

**REPEAL OF UTAH OCCUPATIONAL SAFETY
AND HEALTH ADVISORY COUNCIL**

2002 GENERAL SESSION

STATE OF UTAH

Sponsor: Don E. Bush

This act modifies the Utah Labor Code by repealing the Utah Occupational Safety and Health Advisory Council.

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

AMENDS:

34A-1-202, as last amended by Chapter 69, Laws of Utah 2000

34A-6-103, as renumbered and amended by Chapter 375, Laws of Utah 1997

34A-6-202, as last amended by Chapter 10 and renumbered and amended by Chapter 375, Laws of Utah 1997

REPEALS:

34A-6-106, as renumbered and amended by Chapter 375, Laws of Utah 1997

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

Section 1. Section **34A-1-202** is amended to read:

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

(1) There is created within the commission the following divisions:

(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 Safety that shall administer the regulatory requirements of:

(i) Chapter 7, Safety; and

(ii) Title 40, Chapter 2, Coal Mines;



28 (d) the Division of Antidiscrimination and Labor that shall administer the regulatory
29 requirements of:

- 30 (i) Chapter 5, Utah Antidiscrimination Act;
- 31 (ii) Title 34A, Utah Labor Code, when specified by statute; and
- 32 (iii) Title 57, Chapter 21, Utah Fair Housing Act; and
- 33 (e) the Division of Adjudication that shall adjudicate claims or actions brought under this
34 title.

35 (2) In addition to the divisions created under this section, within the commission are the
36 following:

- 37 (a) the Labor Relations Board created in Section 34-20-3;
- 38 (b) the Appeals Board created in Section 34A-1-205;
- 39 (c) the following program advisory councils:
 - 40 (i) the workers' compensation advisory council created in Section 34A-2-107; and
 - 41 (ii) the antidiscrimination and labor advisory council created in Section 34A-5-105; and
 - 42 [~~(iii) the occupational safety and health advisory council created in Section 34A-6-106;~~
 - 43 ~~and]~~

44 (d) the mining certification panel created in Section 40-2-14.

45 (3) In addition to the responsibilities described in this section, the commissioner may
46 assign to a division a responsibility granted to the commission by law.

47 Section 2. Section **34A-6-103** is amended to read:

48 **34A-6-103. Definitions.**

49 As used in this chapter:

50 (1) "Administrator" means the director of the Division of Occupational Safety and Health.

51 (2) "Amendment" means such modification or change in a code, standard, rule, or order
52 intended for universal or general application.

53 (3) "Commission" means the Labor Commission.

54 [~~(4) "Council" means the Utah Occupational Safety and Health Advisory Council.]~~

55 [~~(5)~~ (4) "Division" means the Division of Occupational Safety and Health.

56 [~~(6)~~ (5) "Employee" includes any person suffered or permitted to work by an employer.

57 [~~(7)~~ (6) "Employer" means:

- 58 (a) the state;

59 (b) each county, city, town, and school district in the state; and

60 (c) every person, firm, and private corporation, including public utilities, having one or
61 more workers or operatives regularly employed in the same business, or in or about the same
62 establishment, under any contract of hire.

63 [~~8~~] (7) "Hearing" means a proceeding conducted by the commission.

64 [~~9~~] (8) "Imminent danger" means a danger exists which reasonably could be expected
65 to cause an occupational disease, death, or serious physical harm immediately, or before the danger
66 could be eliminated through enforcement procedures under this chapter.

67 [~~10~~] (9) "National consensus standard" means any occupational safety and health
68 standard or modification:

69 (a) adopted by a nationally recognized standards-producing organization under procedures
70 where it can be determined by the administrator and division that persons interested and affected
71 by the standard have reached substantial agreement on its adoption;

72 (b) formulated in a manner which affords an opportunity for diverse views to be
73 considered; and

74 (c) designated as such a standard by the Secretary of the United States Department of
75 Labor.

76 [~~11~~] (10) "Person" means the general public, one or more individuals, partnerships,
77 associations, corporations, legal representatives, trustees, receivers, and the state and its political
78 subdivisions.

79 [~~12~~] (11) "Publish" means publication in accordance with Title 63, Chapter 46a, Utah
80 Administrative Rulemaking Act.

81 [~~13~~] (12) "Secretary" means the Secretary of the United States Department of Labor.

82 [~~14~~] (13) "Standard" means an occupational health and safety standard or group of
83 standards which requires conditions, or the adoption or use of one or more practices, means,
84 methods, operations, or processes, reasonably necessary to provide safety and healthful
85 employment and places of employment.

86 [~~15~~] (14) "Variance" means a special, limited modification or change in the code or
87 standard applicable to the particular establishment of the employer or person petitioning for the
88 modification or change.

89 [~~16~~] (15) "Workplace" means any place of employment.

90 Section 3. Section 34A-6-202 is amended to read:

91 **34A-6-202. Standards -- Procedure for issuance, modification, or revocation by**
92 **division -- Emergency temporary standard -- Variances from standards -- Statement of**
93 **reasons for administrator's actions -- Judicial review -- Priority for establishing standards.**

94 (1) (a) The division, as soon as practicable, shall issue as standards any national consensus
95 standard, any adopted federal standard, or any adopted Utah standard, unless it determines that
96 issuance of the standard would not result in improved safety or health.

97 (b) All codes, standards, and rules adopted under Subsection (1)(a) shall take effect 30
98 days after publication unless otherwise specified.

99 (c) If any conflict exists between standards, the division shall issue the standard that
100 assures the greatest protection of safety or health for affected employees.

101 (2) The division may issue, modify, or revoke any standard as follows:

102 (a) ~~(1)~~ ~~[Whenever]~~ The administrator shall follow the procedures of this section in
103 issuing, modifying, or revoking an occupational safety or health standard if the administrator
104 determines that a rule should be promulgated to promote the objectives of this chapter upon the
105 basis of:

106 (i) information submitted in writing by:

107 (A) an interested person[;];

108 (B) a representative of any organization of employers or employees[;];

109 (C) a nationally recognized standards-producing organization[;];

110 (D) the Department of Health[;]; or

111 (E) a state agency or political subdivision[;]; or ~~on~~

112 (ii) information developed by the division or otherwise available~~[, that a rule should be~~
113 ~~promulgated to promote the objectives of this chapter, the administrator may request~~
114 ~~recommendations from the advisory council].~~

115 ~~[(ii) The administrator shall provide the advisory council with proposals, together with all~~
116 ~~pertinent factual information developed by the division, or otherwise available, including the~~
117 ~~results of research, demonstrations, and experiments.]~~

118 ~~[(iii) The advisory council shall submit to the administrator its recommendations regarding~~
119 ~~the rule to be promulgated within a period as prescribed by the administrator.]~~

120 (b) The division shall publish a proposed rule issuing, modifying, or revoking an

121 occupational safety or health standard and shall afford interested parties an opportunity to submit
122 written data or comments as prescribed by Title 63, Chapter 46a, Utah Administrative Rulemaking
123 Act. ~~[When the administrator determines that a rule should be issued, the division shall publish~~
124 ~~the proposed rule after the submission of the advisory council's recommendations or the expiration~~
125 ~~of the period prescribed by the administrator for submission.]~~

126 (c) The administrator, in issuing standards for toxic materials or harmful physical agents
127 under this subsection, shall set the standard which most adequately assures, to the extent feasible,
128 on the basis of the best available evidence, that no employee will suffer material impairment of
129 health or functional capacity even if the employee has regular exposure to the hazard during an
130 employee's working life. Development of standards under this subsection shall be based upon
131 research, demonstrations, experiments, and other information deemed appropriate. In addition to
132 the attainment of the highest degree of health and safety protection for the employee, other
133 considerations shall be the latest available scientific data in the field, the feasibility of the
134 standards, and experience under this and other health and safety laws. Whenever practicable, the
135 standard shall be expressed in terms of objective criteria and of the performance desired.

136 (d) (i) Any employer may apply to the administrator for a temporary order granting a
137 variance from a standard issued under this section. Temporary orders shall be granted only if the
138 employer:

139 (A) files an application which meets the requirements of Subsection (2)(d)(iv);

140 (B) establishes that the employer is unable to comply with a standard by its effective date
141 because of unavailability of professional or technical personnel or of materials and equipment
142 needed for compliance with the standard or because necessary construction or alteration of
143 facilities cannot be completed by the effective date;

144 (C) establishes that the employer is taking all available steps to safeguard the employer's
145 employees against hazards; and

146 (D) establishes that the employer has an effective program for compliance as quickly as
147 practicable.

148 (ii) Any temporary order shall prescribe the practices, means, methods, operations, and
149 processes which the employer must adopt and use while the order is in effect and state in detail the
150 employer's program for compliance with the standard. A temporary order may be granted only
151 after notice to employees and an opportunity for a public hearing; provided, that the administrator

152 may issue one interim order effective until a decision is made after public hearing.

153 (iii) A temporary order may not be in effect longer than the period reasonably required by
154 the employer to achieve compliance. In no case shall the period of a temporary order exceed one
155 year.

156 (iv) An application for a temporary order under Subsection (2)(d) shall contain:

157 (A) a specification of the standard or part from which the employer seeks a variance;

158 (B) a representation by the employer, supported by representations from qualified persons
159 having first-hand knowledge of the facts represented, that the employer is unable to comply with
160 the standard or some part of the standard;

161 (C) a detailed statement of the reasons the employer is unable to comply;

162 (D) a statement of the measures taken and anticipated with specific dates, to protect
163 employees against the hazard;

164 (E) a statement of when the employer expects to comply with the standard and what
165 measures the employer has taken and those anticipated, giving specific dates for compliance; and

166 (F) a certification that the employer has informed the employer's employees of the
167 application by:

168 (I) giving a copy to their authorized representative;

169 (II) posting a statement giving a summary of the application and specifying where a copy
170 may be examined at the place or places where notices to employees are normally posted; and

171 (III) by other appropriate means.

172 (v) The certification required under Subsection (2)(d)(iv) shall contain a description of
173 how employees have been informed.

174 (vi) The information to employees required under Subsection (2)(d)(v) shall inform the
175 employees of their right to petition the division for a hearing.

176 (vii) The administrator is authorized to grant a variance from any standard or some part
177 of the standard when the administrator determines that it is necessary to permit an employer to
178 participate in a research and development project approved by the administrator to demonstrate
179 or validate new and improved techniques to safeguard the health or safety of workers.

180 (e) (i) Any standard issued under this subsection shall prescribe the use of labels or other
181 forms of warning necessary to ensure that employees are apprised of all hazards, relevant
182 symptoms and emergency treatment, and proper conditions and precautions of safe use or

183 exposure. When appropriate, a standard shall prescribe suitable protective equipment and control
184 or technological procedures for use in connection with such hazards and provide for monitoring
185 or measuring employee exposure at such locations and intervals, and in a manner necessary for the
186 protection of employees. In addition, any such standard shall prescribe the type and frequency of
187 medical examinations or other tests which shall be made available by the employer, or at his cost,
188 to employees exposed to hazards in order to most effectively determine whether the health of
189 employees is adversely affected by exposure. If medical examinations are in the nature of research
190 as determined by the division, the examinations may be furnished at division expense. The results
191 of such examinations or tests shall be furnished only to the division; and, at the request of the
192 employee, to the employee's physician.

193 (ii) The administrator may by rule make appropriate modifications in requirements for the
194 use of labels or other forms of warning, monitoring or measuring, and medical examinations
195 warranted by experience, information, or medical or technological developments acquired
196 subsequent to the promulgation of the relevant standard.

197 (f) Whenever a rule issued by the administrator differs substantially from an existing
198 national consensus standard, the division shall publish a statement of the reasons why the rule as
199 adopted will better effectuate the purposes of this chapter than the national consensus standard.

200 (g) Whenever a rule, standard, or national consensus standard is modified by the secretary
201 so as to make less restrictive the federal Williams-Steiger Occupational Safety and Health Act of
202 1970, the less restrictive modification shall be immediately applicable to this chapter and shall be
203 immediately implemented by the division.

204 (3) (a) The administrator shall provide an emergency temporary standard to take immediate
205 effect upon publication if the administrator determines that:

206 (i) employees are exposed to grave danger from exposure to substances or agents
207 determined to be toxic or physically harmful or from new hazards; and

208 (ii) that the standard is necessary to protect employees from danger.

209 (b) An emergency standard shall be effective until superseded by a standard issued in
210 accordance with the procedures prescribed in Subsection (3)(c).

211 (c) Upon publication of an emergency standard the division shall commence a proceeding
212 in accordance with Subsection (2) and the standard as published shall serve as a proposed rule for
213 the proceedings. The division shall issue a standard under Subsection (3) no later than 120 days

214 after publication of the emergency standard.

215 (4) (a) Any affected employer may apply to the division for a rule or order for a variance
216 from a standard issued under this section. Affected employees shall be given notice of each
217 application and may participate in a hearing. The administrator shall issue a rule or order if the
218 administrator determines on the record, after opportunity for an inspection where appropriate and
219 a hearing, that the proponent of the variance has demonstrated by a preponderance of the evidence
220 that the conditions, practices, means, methods, operations, or processes used or proposed to be
221 used by an employer will provide employment and a workplace to the employer's employees that
222 are as safe and healthful as those which would prevail if the employer complied with the standard.

223 (b) The rule or order issued under Subsection (4)(a) shall prescribe the conditions the
224 employer must maintain, and the practices, means, methods, operations and processes that the
225 employer must adopt and use to the extent they differ from the standard in question.

226 (c) A rule or order issued under Subsection (4)(a) may be modified or revoked upon
227 application by an employer, employees, or by the administrator on its own motion, in the manner
228 prescribed for its issuance under Subsection (4) at any time after six months from its issuance.

229 (5) The administrator shall include a statement of reasons for the administrator's actions
230 when the administrator:

231 (a) issues any code, standard, rule, or order;

232 (b) grants any exemption or extension of time; or

233 (c) compromises, mitigates, or settles any penalty assessed under this chapter.

234 (6) Any person adversely affected by a standard issued under this section, at any time prior
235 to 60 days after a standard is issued, may file a petition challenging its validity with the district
236 court having jurisdiction for judicial review. A copy of the petition shall be served upon the
237 division by the petitioner. The filing of a petition shall not, unless otherwise ordered by the court,
238 operate as a stay of the standard. The determinations of the division shall be conclusive if
239 supported by substantial evidence on the record as a whole.

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

245 Section 4. **Repealer.**
246 This act repeals:
247 Section **34A-6-106, Occupational Safety and Health Advisory Council -- Appointment.**

Legislative Review Note
as of 10-24-01 12:07 PM

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

Office of Legislative Research and General Counsel

Committee Note

The Government Operations Interim Committee recommended this bill.