a reasonable time for owner or user to comply.
- (3)
  - (a) Not more than 14 months shall elapse between internal inspections of a boiler, except not more than 30 months between internal inspections of a large power boiler.
  - (b) For purposes of this Subsection (3) a "large power boiler" is a boiler operated and monitored continuously with adequate maintenance, combustion, and water controls.
  - (c) The Division of Boiler and Elevator Safety may extend the inspection interval in writing when proper evidence has been presented as to method of operation, performance records, and water treatment.
- (4)
  - (a) All low pressure boilers shall be internally and externally inspected at least biennially where construction will permit.
  - (b) For purposes of this Subsection (4), a "low pressure boiler" is a boiler with steam 15 pounds per square inch pressure and water 160 pounds per square inch pressure, maximum.
- (5)
  - (a) A boiler inspected by a deputized inspector employed by an insurance company, if made within the time limits provided in this section, shall be considered to meet the provisions of this part if:
    - (i) a report of the inspection is filed with the Division of Boiler and Elevator Safety within 30 days after the inspection; and
    - (ii) the boiler is certified by the inspector employed by an insurance company as being safe to operate for the purpose for which it is being used.
  - (b) The inspection and filing of the report with the Division of Boiler and Elevator Safety shall exempt the boiler or boilers from inspection fees provided for in this part.

- (6) If a boiler shall, upon inspection, be found to be suitable and to conform to the rules of the commission, the inspector shall issue to the owner or user an inspection certificate.
- (7)
  - (a) The Division of Boiler and Elevator Safety may at any time suspend an inspection certificate when in its opinion the boiler for which it was issued may not continue to be operated without menace to the public safety or when the boiler is found not to comply with the safety rules of the commission.
  - (b) The suspension of an inspection certificate shall continue in effect until the boiler shall have been made to conform to the safety rules of the commission and a new certificate is issued.
- (8) An inspector deputized or employed by the Division of Boiler and Elevator Safety under this part shall meet at all times nationally recognized standards of qualifications of fitness and competence for such work.

Amended by Chapter 155, 2006 General Session

**34A-7-104 Fees.**

The owner or user of a boiler required by this part to be inspected shall pay to the commission fees for inspection or for permits to operate in amounts set by the commission pursuant to Section 63J-1-504.

Amended by Chapter 183, 2009 General Session

**34A-7-105 Violation of chapter -- Misdemeanor -- Injunction.**

- (1) It is a violation of this part and a class C misdemeanor to operate a boiler or pressure vessel subject to this part if:
  - (a) certification has been denied or suspended; or
  - (b) the boiler or pressure vessel is knowingly operated while constituting a safety hazard.
- (2)
  - (a) The Division of Boiler and Elevator Safety may bring a lawsuit in any court of this state to enjoin the operation of any boiler or pressure vessel in violation of this part.
  - (b) The court may issue a temporary injunction, without bond, restraining further operation of the boiler or pressure vessel, ex parte.
  - (c) Upon a proper showing, the court shall permanently enjoin the operation of the boiler or pressure vessel until the violation is corrected.

Amended by Chapter 155, 2006 General Session

**Part 2  
Elevator and Escalator Safety Act**

**34A-7-201 Title.**

This part is known as the "Elevator and Escalator Safety Act."

Enacted by Chapter 53, 1999 General Session

**34A-7-202 Definitions.**

As used in this part:

- (1) "Division" means the Division of Boiler and Elevator Safety within the commission.
- (2)
  - (a) "Elevator" means a hoisting and lowering mechanism:
    - (i) equipped with a car or platform; and
    - (ii) that moves in guides in a substantially vertical direction.
  - (b) "Elevator" does not mean:
    - (i) a device used for the sole purpose of elevating or lowering materials such as:
      - (A) a dumbwaiter;
      - (B) a conveyor; or
      - (C) a chain, bucket, or construction hoist;
    - (ii) a tiering, piling, feeding, or similar machine giving service within only one story;
    - (iii) a portable platform;
    - (iv) a stage lift;
    - (v) a device installed in a single family dwelling;
    - (vi) a device installed in a facility owned and operated by the federal government; or
    - (vii) an amusement ride, as defined in Section 78B-4-507.
- (3)
  - (a) "Escalator" means a stairway, moving walkway, or runway that is:
    - (i) power-driven;
    - (ii) continuous; and
    - (iii) used to transport one or more individuals.
  - (b) "Escalator" does not mean:
    - (i) a device used for the sole purpose of elevating or lowering materials such as:
      - (A) a dumbwaiter;
      - (B) a conveyor; or
      - (C) a chain, bucket, or construction hoist;
    - (ii) a device installed in a single-family dwelling;
    - (iii) a device installed in a facility owned and operated by the federal government; or
    - (iv) an amusement ride, as defined in Section 78B-4-507.
- (4) "Owner or operator" means a person who owns, controls, or has the duty to control the operation of an elevator or escalator.
- (5) "Safety code" means the one or more codes adopted by the division in accordance with Subsection 34A-7-203(6) to be used in inspecting elevators and escalators.

Amended by Chapter 3, 2008 General Session

**34A-7-203 Requirements for operating an elevator or escalator -- Inspection -- Division duties.**

- (1) An elevator or escalator may not operate in this state unless:
  - (a) the owner or operator of the elevator or escalator obtains an inspection certificate under Subsection (3); and
  - (b) the inspection certificate described in Subsection (1)(a) has not:
    - (i) expired under Subsection (3); or
    - (ii) been suspended under Section 34A-7-204.
- (2) An elevator or escalator used or proposed to be used in this state shall be inspected as to its safety to operate in accordance with the safety code:
  - (a) every two years; or

- (b) more frequently than every two years if the division determines that more frequent inspections are necessary.
- (3)
  - (a) If upon inspection an elevator or escalator is safe to operate in accordance with the safety code, the inspector shall issue to the owner or operator an inspection certificate.
  - (b) An inspection certificate issued under Subsection (3)(a) shall expire two years from the date the inspection certificate is issued.
- (4) An inspector employed by the division under this part shall at all times meet nationally recognized standards of qualifications for inspectors of elevators and escalators, as defined by rule by the division.
- (5) The owner or operator of an elevator or escalator that is used in the state shall pay to the commission a fee in amounts set by the commission pursuant to Section 63J-1-504:
  - (a) for inspection; and
  - (b) for an inspection certificate.
- (6) The division:
  - (a) shall provide for the inspection of elevators and escalators in accordance with this section;
  - (b) shall adopt by rule one or more nationally recognized standards or other safety codes to be used in inspecting elevators or escalators; and
  - (c) may adopt amendments to the safety code adopted under Subsection (6)(b).

Amended by Chapter 183, 2009 General Session

**34A-7-204 Suspension of inspection certificates -- Violation of part -- Misdemeanor -- Injunction.**

- (1)
  - (a) The division may suspend an inspection certificate issued under Section 34A-7-203 if it finds that the elevator or escalator for which the inspection certificate is issued does not meet the requirements of the safety code.
  - (b) The suspension of an inspection certificate shall continue in effect until:
    - (i) the elevator or escalator conforms to the safety code; and
    - (ii) a new inspection certificate is issued.
- (2) It is a violation of this part and a class C misdemeanor to operate an elevator or escalator in this state if:
  - (a) an inspection certificate for the elevator or escalator has not been issued;
  - (b)
    - (i) an inspection certificate for the elevator or escalator is suspended; and
    - (ii) the requirements of Subsection (1)(b) are not met; or
  - (c) the elevator or escalator is knowingly operated while constituting a safety hazard.
- (3) The division may bring a lawsuit in any court of this state to enjoin the operation of any elevator or escalator in violation of this part.

Enacted by Chapter 53, 1999 General Session

**Chapter 11**  
**Genetic Testing Restrictions on Employers Act**

**34A-11-101 Title.**

This chapter is known as the "Genetic Testing Restrictions on Employers Act."

Enacted by Chapter 120, 2002 General Session

**34A-11-102 Restrictions on employers.**

With respect to matters related to genetic testing and private genetic information, an employer shall comply with Section 26-45-103 and the other applicable provisions of Title 26, Chapter 45, Genetic Testing Privacy Act.

Enacted by Chapter 120, 2002 General Session