

**WORKERS' COMPENSATION - MOTOR
CARRIERS**

2009 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Don L. Ipson

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies the Workers' Compensation Act to address the independent contract status of individuals operating under an agreement with a motor carrier.

Highlighted Provisions:

This bill:

▶ exempts from the definition of employee for purposes of workers' compensation certain individuals who operate a motor vehicle under an agreement with a motor carrier; and

▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

34A-2-104, as last amended by Laws of Utah 2003, Chapter 298

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

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



28 **34A-2-104. "Employee," "worker," and "operative" defined -- Specific**
29 **circumstances -- Exemptions.**

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

32 (a) (i) [~~each~~] an elective [~~and~~] or appointive officer and any other person:

33 (A) in the service of:

34 (I) the state;

35 (II) a county, city, or town within the state; or

36 (III) a school district within the state;

37 (B) serving the state, or any county, city, town, or school district under:

38 (I) an election;

39 (II) appointment; or

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

41 (ii) including:

42 (A) an officer or employee of the state institutions of learning; and

43 (B) a member of the National Guard while on state active duty; and

44 (b) [~~each~~] a person in the service of any employer, as defined in Section 34A-2-103,

45 who employs one or more workers or operatives regularly in the same business, or in or about
46 the same establishment:

47 (i) under any contract of hire:

48 (A) express or implied; and

49 (B) oral or written;

50 (ii) including aliens and minors, whether legally or illegally working for hire; and

51 (iii) not including any person whose employment:

52 (A) is casual; and

53 (B) not in the usual course of the trade, business, or occupation of the employee's

54 employer.

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

58 (i) covered for compensation by the lessor under this chapter and Chapter 3;

59 (ii) subject to this chapter and Chapter 3; and

60 (iii) entitled to the benefits of this chapter and Chapter 3, to the same extent as if the
61 lessee, employee, or sublessee were employees of the lessor drawing the wages paid employees
62 for substantially similar work.

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

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

68 (b) If a partnership or sole proprietorship makes an election under Subsection (3)(a),
69 the partnership or sole proprietorship shall serve written notice upon its insurance carrier
70 naming the persons to be covered.

71 (c) A partner of a partnership or owner of a sole proprietorship may not be considered
72 an employee of the partner's partnership or the owner's sole proprietorship under this chapter or
73 Chapter 3 until the notice described in Subsection (3)(b) is given.

74 (d) For premium rate making, the insurance carrier shall assume the salary or wage of
75 the partner or sole proprietor electing coverage under Subsection (3)(a) to be 100% of the
76 state's average weekly wage.

77 (4) (a) A corporation may elect not to include any director or officer of the corporation
78 as an employee under this chapter and Chapter 3.

79 (b) If a corporation makes an election under Subsection (4)(a), the corporation shall
80 serve written notice upon its insurance carrier naming the persons to be excluded from
81 coverage.

82 (c) A director or officer of a corporation is considered an employee under this chapter
83 and Chapter 3 until the notice described in Subsection (4)(b) is given.

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

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

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

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

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

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

95 (b) an offender performing labor under Section 64-13-16 or 64-13-19, except as
96 required by federal statute or regulation;

97 (c) an individual who for an insurance producer, as defined in Section 31A-1-301,
98 solicits, negotiates, places or procures insurance if:

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

101 (ii) the services of the individual are performed under a written contract that states that
102 the individual:

103 (A) is an independent contractor;

104 (B) is not to be treated as an employee for federal income tax purposes; and

105 (C) can derive income from more than one insurance company; ~~or~~

106 (d) notwithstanding Subsection 34A-2-103(4), an individual who provides domestic
107 work for a person if:

108 (i) the person for whom the domestic work is being provided receives or is eligible to
109 receive the domestic work under a state or federal program designed to pay the costs of
110 domestic work to prevent the person from being placed in:

111 (A) an institution; or

112 (B) a more restrictive placement than where that person resides at the time the person
113 receives the domestic work;

114 (ii) the individual is paid by a person designated by the Secretary of the Treasury in
115 accordance with Section 3504, Internal Revenue Code, as a fiduciary, agent, or other person
116 that has the control, receipt, custody, or disposal of, or pays the wages of the individual; and

117 (iii) the domestic work is performed under a written contract that notifies the
118 individual that the individual is not an employee under this chapter or Chapter 3[-]; or

119 (e) subject to Subsection (7), an individual who:

120 (i) (A) owns a motor vehicle; or

121 (B) leases a motor vehicle to a motor carrier;
122 (ii) personally operates the motor vehicle described in Subsection (5)(e)(i); and
123 (iii) operates the motor vehicle described in Subsection (5)(e)(i) under a written
124 agreement with the motor carrier that states that the individual operates the motor vehicle as an
125 independent contractor.

126 (6) An individual described in Subsection (5)(d) may become an employee under this
127 chapter and Chapter 3 if the employer of the individual complies with:

- 128 (a) this chapter and Chapter 3; and
- 129 (b) commission rules.

130 (7) For purposes of Subsection (5)(e):

131 (a) "Motor carrier" means a person engaged in the business of transporting passengers,
132 freight, merchandise, or other property by a commercial vehicle on a highway within this state.

133 (b) "Motor vehicle" means a self-propelled vehicle intended primarily for use and
134 operation on the highways, including a trailer or semitrailer designed for use with another
135 motorized vehicle.

Legislative Review Note
as of 2-6-09 11:01 AM

Office of Legislative Research and General Counsel

H.B. 308 - Workers' Compensation - Motor Carriers

Fiscal Note

2009 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for local governments. Individuals and business may be impacted by this change in the proposed statute.
