

**EXEMPTION FOR DOMESTIC WORKERS FOR  
PERSONS ELIGIBLE FOR STATE AND  
FEDERAL PROGRAMS**

2001 GENERAL SESSION

STATE OF UTAH

**Sponsor: Trisha S. Beck**

**This act modifies the Labor Code to exempt certain domestic workers from coverage under workers' compensation provisions and to make technical and conforming changes.**

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

**34A-2-104**, as last amended by Chapter 45, Laws of Utah 1998

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

Section 1. Section **34A-2-104** is amended to read:

**34A-2-104. "Employee," "worker," or "operative" defined -- Mining lessees and sublessees -- Corporate officers and directors -- Real estate agents and brokers -- Prison inmates -- Insurance agents -- Certain domestic workers.**

(1) As used in this chapter and Chapter 3, Utah Occupational Disease Act, "employee," "worker," and "operative" mean:

(a) (i) each elective and appointive officer and any other person[;];

(A) in the service of;

(I) the state[;]; [~~or of any~~]

(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 [any];

(I) an election [~~or~~];

(II) appointment[;]; or [~~under~~]

(III) any contract of hire, express or implied, written or oral[;]; and

28           (ii) including ~~each~~;  
29           (A) an officer ~~and~~ or employee of the state institutions of learning; and ~~members~~  
30           (B) a member of the National Guard while on state active duty; and  
31           (b) each person in the service of any employer, as defined in Section 34A-2-103, who  
32 employs one or more workers or operatives regularly in the same business, or in or about the same  
33 establishment~~[-];~~

34           (i) under any contract of hire~~[-];~~  
35           (A) express or implied~~[-]; and~~  
36           (B) oral or written~~[-];~~  
37           (ii) including aliens and minors, whether legally or illegally working for hire~~[-, but]; and~~ and  
38           (iii) not including any person whose employment:  
39           (A) is casual; and  
40           (B) not in the usual course of the trade, business, or occupation of the employee's  
41 employer.

42           (2) (a) Unless a lessee provides coverage as an employer under this chapter and Chapter  
43 3, any lessee in mines or of mining property and each employee and sublessee of the lessee shall  
44 be:

45           (i) covered for compensation by the lessor under this chapter and Chapter 3~~[-, and shall be];~~  
46           (ii) subject to this chapter and Chapter 3; and  
47           (iii) entitled to ~~its~~ the benefits of this chapter and Chapter 3, to the same extent as if  
48 ~~they~~ the lessee, employee, or sublessee were employees of the lessor drawing the wages paid  
49 employees for substantially similar work.

50           (b) The lessor may deduct from the proceeds of ores mined by the lessees an amount equal  
51 to the insurance premium for that type of work.

52           (3) (a) A partnership or sole proprietorship may elect to include any partner of the  
53 partnership or owner of the sole proprietorship as an employee of the partnership or sole  
54 proprietorship under this chapter and Chapter 3.

55           (b) If a partnership or sole proprietorship makes an election under Subsection (3)(a), ~~it~~  
56 the partnership or sole proprietorship shall serve written notice upon its insurance carrier naming  
57 the persons to be covered.

58           (c) A partner of a partnership or owner of a sole proprietorship may not be considered an

59 employee of the partner's partnership or the owner's sole proprietorship under this chapter or  
60 Chapter 3~~[-Utah Occupational Disease Act,]~~ until ~~[this]~~ the notice ~~[has been]~~ described in  
61 Subsection (3)(b) is given.

62 ~~[(e)]~~ (d) For premium rate making, the insurance carrier shall assume the salary or wage  
63 of the partner or sole proprietor electing coverage under Subsection (3)(a) to be 100% of the state's  
64 average weekly wage.

65 (4) (a) A corporation may elect not to include any director or officer of the corporation as  
66 an employee under this chapter and Chapter 3~~[-Utah Occupational Disease Act]~~.

67 (b) If a corporation makes an election under Subsection (4)(a), ~~[it]~~ the corporation shall  
68 serve written notice upon its insurance carrier naming the persons to be excluded from coverage.

69 (c) A director or officer of a corporation is considered an employee under this chapter and  
70 Chapter 3~~[-Utah Occupational Disease Act,]~~ until ~~[this]~~ the notice ~~[has been]~~ described in  
71 Subsection (4)(b) is given.

72 (5) As used in this chapter and Chapter 3, "employee," "worker," and "operative" do not  
73 include:

74 (a) a real estate sales agent or real estate broker, as defined in Section 61-2-2, who  
75 performs services in that capacity for a real estate broker if:

76 (i) substantially all of the real estate sales agent's or associated broker's income for services  
77 is from real estate commissions; and

78 (ii) the services of the real estate sales agent or associated broker are performed under a  
79 written contract that:

80 (A) the real estate agent is an independent contractor; and

81 (B) the real estate sales agent or associated broker is not to be treated as an employee for  
82 federal income tax purposes;

83 (b) an offender performing labor under Section 64-13-16 or 64-13-19, except as required  
84 by federal statute or regulation; ~~[or]~~

85 (c) an individual who for an insurance agent or broker, as defined in Section 31A-1-301,  
86 solicits, negotiates, places or procures insurance if:

87 (i) substantially all of the individual's income from those services is from insurance  
88 commissions; and

89 (ii) the services of the individual are performed under a written contract that states that the

- 90 individual:
- 91 (A) is an independent contractor;
- 92 (B) is not to be treated as an employee for federal income tax purposes; and
- 93 (C) can derive income from more than one insurance company[-]; or
- 94 (d) notwithstanding Subsection 34A-2-103(4), an individual who provides domestic work
- 95 for a person if:
- 96 (i) the person for whom the domestic work is being provided receives or is eligible to
- 97 receive the domestic work under a state or federal program designed to pay the costs of domestic
- 98 work to prevent the person from being placed in:
- 99 (A) an institution; or
- 100 (B) a more restrictive placement than where that person resides at the time the person
- 101 receives the domestic work;
- 102 (ii) the individual is paid by a person designated by the Secretary of the Treasury in
- 103 accordance with Internal Revenue Code, Section 3504, as a fiduciary, agent, or other person that
- 104 has the control, receipt, custody, or disposal of, or pays the wages of the individual; and
- 105 (iii) the domestic work is performed under a written contract that notifies the individual
- 106 that the individual is not an employee under this chapter or Chapter 3.
- 107 (6) An individual described in Subsection (5)(d) may become an employee under this
- 108 chapter and Chapter 3 if the employer of the individual complies with:
- 109 (a) this chapter and Chapter 3; and
- 110 (b) commission rules.

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**Legislative Review Note**  
**as of 1-17-01 4:53 PM**

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

**Office of Legislative Research and General Counsel**