

WORKERS' COMPENSATION AMENDMENTS

2008 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Dan R. Eastman

House Sponsor: Todd E. Kiser

LONG TITLE

General Description:

This bill modifies provisions related to workers' compensation.

Highlighted Provisions:

This bill:

- ▶ modifies provisions related to workers' compensation and a workers' compensation coverage waiver;
- ▶ modifies provisions related to workers' compensation insurance fraud; and
- ▶ makes technical and conforming amendments.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

31A-21-104, as last amended by Laws of Utah 2007, Chapters 89 and 307

31A-22-501.1, as enacted by Laws of Utah 2005, Chapter 125

34A-2-103, as last amended by Laws of Utah 2006, Chapter 295

34A-2-110, as last amended by Laws of Utah 2007, Chapter 339

ENACTS:

31A-22-1011, Utah Code Annotated 1953

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

30 Section 1. Section **31A-21-104** is amended to read:

31 **31A-21-104. Insurable interest and consent -- Scope.**

32 (1) As used in this chapter:

33 (a) For purposes of this section, "exchange" means an exchange made pursuant to
34 Section 1035, Internal Revenue Code, as may be amended.

35 (b) "Insurable interest" in a person means the following, including a circumstance
36 described in Subsection (3):

37 (i) for [~~persons~~] a person closely related by blood or by law, a substantial interest
38 engendered by love and affection; or

39 (ii) in the case of [~~other persons~~] a person not described in Subsection (1)(b)(i), a lawful
40 and substantial interest in having the life, health, and bodily safety of the person insured
41 continue.

42 (c) "Insurable interest" in property or liability means any lawful and substantial
43 economic interest in the nonoccurrence of the event insured against.

44 (d) "Viatical settlement" is as defined in Section 31A-36-102.

45 (2) (a) An insurer may not knowingly provide insurance to a person who does not have
46 or expect to have an insurable interest in the subject of the insurance.

47 (b) A person may not knowingly procure, directly, by assignment, or otherwise, an
48 interest in the proceeds of an insurance policy unless that person has or expects to have an
49 insurable interest in the subject of the insurance.

50 (c) In the case of life insurance, the insurable interest requirements of Subsections (2)(a)
51 and (b):

52 (i) are satisfied if the requirements are met:

53 (A) at the effective date of the insurance policy; and

54 (B) at the time of a later procurement, if any, of an interest in the proceeds of an
55 insurance policy; and

56 (ii) do not need to be met at the time that proceeds of an insurance policy are payable if
57 the requirements are met at the times specified in Subsection (2)(c)(i).

58 (d) Except as provided in Subsections (7)[;] and (8), [~~and (9), any~~] insurance provided
59 in violation of this Subsection (2) is subject to Subsection (6).

60 (e) A policy holder in a group insurance policy does not need an insurable interest if a
61 certificate holder or a person other than the group policyholder who is specified by the
62 certificate holder is the recipient of the proceeds of the group insurance policy.

63 (3) The following is a nonexhaustive list of insurable interests:

64 (a) Each person has an unlimited insurable interest in that person's own life and health.

65 (b) A shareholder, member, or partner has an insurable interest in the life of [~~other~~
66 ~~shareholders, members, or partners~~] another shareholder, member, or partner for purposes of an
67 insurance [~~contracts that are~~] contract that is an integral part of a legitimate buy-sell agreement
68 respecting shares, membership interests, or partnership interests in the business.

69 (c) A trust has an insurable interest in the subject of the insurance to the extent that a
70 beneficiary of the trust has the insurable interest.

71 (d) (i) Subject to Subsection (3)(d)(v), an employer or an employer sponsored trust:

72 (A) has an insurable interest in the lives of the employer's:

73 (I) directors;

74 (II) officers;

75 (III) managers;

76 (IV) nonmanagement employees; and

77 (V) retired employees; and

78 (B) may insure [~~the lives~~] a life listed in Subsection (3)(d)(i)(A):

79 (I) on an individual or group basis; and

80 (II) with the written consent of the insured.

81 (ii) (A) A trustee of a trust established by an employer for the sole benefit of the
82 employer has the same insurable interest in the life and health of any person as does the
83 employer.

84 (B) Without limiting the general principle in Subsection (3)(d)(ii)(A), a trustee of a trust
85 established by an employer that provides life, health, disability, retirement, or similar benefits to

86 an individual identified in Subsection (3)(d)(i)(A) has an insurable interest in the life of the
87 individual described in Subsection (3)(d)(i)(A) for whom the benefits are provided.

88 (iii) (A) For the purpose of exchanging life insurance, [~~the individuals~~] an individual
89 described in Subsection (3)(d)(i)(A) [~~include~~] includes an individual who was formerly included
90 under Subsection (3)(d)(i)(A) if the life insurance to be exchanged:

91 (I) is purchased or acquired while the individual is a current director, officer, manager,
92 or employee; and

93 (II) is exchanged for life insurance in an amount that does not exceed the amount of the
94 insurance being exchanged.

95 (B) Written consent of an individual described in this Subsection (3)(d)(iii) is not
96 required at the time of the exchange of the life insurance.

97 (C) This Subsection (3)(d)(iii) shall be interpreted in a manner consistent with
98 Subsection (2)(c).

99 (iv) (A) If an employer or trustee establishes an insurable interest as provided in this
100 Subsection (3)(d) and all of the employer's business is acquired, purchased, merged into, or
101 otherwise transferred to a subsequent employer, the insurable interest of the original employer
102 or trustee in an individual described in Subsection (3)(d)(i)(A) is automatically transferred to:

103 (I) the subsequent employer; or

104 (II) the trustee of a trust established by the subsequent employer for the subsequent
105 employer's sole benefit.

106 (B) A subsequent employer or a trustee of a trust described in Subsection
107 (3)(d)(iv)(A)(II) may exchange life insurance that is purchased or acquired in an individual
108 described in Subsection (3)(d)(i)(A) by the original employer or trustee without establishing a
109 new insurable interest at the time of the exchange of the insurance.

110 (v) The extent of an employer's or employer sponsored trust's insurable interest for a
111 nonmanagement or retired employee under Subsection (3)(d)(i) is limited to an amount
112 commensurate with the employer's unfunded liabilities at the time insurance on the
113 nonmanagement or retired employee is procured.

114 (4) (a) Except as provided in Subsection (5), an insurer may not knowingly issue an
115 individual life or accident and health insurance policy to a person other than the one whose life
116 or health is at risk unless that person:

117 (i) is 18 years of age or older;

118 (ii) is not under guardianship under Title 75, Chapter 5, Protection of Persons Under
119 Disability and Their Property; and

120 (iii) gives written consent to the issuance of the policy.

121 (b) A person shall express consent:

122 (i) by signing an application for the insurance with knowledge of the nature of the
123 document; or

124 (ii) in any other reasonable way.

125 (c) [~~Any insurance~~] Insurance provided in violation of this Subsection (4) is subject to
126 Subsection (6).

127 (5) (a) A life or accident and health insurance policy may be taken out without consent
128 in a circumstance described in this Subsection (5)(a).

129 (i) A person may obtain insurance on a dependent who does not have legal capacity.

130 (ii) A creditor may, at the creditor's expense, obtain insurance on the debtor in an
131 amount reasonably related to the amount of the debt.

132 (iii) A person may obtain life and accident and health insurance on an immediate family
133 member who is living with or dependent on the person.

134 (iv) A person may obtain an accident and health insurance policy on others that would
135 merely indemnify the policyholder against expenses the person would be legally or morally
136 obligated to pay.

137 (v) The commissioner may adopt rules permitting issuance of insurance for a limited
138 term on the life or health of a person serving outside the continental United States who is in the
139 public service of the United States, if the policyholder is related within the second degree by
140 blood or by marriage to the person whose life or health is insured.

141 (b) Consent may be given by another in a circumstance described in this Subsection

142 (5)(b).

143 (i) A parent, a person having legal custody of a minor, or a guardian of a person under
144 Title 75, Chapter 5, Protection of Persons Under Disability and Their Property, may consent to
145 the issuance of a policy on a dependent child or on a person under guardianship under Title 75,
146 Chapter 5, Protection of Persons Under Disability and Their Property.

147 (ii) A grandparent may consent to the issuance of life or accident and health insurance
148 on a grandchild.

149 (iii) A court of general jurisdiction may give consent to the issuance of a life or accident
150 and health insurance policy on an ex parte application showing facts the court considers
151 sufficient to justify the issuance of that insurance.

152 (6) (a) An insurance policy is not invalid because:

153 (i) the insurance policy is issued or procured in violation of Subsection (2); or

154 (ii) consent has not been given.

155 (b) Notwithstanding Subsection (6)(a), a court with appropriate jurisdiction may:

156 (i) order the proceeds to be paid to some person who is equitably entitled to the
157 proceeds, other than the one to whom the policy is designated to be payable; or

158 (ii) create a constructive trust in the proceeds or a part of the proceeds on behalf of a
159 person who is equitably entitled to the proceeds, subject to all the valid terms and conditions of
160 the policy other than those relating to insurable interest or consent.

161 (7) This section does not prevent [~~any~~] an organization described under [~~26 U.S.C.~~
162 ~~Sec.~~] Section 501(c)(3), (e), or (f), Internal Revenue Code, as amended, and the regulations
163 made under this section, and which is regulated under Title 13, Chapter 22, Charitable
164 Solicitations Act, from soliciting and procuring, by assignment or designation as beneficiary, a
165 gift or assignment of an interest in life insurance on the life of the donor or assignor or from
166 enforcing payment of proceeds from that interest.

167 (8) An insurance policy transferred pursuant to Chapter 36, Viatical Settlements Act, is
168 not subject to Subsection (6)(b) and nothing else in this section shall prevent:

169 (a) [~~any~~] a policyholder of life insurance, whether or not the policyholder is also the

170 subject of the insurance, from entering into a viatical settlement;

171 (b) ~~[any]~~ a person from soliciting a person to enter into a viatical settlement;

172 (c) a person from enforcing payment of proceeds from the interest obtained under a
173 viatical settlement; or

174 (d) a viatical settlement provider, a viatical settlement purchaser, a financing entity, a
175 related provider trust, or a special purpose entity from executing any of the following with
176 respect to the death benefit or ownership of any portion of a viaticated policy as provided for in

177 Section 31A-36-109:

178 (i) an assignment;

179 (ii) a sale;

180 (iii) a transfer;

181 (iv) a devise; or

182 (v) a bequest.

183 ~~[(9) Notwithstanding Subsection (2), an insurer authorized under this title to issue a~~
184 ~~workers' compensation policy may issue a workers' compensation policy to a sole~~
185 ~~proprietorship, corporation, or partnership that elects not to include any owner, corporate~~
186 ~~officer, or partner as an employee under the policy even if at the time the policy is issued the~~
187 ~~sole proprietorship, corporation, or partnership has no employees.]~~

188 ~~[(10)]~~ (9) (a) The insurable interests described in this section:

189 (i) are not exclusive;

190 (ii) are cumulative of an insurable interest that is not expressly included in this section
191 but exists in common law; and

192 (iii) are not in lieu of an insurable interest that is not expressly included in this section
193 but exists in common law.

194 (b) The inclusion of an insurable interest in this section may not be considered to be
195 excluding another insurable interest that is similar to the insurable interest included in this
196 section.

197 (c) (i) The recognition of an insurable interest in this section by Chapter 89, Laws of

198 Utah 2007, does not imply or create a presumption that the insurable interest did not exist
199 before April 30, 2007.

200 (ii) An insurable interest shall be presumed with respect to a life insurance policy issued
201 before April 30, 2007 to a person whose insurable interest is recognized in this section by
202 Chapter 89, Laws of Utah 2007.

203 Section 2. Section **31A-22-501.1** is amended to read:

204 **31A-22-501.1. Employer groups.**

205 (1) The lives of a group of individuals may be insured under a policy:

206 (a) issued as a policyholder, to:

207 (i) an employer; or

208 (ii) an employer sponsored trust for the benefit of the employer's employees;

209 (b) having an insurable interest as stated in Subsection 31A-21-104[(2)(a)(v)](3)(d);

210 and

211 (c) subject to the requirement of Subsection 31A-21-104[(9)](3)(d)(v).

212 (2) A policy issued under this section is not subject to:

213 (a) Section 31A-21-311; and

214 (b) Sections 31A-22-516 through 31A-22-522.

215 Section 3. Section **31A-22-1011** is enacted to read:

216 **31A-22-1011. Workers' compensation coverage waivers.**

217 (1) As used in this section:

218 (a) "Business entity" means:

219 (i) a sole proprietorship;

220 (ii) a corporation;

221 (iii) a partnership;

222 (iv) a limited liability company; or

223 (v) an entity similar to one described in Subsections (1)(a)(i) through (iv).

224 (b) "Waiver" means a workers' compensation coverage waiver issued under this section.

225 (2) (a) Notwithstanding Section 31A-21-104, if the information required by Subsection

226 (3) is provided, an insurer authorized under this title to issue a workers' compensation policy
227 may issue a workers' compensation coverage waiver to a business entity that:

228 (i) elects not to include an owner, partner, or corporate officer or director as an
229 employee under a workers' compensation policy in accordance with Section 34A-2-103 and
230 Subsection 34A-2-104(4); and

231 (ii) employs no other employee on the day on which the insurer issues the waiver to the
232 business entity.

233 (b) As of the day on which a business entity described in Subsection (2)(a) employs an
234 employee other than an owner, partner, or corporate officer or director described in Subsection
235 (2)(a):

236 (i) the business entity's waiver is invalid; and

237 (ii) the business entity is required to provide workers' compensation coverage for that
238 employee in accordance with Section 34A-2-201.

239 (3) To obtain a waiver, a business entity shall submit to the insurer that issues the
240 waiver:

241 (a) a copy of two or more of the following:

242 (i) the business entity's federal or state income tax return that shows business income
243 for the complete taxable year that immediately precedes the day on which the business entity
244 submits the information;

245 (ii) a valid business license;

246 (iii) a license to engage in an occupation or profession, including a license under Title
247 59, Occupations and Professions; or

248 (iv) documentation of an active liability insurance policy that covers the business entity's
249 activities; or

250 (b) a copy of an item listed in Subsection (3)(a) and a copy of two or more of the
251 following:

252 (i) proof of a bank account for the business entity;

253 (ii) proof that for the business entity there is:

254 (A) a telephone number; and
255 (B) a physical location; or
256 (iii) an advertisement of services in a newspaper of general circulation or telephone
257 directory showing the business entity's:
258 (A) name; and
259 (B) contact information.
260 (4) (a) An insurer that issues a waiver shall report to the Labor Commission for each
261 business entity to which the insurer issues a waiver:
262 (i) the name, address, and telephone number of the business entity;
263 (ii) a name of an individual who can be contacted on behalf of the business entity; and
264 (iii) other information required by the Labor Commission, by rule made in accordance
265 with Title 63, Chapter 46a, Utah Administrative Rulemaking Act.
266 (b) The Labor Commission, by rule made in accordance with Title 63, Chapter 46a,
267 Utah Administrative Rulemaking Act, shall determine how frequently an insurer shall make a
268 report required by Subsection (4)(a), except that the Labor Commission shall require that a
269 report be submitted at least monthly.
270 (5) (a) The Labor Commission may investigate a business entity to determine whether
271 the business entity validly elects to not cover an owner, partner, or corporate officer or director
272 as an employee under a workers' compensation policy in accordance with Section 34A-2-103.
273 (b) If the Labor Commission determines that a business entity's election as provided in
274 this section is invalid, the Labor Commission may:
275 (i) prohibit a business entity from using a waiver obtained under this section; and
276 (ii) take any action provided for under Title 34A, Chapter 2 or 3 for failure to obtain
277 workers' compensation coverage for an employee.
278 Section 4. Section **34A-2-103** is amended to read:
279 **34A-2-103. Employers enumerated and defined -- Regularly employed --**
280 **Statutory employers.**
281 (1) (a) The state, and each county, city, town, and school district in the state are

282 considered employers under this chapter and Chapter 3, Utah Occupational Disease Act.

283 (b) For the purposes of the exclusive remedy in this chapter and Chapter 3, Utah
284 Occupational Disease Act prescribed in Sections 34A-2-105 and 34A-3-102, the state is
285 considered to be a single employer and includes any office, department, agency, authority,
286 commission, board, institution, hospital, college, university, or other instrumentality of the state.

287 (2) (a) Except as provided in Subsection (4), each person, including each public utility
288 and each independent contractor, who regularly employs one or more workers or operatives in
289 the same business, or in or about the same establishment, under any contract of hire, express or
290 implied, oral or written, is considered an employer under this chapter and Chapter 3, Utah
291 Occupational Disease Act.

292 (b) As used in this Subsection (2):

293 (i) "Independent contractor" means any person engaged in the performance of any work
294 for another who, while so engaged, is:

295 (A) independent of the employer in all that pertains to the execution of the work;

296 (B) not subject to the routine rule or control of the employer;

297 (C) engaged only in the performance of a definite job or piece of work; and

298 (D) subordinate to the employer only in effecting a result in accordance with the
299 employer's design.

300 (ii) "Regularly" includes all employments in the usual course of the trade, business,
301 profession, or occupation of the employer, whether continuous throughout the year or for only
302 a portion of the year.

303 (3) (a) The client company in an employee leasing arrangement under Title 58, Chapter
304 59, Professional Employer Organization Registration Act, is considered the employer of leased
305 employees and shall secure workers' compensation benefits for them by complying with
306 Subsection 34A-2-201(1) or (2) and commission rules.

307 (b) An insurance carrier may underwrite workers' compensation secured in accordance
308 with Subsection (3)(a) showing the leasing company as the named insured and each client
309 company as an additional insured by means of individual endorsements.

310 (c) Endorsements shall be filed with the division as directed by commission rule.

311 (d) The division shall promptly inform the Division of Occupation and Professional
312 Licensing within the Department of Commerce if the division has reason to believe that an
313 employee leasing company is not in compliance with Subsection 34A-2-201(1) or (2) and
314 commission rules.

315 (4) A domestic employer who does not employ one employee or more than one
316 employee at least 40 hours per week is not considered an employer under this chapter and
317 Chapter 3, Utah Occupational Disease Act.

318 (5) (a) As used in this Subsection (5):

319 (i) (A) "agricultural employer" means a person who employs agricultural labor as
320 defined in Subsections 35A-4-206(1) and (2) and does not include employment as provided in
321 Subsection 35A-4-206(3); and

322 (B) notwithstanding Subsection (5)(a)(i)(A), only for purposes of determining who is a
323 member of the employer's immediate family under Subsection (5)(a)(ii), if the agricultural
324 employer is a corporation, partnership, or other business entity, "agricultural employer" means
325 an officer, director, or partner of the business entity;

326 (ii) "employer's immediate family" means:

327 (A) an agricultural employer's:

328 (I) spouse;

329 (II) grandparent;

330 (III) parent;

331 (IV) sibling;

332 (V) child;

333 (VI) grandchild;

334 (VII) nephew; or

335 (VIII) niece;

336 (B) a spouse of any person provided in Subsection (5)(a)(ii)(A)(II) through (VIII); or

337 (C) an individual who is similar to those listed in Subsections (5)(a)(ii)(A) or (B) as

338 defined by rules of the commission; and

339 (iii) "nonimmediate family" means a person who is not a member of the employer's
340 immediate family.

341 (b) For purposes of this chapter and Chapter 3, Utah Occupational Disease Act, an
342 agricultural employer is not considered an employer of a member of the employer's immediate
343 family.

344 (c) For purposes of this chapter and Chapter 3, Utah Occupational Disease Act, an
345 agricultural employer is not considered an employer of a nonimmediate family employee if:

346 (i) for the previous calendar year the agricultural employer's total annual payroll for all
347 nonimmediate family employees was less than \$8,000; or

348 (ii) (A) for the previous calendar year the agricultural employer's total annual payroll for
349 all nonimmediate family employees was equal to or greater than \$8,000 but less than \$50,000;
350 and

351 (B) the agricultural employer maintains insurance that covers job-related injuries of the
352 employer's nonimmediate family employees in at least the following amounts:

353 (I) \$300,000 liability insurance, as defined in Section 31A-1-301; and

354 (II) \$5,000 for health care benefits similar to benefits under health care insurance as
355 defined in Section 31A-1-301.

356 (d) For purposes of this chapter and Chapter 3, Utah Occupational Disease Act, an
357 agricultural employer is considered an employer of a nonimmediate family employee if:

358 (i) for the previous calendar year the agricultural employer's total annual payroll for all
359 nonimmediate family employees is equal to or greater than \$50,000; or

360 (ii) (A) for the previous year the agricultural employer's total payroll for nonimmediate
361 family employees was equal to or exceeds \$8,000 but is less than \$50,000; and

362 (B) the agricultural employer fails to maintain the insurance required under Subsection
363 (5)(c)(ii)(B).

364 (6) An employer of agricultural laborers or domestic servants who is not considered an
365 employer under this chapter and Chapter 3, Utah Occupational Disease Act, may come under

366 this chapter and Chapter 3, Utah Occupational Disease Act, by complying with:

367 (a) this chapter and Chapter 3, Utah Occupational Disease Act; and

368 (b) the rules of the commission.

369 (7) (a) (i) As used in this Subsection (7)(a), "employer" includes any of the following
370 persons that procures work to be done by a contractor notwithstanding whether or not the
371 person directly employs a person:

372 (A) a sole proprietorship;

373 (B) a corporation;

374 (C) a partnership;

375 (D) a limited liability company; or

376 (E) a person similar to one described in Subsections (7)(a)(i)(A) through (D).

377 ~~[(7) (a)]~~ (ii) If ~~[any person who is]~~ an employer procures any work to be done wholly
378 or in part for the employer by a contractor over whose work the employer retains supervision or
379 control, and this work is a part or process in the trade or business of the employer, the
380 contractor, all persons employed by the contractor, all subcontractors under the contractor, and
381 all persons employed by any of these subcontractors, are considered employees of the original
382 employer for the purposes of this chapter and Chapter 3, Utah Occupational Disease Act.

383 (b) Any person who is engaged in constructing, improving, repairing, or remodeling a
384 residence that the person owns or is in the process of acquiring as the person's personal
385 residence may not be considered an employee or employer solely by operation of Subsection
386 (7)(a).

387 (c) A partner in a partnership or an owner of a sole proprietorship is not considered an
388 employee under Subsection (7)(a) if the employer who procures work to be done by the
389 partnership or sole proprietorship obtains and relies on either:

390 (i) a valid certification of the partnership's or sole proprietorship's compliance with
391 Section 34A-2-201 indicating that the partnership or sole proprietorship secured the payment of
392 workers' compensation benefits pursuant to Section 34A-2-201; or

393 (ii) if a partnership or sole proprietorship with no employees other than a partner of the

394 partnership or owner of the sole proprietorship, a workers' compensation [~~policy~~] coverage
395 waiver issued by an insurer pursuant to [~~Subsection 31A-21-104(8)~~] Section 31A-22-1011
396 stating that:

397 (A) the partnership or sole proprietorship is customarily engaged in an independently
398 established trade, occupation, profession, or business; and

399 (B) the partner or owner personally waives the partner's or owner's entitlement to the
400 benefits of this chapter and Chapter 3, Utah Occupational Disease Act, in the operation of the
401 partnership or sole proprietorship.

402 (d) A director or officer of a corporation is not considered an employee under
403 Subsection (7)(a) if the director or officer is excluded from coverage under Subsection
404 34A-2-104(4).

405 (e) A contractor or subcontractor is not an employee of the employer under Subsection
406 (7)(a), if the employer who procures work to be done by the contractor or subcontractor
407 obtains and relies on either:

408 (i) a valid certification of the contractor's or subcontractor's compliance with Section
409 34A-2-201; or

410 (ii) if a partnership, corporation, or sole proprietorship with no employees other than a
411 partner of the partnership, officer of the corporation, or owner of the sole proprietorship, a
412 workers' compensation [~~policy~~] coverage waiver issued by an insurer pursuant to [~~Subsection~~
413 ~~31A-21-104(8)~~] Section 31A-22-1011 stating that:

414 (A) the partnership, corporation, or sole proprietorship is customarily engaged in an
415 independently established trade, occupation, profession, or business; and

416 (B) the partner, corporate officer, or owner personally waives the partner's, corporate
417 officer's, or owner's entitlement to the benefits of this chapter and Chapter 3, Utah Occupational
418 Disease Act, in the operation of the partnership's, corporation's, or sole proprietorship's
419 enterprise under a contract of hire for services.

420 (f) (i) For purposes of this Subsection (7)(f), "eligible employer" means a person who:

421 (A) is an employer; and

422 (B) procures work to be done wholly or in part for the employer by a contractor,
423 including:

- 424 (I) all persons employed by the contractor;
- 425 (II) all subcontractors under the contractor; and
- 426 (III) all persons employed by any of these subcontractors.

427 (ii) Notwithstanding the other provisions in this Subsection (7), if the conditions of
428 Subsection (7)(f)(iii) are met, an eligible employer is considered an employer for purposes of
429 Section 34A-2-105 of the contractor, subcontractor, and all persons employed by the contractor
430 or subcontractor described in Subsection (7)(f)(i)(B).

431 (iii) Subsection (7)(f)(ii) applies if the eligible employer:

432 (A) under Subsection (7)(a) is liable for and pays workers' compensation benefits as an
433 original employer under Subsection (7)(a) because the contractor or subcontractor fails to
434 comply with Section 34A-2-201;

435 (B) (I) secures the payment of workers' compensation benefits for the contractor or
436 subcontractor pursuant to Section 34A-2-201;

437 (II) procures work to be done that is part or process of the trade or business of the
438 eligible employer; and

439 (III) does the following with regard to a written workplace accident and injury
440 reduction program that meets the requirements of Subsection 34A-2-111(3)(d):

441 (Aa) adopts the workplace accident and injury reduction program;

442 (Bb) posts the workplace accident and injury reduction program at the work site at
443 which the eligible employer procures work; and

444 (Cc) enforces the workplace accident and injury reduction program according to the
445 terms of the workplace accident and injury reduction program; or

446 (C) (I) obtains and relies on:

447 (Aa) a valid certification described in Subsection (7)(c)(i) or (7)(e)(i);

448 (Bb) a workers' compensation [~~policy~~] coverage waiver described in Subsection
449 (7)(c)(ii) or (7)(e)(ii); or

450 (Cc) proof that a director or officer is excluded from coverage under Subsection
451 34A-2-104(4);

452 (II) is liable under Subsection (7)(a) for the payment of workers' compensation benefits
453 if the contractor or subcontractor fails to comply with Section 34A-2-201;

454 (III) procures work to be done that is part or process in the trade or business of the
455 eligible employer; and

456 (IV) does the following with regard to a written workplace accident and injury
457 reduction program that meets the requirements of Subsection 34A-2-111(3)(d):

458 (Aa) adopts the workplace accident and injury reduction program;

459 (Bb) posts the workplace accident and injury reduction program at the work site at
460 which the eligible employer procures work; and

461 (Cc) enforces the workplace accident and injury reduction program according to the
462 terms of the workplace accident and injury reduction program.

463 Section 5. Section **34A-2-110** is amended to read:

464 **34A-2-110. Workers' compensation insurance fraud -- Elements -- Penalties --**
465 **Notice.**

466 (1) As used in this section:

467 (a) "Corporation" has the same meaning as in Section 76-2-201.

468 (b) "Intentionally" has the same meaning as in Section 76-2-103.

469 (c) "Knowingly" has the same meaning as in Section 76-2-103.

470 (d) "Person" has the same meaning as in Section 76-1-601.

471 (e) "Recklessly" has the same meaning as in Section 76-2-103.

472 (f) "Thing of value" means one or more of the following obtained under this chapter or

473 Chapter 3, Utah Occupational Disease Act:

474 (i) workers' compensation insurance coverage;

475 (ii) disability compensation;

476 (iii) a medical benefit;

477 (iv) a good;

478 (v) a professional service;

479 (vi) a fee for a professional service; or

480 (vii) anything of value.

481 (2) (a) ~~[Any]~~ A person is guilty of workers' compensation insurance fraud if that person
482 intentionally, knowingly, or recklessly:

483 (i) ~~devises [any] a scheme or artifice to [obtain workers' compensation insurance~~
484 ~~coverage, disability compensation, medical benefits, goods, professional services, fees for~~
485 ~~professional services, or anything of value under this chapter or Chapter 3, Utah Occupational~~
486 ~~Disease Act, by means of false or fraudulent pretenses, representations, promises, or material~~
487 ~~omissions; and]~~ do the following by means of a false or fraudulent pretense, representation,
488 promise, or material omission:

489 (A) obtain a thing of value under this chapter or Chapter 3;

490 (B) avoid paying the premium that an insurer charges, for an employee on the basis of
491 the underwriting criteria applicable to that employee, to obtain a thing of value under this
492 chapter or Chapter 3; or

493 (C) deprive an employee of a thing of value under this chapter or Chapter 3; and

494 (ii) communicates or causes a communication with another in furtherance of the scheme
495 or artifice.

496 (b) A violation of this Subsection (2) includes a scheme or artifice to:

497 (i) make or cause to be made a false written or oral statement with the intent to obtain
498 insurance coverage as mandated by this chapter or Chapter 3 at a rate that does not reflect the
499 risk, industry, employer, or class code actually covered by the insurance coverage;

500 (ii) form a business, reorganize a business, or change ownership in a business with the
501 intent to obtain insurance coverage as mandated by this chapter or Chapter 3 at a rate that does
502 not reflect the risk, industry, employer, or class code actually covered by the insurance
503 coverage;

504 (iii) misclassify an employee as one of the following so as to avoid the obligation to
505 obtain insurance coverage as mandated by this chapter or Chapter 3:

506 (A) an independent contractor;
507 (B) a sole proprietor;
508 (C) an owner;
509 (D) a partner;
510 (E) an officer; or
511 (F) a member in a limited liability company;
512 (iv) use a workers' compensation coverage waiver issued under Section 31A-22-1011
513 to deprive an employee of workers' compensation coverage under this chapter or Chapter 3; or
514 (v) collect or make a claim for temporary disability compensation as provided in Section
515 34A-2-410 while working for gain.
516 ~~[(b)]~~ (3) (a) Workers' compensation insurance fraud under Subsection (2)~~[(a)]~~ is
517 punishable in the manner prescribed ~~[by Section 76-10-1801 for communication fraud]~~ in
518 Subsection (3)(c).
519 ~~[(3)]~~ (b) A corporation or association is guilty of the offense of workers' compensation
520 insurance fraud under the same conditions as those set forth in Section 76-2-204.
521 ~~[(4) The]~~ (c) (i) In accordance with Subsection (3)(c)(ii), the determination of the
522 degree of ~~[any]~~ an offense under Subsection (2) shall be measured by the following on the basis
523 of which creates the greatest penalty:
524 (A) the total value of all property, money, or other things obtained or sought to be
525 obtained by the scheme or artifice described in Subsection (2)~~[, except as provided in~~
526 Subsection 76-10-1801(1)(e).]; or
527 (B) the number of individuals not covered under this chapter or Chapter 3 because of
528 the scheme or artifice described in Subsection (2).
529 (ii) A person is guilty of:
530 (A) a class A misdemeanor:
531 (I) if the value of the property, money, or other thing of value described in Subsection
532 (3)(c)(i)(A) is less than \$1,000; or
533 (II) for each individual described in Subsection (3)(c)(i)(B), if the number of individuals

534 described in Subsection (3)(c)(i)(B) is less than five;

535 (B) a third degree felony:

536 (I) if the value of the property, money, or other thing of value described in Subsection

537 (3)(c)(i)(A) is equal to or greater than \$1,000, but is less than \$5,000; or

538 (II) for each individual described in Subsection (3)(c)(i)(B), if the number of individuals

539 described in Subsection (3)(c)(i)(B) is equal to or greater than five, but is less than 50; and

540 (C) a second degree felony:

541 (I) if the value of the property, money, or other thing of value described in Subsection

542 (3)(c)(i)(A) is equal to or greater than \$5,000; or

543 (II) for each individual described in Subsection (3)(c)(i)(B), if the number of individuals

544 described in Subsection (3)(c)(i)(B) is equal to or greater than 50.

545 (4) The following are not a necessary element of an offense described in Subsection (2):

546 ~~[(5) Reliance] (a) reliance on the part of [any] a person [is not a necessary element of~~
547 ~~the offense described in Subsection (2)].;~~

548 ~~[(6) An] (b) the intent on the part of the perpetrator of [any] an offense described in~~
549 ~~Subsection (2) to permanently deprive [any] a person of property, money, or anything of value~~
550 ~~[is not a necessary element of this offense.]; or~~

551 ~~[(7) An] (c) an insurer or self-insured employer giving written notice in accordance~~
552 ~~with Subsection [(10)] (5) that workers' compensation insurance fraud is a crime [is not a~~
553 ~~necessary element of the offense described in Subsection (2)].~~

554 ~~[(8) A scheme or artifice to obtain workers' compensation insurance coverage includes~~
555 ~~any scheme or artifice to make or cause to be made any false written or oral statement or~~
556 ~~business reorganization, incorporation, or change in ownership intended to obtain insurance~~
557 ~~coverage as mandated by this chapter or Chapter 3, Utah Occupational Disease Act, at rates~~
558 ~~that do not reflect the risk, industry, employer, or class codes actually covered by the policy.]~~

559 ~~[(9) A scheme or artifice to obtain disability compensation includes a scheme or artifice~~
560 ~~to collect or make a claim for temporary disability compensation as provided in Section~~
561 ~~34A-2-410 while working for gain.]~~

562 ~~[(10)(a) Each]~~ (5) (a) An insurer or self-insured employer who, in connection with this
 563 chapter or Chapter 3, Utah Occupational Disease Act, prints, reproduces, or furnishes a form
 564 ~~[to any person upon which that person applies for insurance coverage, reports payroll, makes a~~
 565 ~~claim by reason of accident, injury, death, disease, or other claimed loss, or otherwise reports or~~
 566 ~~gives notice to the insurer or self-insured employer,]~~ described in Subsection (5)(b) shall cause
 567 to be printed or displayed in comparative prominence with other content on the form the
 568 statement: "Any person who knowingly presents false or fraudulent underwriting information,
 569 files or causes to be filed a false or fraudulent claim for disability compensation or medical
 570 benefits, or submits a false or fraudulent report or billing for health care fees or other
 571 professional services is guilty of a crime and may be subject to fines and confinement in state
 572 prison."

573 (b) Subsection (5)(a) applies to a form upon which a person:

574 (i) applies for insurance coverage;

575 (ii) applies for a workers' compensation coverage waiver issued under Section
 576 31A-22-1011;

577 (iii) reports payroll;

578 (iv) makes a claim by reason of accident, injury, death, disease, or other claimed loss; or

579 (v) makes a report or gives notice to an insurer or self-insured employer.

580 ~~[(b) Each]~~ (c) An insurer or self-insured employer who issues a check, warrant, or
 581 other financial instrument in payment of compensation issued under this chapter or Chapter 3,
 582 ~~[Utah Occupational Disease Act,]~~ shall cause to be printed or displayed in comparative
 583 prominence above the area for endorsement a statement substantially similar to the following:
 584 "Workers' compensation insurance fraud is a crime punishable by Utah law."

585 ~~[(c) (i) Subsections (10)(a) and (b) apply]~~

586 (d) This Subsection (5) applies only to the legal obligations of an insurer or a
 587 self-insured employer.

588 ~~[(d)]~~ (e) A person who violates Subsection (2) is guilty of workers' compensation
 589 insurance fraud, and the failure of an insurer or a self-insured employer to fully comply with

590 [~~Subsections (10)(a) and (b) may not be~~] this Subsection (5) is not:

591 [~~(A)~~] (i) a defense to violating Subsection (2); or

592 [~~(B)~~] (ii) grounds for suppressing evidence.

593 [~~(H)~~] (6) In the absence of malice, a person, employer, insurer, or governmental entity
594 that reports a suspected fraudulent act relating to a workers' compensation insurance policy or
595 claim is not subject to [~~any~~] civil liability for libel, slander, or [~~any other~~] another relevant cause
596 of action.

597 [~~(I2)~~] (7) In [~~any~~] an action involving workers' compensation, this section supersedes
598 Title 31A, Chapter 31, Insurance Fraud Act.