

**Representative Brian M. Greene** proposes the following substitute bill:

**DETERMINATION OF EMPLOYER STATUS AMENDMENTS**

2016 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Brian M. Greene**

Senate Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill modifies provisions related to insurance, labor, and employment security to address the determination of who is an employer.

**Highlighted Provisions:**

This bill:

- ▶ amends definition provisions;
- ▶ addresses when a franchisor is considered an employer;
- ▶ in certain circumstances, prohibits reliance on federal executive branch orders or regulations in determining whether two or more entities are joint employers; and
- ▶ makes technical changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**31A-40-102**, as enacted by Laws of Utah 2008, Chapter 318

**34-28-2**, as last amended by Laws of Utah 2011, Chapter 413



- 26 [34-40-102](#), as last amended by Laws of Utah 2003, Chapter 151
- 27 [34A-2-103](#), as last amended by Laws of Utah 2014, Chapter 303
- 28 [34A-5-102](#), as last amended by Laws of Utah 2015, Chapters 13 and 23
- 29 [34A-6-103](#), as last amended by Laws of Utah 2013, Chapter 413
- 30 [35A-4-203](#), as last amended by Laws of Utah 2003, Chapter 17

31 ENACTS:

32 [31A-40-212](#), Utah Code Annotated 1953

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

35 Section 1. Section [31A-40-102](#) is amended to read:

36 **[31A-40-102. Definitions.](#)**

37 As used in this chapter:

38 (1) (a) Except as provided in Subsection (1)(b), "administrative fee" means a fee  
39 charged to a client by a professional employer organization for a professional employer service.

40 (b) "Administrative fee" does not include an amount or a fee received by a professional  
41 employer organization that is:

- 42 (i) compensation of a covered employee;
- 43 (ii) a benefit for a covered employee;
- 44 (iii) a payroll-related tax;
- 45 (iv) an unemployment insurance contribution;
- 46 (v) withholding of compensation for a covered employee;
- 47 (vi) a workers' compensation premium; or
- 48 (vii) another assessment paid by a professional employer organization to or on behalf  
49 of a covered employee under a professional employer agreement.

50 (2) "Assurance organization" means a person designated as an assurance organization  
51 in accordance with Section [31A-40-303](#).

52 (3) "Client" means a person who enters into a professional employer agreement with a  
53 professional employer organization.

54 (4) "Coemployer" means:

- 55 (a) a client; or
- 56 (b) a professional employer organization.

- 57 (5) "Coemployment relationship" means a relationship:  
58 (a) that is intended to be ongoing rather than a temporary or project specific  
59 relationship; and  
60 (b) wherein the rights and obligations of an employer that arise out of an employment  
61 relationship are allocated between coemployers pursuant to:  
62 (i) a professional employer agreement; or  
63 (ii) this chapter.  
64 (6) Notwithstanding Section 31A-1-301, "controlling person" means a person who,  
65 individually or acting in concert with one or more persons, owns, directly or indirectly, 10% or  
66 more of the equity interest in a professional employer organization.  
67 (7) "Covered employee" means an individual who has a coemployment relationship  
68 with a client and a professional employer organization if the conditions of Section 31A-40-203  
69 are met.  
70 (8) (a) "Employment related economic incentive" means:  
71 (i) (A) a credit against or exemption from taxes due the state or a political subdivision  
72 of the state; or  
73 (B) an economic inducement, including a loan or a grant; and  
74 (ii) if the credit, exemption, or economic inducement described in Subsection (8)(a)(i):  
75 (A) is offered by the state or a political subdivision of the state; and  
76 (B) has an eligibility requirement that relates in whole or in part to employment  
77 including:  
78 (I) the number of employees; or  
79 (II) the nature of the employment.  
80 (9) "Federal executive agency" means an executive agency, as defined in 5 U.S.C.  
81 Sec.105, of the federal government.  
82 (10) "Franchise" means the same as that term is defined in 16 C.F.R. Sec. 436.1.  
83 (11) "Franchisee" means the same as that term is defined in 16 C.F.R. Sec. 436.1.  
84 (12) "Franchisor" means the same as that term is defined in 16 C.F.R. Sec. 436.1.  
85 [~~9~~] (13) "Guarantee" means to assume an obligation of another person if that person  
86 fails to meet the obligation.  
87 [~~10~~] (14) "Licensee" means a person licensed under this chapter.

88            [~~(H)~~] (15) "Professional employer agreement" means a written contract by and  
89 between a client and a professional employer organization that provides for:

- 90            (a) the coemployment of a covered employee;
- 91            (b) with respect to a covered employee, the allocation of a right or obligation of an  
92 employer between:
  - 93            (i) the client; and
  - 94            (ii) the professional employer organization; and
- 95            (c) the assumption of the obligations imposed by this chapter by:
  - 96            (i) the client; or
  - 97            (ii) the professional employer organization.

98            [~~(H2)~~] (16) (a) Subject to Subsection [~~(H2)~~] (16)(b), "professional employer  
99 organization" means a person engaged in the business of providing a professional employer  
100 service.

101            (b) "Professional employer organization" does not include:

- 102            (i) a person that:
  - 103            (A) does not:
    - 104            (I) have as a principal business activity the entering into of a professional employer  
105 arrangement; or
    - 106            (II) hold the person out as a professional employer organization; and
  - 107            (B) shares an employee with a commonly owned company within the meaning of  
108 Sections 414(b) and (c), Internal Revenue Code;
- 109            (ii) an independent contractor arrangement by which a person:
  - 110            (A) assumes responsibility for the product produced or service performed by the person  
111 or the person's agent; and
  - 112            (B) retains and exercises primary direction and control over the work performed by an  
113 individual whose service is supplied under the independent contractor arrangement; or
- 114            (iii) a person providing temporary help service.

115            [~~(H3)~~] (17) "Professional employer organization group" means two or more  
116 professional employer organizations that are majority owned or commonly controlled or  
117 directed by the same one or more persons.

118            [~~(H4)~~] (18) "Professional employer service" means the service of entering into a

119 coemployment relationship under this chapter under which all or a majority of the employees  
120 who provide a service to a client, or a division or work unit of a client, are covered employees.

121 [~~15~~] (19) "Qualified actuary" means an individual who:

122 (a) is a member in good standing of a professional actuarial accreditation organization  
123 designated by the department by rule;

124 (b) is qualified to sign a statement of actuarial opinion or annual statement for a  
125 professional employer organization in accordance with the qualification standards for an  
126 actuary signing an opinion or annual statement as provided by the professional actuarial  
127 accreditation organization designated under Subsection [~~15~~] (19)(a);

128 (c) is familiar with the valuation requirements applicable to a professional employer  
129 organization;

130 (d) has not been found by the commissioner, or if so found has subsequently been  
131 reinstated as a qualified actuary, following appropriate notice and hearing to have:

132 (i) violated a provision of, or an obligation imposed by, statute or other law in the  
133 course of the actuary's dealings as a qualified actuary;

134 (ii) been found guilty of a fraudulent or dishonest practice;

135 (iii) demonstrated the actuary's incompetency, lack of cooperation, or  
136 untrustworthiness to act as a qualified actuary;

137 (iv) submitted to the commissioner during the past five years, pursuant to this rule, an  
138 actuarial opinion or memorandum that the commissioner rejected because it did not meet the  
139 provisions of rule; or

140 (v) resigned or been removed as an actuary within the past five years as a result of an  
141 act or omission indicated in an adverse report on examination or as a result of failure to adhere  
142 to a generally acceptable actuarial standard; and

143 (e) has not failed to notify the commissioner of an action taken by any commissioner of  
144 another state similar to that under Subsection [~~15~~] (19)(d).

145 [~~16~~] (20) "Temporary help service" means a service consisting of a person:

146 (a) recruiting and hiring the person's own employee;

147 (b) finding another person that wants the services of that employee;

148 (c) assigning the employee to:

149 (i) perform services at or for the other person to support or supplement the other

150 person's employees;

151 (ii) provide assistance in a special work situation such as:

152 (A) an employee absence;

153 (B) a skill shortage; or

154 (C) a seasonal workload; or

155 (iii) perform a special assignment or project; and

156 (d) customarily reassigning the employee to another organization when the employee  
157 finishes an assignment.

158 [(17)] (21) "Working capital" means the current assets minus the current liabilities of a  
159 professional employer organization determined in accordance with generally accepted  
160 accounting principles.

161 Section 2. Section 31A-40-212 is enacted to read:

162 **31A-40-212. Determination of coemployment relationship not based on federal**  
163 **order or regulation -- Franchisors excluded.**

164 (1) For purposes of this chapter and to the extent not preempted by federal statute, in  
165 determining whether two or more persons are considered to be in a coemployment relationship,  
166 a person may not rely on an order or regulation of a federal executive agency that has not been  
167 expressly authorized by Congress or upheld by a court of law.

168 (2) (a) For purposes of this chapter, a franchisor is not considered to be an employer of:

169 (i) a franchisee; or

170 (ii) a franchisee's employee.

171 (b) With respect to a specific claim for relief under this chapter made by a franchisee or  
172 a franchisee's employee, this Subsection (2) does not apply to a franchisor under a franchise  
173 that exercises a type or degree of control over the franchisee or the franchisee's employee not  
174 customarily exercised by a franchisor for the purpose of protecting the franchisor's trademarks  
175 and brand.

176 Section 3. Section 34-28-2 is amended to read:

177 **34-28-2. Definitions -- Unincorporated entities -- Joint employers -- Franchisors.**

178 (1) As used in this chapter:

179 (a) "Commission" means the Labor Commission.

180 (b) "Division" means the Division of Antidiscrimination and Labor.

181 (c) "Employer" includes every person, firm, partnership, association, corporation,  
182 receiver or other officer of a court of this state, and any agent or officer of any of the  
183 above-mentioned classes, employing any person in this state.

184 (d) "Federal executive agency" means an executive agency, as defined in 5 U.S.C. Sec.  
185 105, of the federal government.

186 (e) "Franchise" means the same as that term is defined in 16 C.F.R. Sec. 436.1.

187 (f) "Franchisee" means the same as that term is defined in 16 C.F.R. Sec. 436.1.

188 (g) "Franchisor" means the same as that term is defined in 16 C.F.R. Sec. 436.1.

189 ~~(h)~~ (h) "Unincorporated entity" means an entity organized or doing business in the  
190 state that is not:

191 (i) an individual;

192 (ii) a corporation; or

193 (iii) publicly traded.

194 ~~(i)~~ (i) "Wages" means the amounts due the employee for labor or services, whether  
195 the amount is fixed or ascertained on a time, task, piece, commission basis or other method of  
196 calculating such amount.

197 (2) (a) For purposes of this chapter, an unincorporated entity that is required to be  
198 licensed under Title 58, Chapter 55, Utah Construction Trades Licensing Act, is presumed to  
199 be the employer of each individual who, directly or indirectly, holds an ownership interest in  
200 the unincorporated entity.

201 (b) Pursuant to rules made by the commission in accordance with Title 63G, Chapter 3,  
202 Utah Administrative Rulemaking Act, an unincorporated entity may rebut the presumption  
203 under Subsection (2)(a) for an individual by establishing by clear and convincing evidence that  
204 the individual:

205 (i) is an active manager of the unincorporated entity;

206 (ii) directly or indirectly holds at least an 8% ownership interest in the unincorporated  
207 entity; or

208 (iii) is not subject to supervision or control in the performance of work by:

209 (A) the unincorporated entity; or

210 (B) a person with whom the unincorporated entity contracts.

211 (c) As part of the rules made under Subsection (2)(b), the commission may define:

- 212 (i) "active manager";
- 213 (ii) "directly or indirectly holds at least an 8% ownership interest"; and
- 214 (iii) "subject to supervision or control in the performance of work."
- 215 (d) The commission by rule made in accordance with Title 63G, Chapter 3, Utah
- 216 Administrative Rulemaking Act, may establish a procedure, consistent with Section 34-28-7,
- 217 under which an unincorporated entity may seek approval of a mutual agreement to pay wages
- 218 on non-regular paydays.

219 (3) In determining whether two or more persons are considered joint employers for  
220 purposes of this chapter, a person may not rely on an order or regulation of a federal executive  
221 agency that has not been expressly authorized by Congress or upheld by a court of law.

222 (4) (a) For purposes of this chapter, a franchisor is not considered to be an employer of:

- 223 (i) a franchisee; or
- 224 (ii) a franchisee's employee.

225 (b) With respect to a specific claim for relief under this chapter made by a franchisee or  
226 a franchisee's employee, this Subsection (4) does not apply to a franchisor under a franchise  
227 that exercises a type or degree of control over the franchisee or the franchisee's employee not  
228 customarily exercised by a franchisor for the purpose of protecting the franchisor's trademarks  
229 and brand.

230 Section 4. Section 34-40-102 is amended to read:

231 **34-40-102. Definitions -- Joint employees -- Franchisors.**

232 (1) ~~[This]~~ Subject to Subsection (3), this chapter and the terms used in it, including the  
233 computation of wages, shall be interpreted consistently with ~~[29 U.S.C. Sec. 201 et seq.,]~~ the  
234 Fair Labor Standards Act of 1938, 29 U.S.C. Sec. 201 et seq., as amended, to the extent that act  
235 relates to the payment of a minimum wage.

236 (2) As used in this chapter:

237 (a) "Cash wage obligation" means an hourly wage that an employer pays a tipped  
238 employee regardless of the tips or gratuities a tipped employee receives.

239 (b) "Commission" means the Labor Commission.

240 (c) "Division" means the Division of Antidiscrimination and Labor in the commission.

241 (d) "Federal executive agency" means an executive agency, as defined in 5 U.S.C. Sec.  
242 105, of the federal government.

243 (e) "Franchise" means the same as that term is defined in 16 C.F.R. Sec. 436.1.

244 (f) "Franchisee" means the same as that term is defined in 16 C.F.R. Sec. 436.1.

245 (g) "Franchisor" means the same as that term is defined in 16 C.F.R. Sec. 436.1.

246 ~~[(d)]~~ (h) "Minimum wage" means the state minimum hourly wage for adult employees

247 as established under this chapter, unless the context clearly indicates otherwise.

248 ~~[(e)]~~ (i) "Tipped employee" means an employee who customarily and regularly receives

249 tips or gratuities.

250 (3) Notwithstanding Subsection (1), in determining whether two or more persons are

251 considered joint employers for purposes of this chapter, a person may not rely on an order or

252 regulation of a federal executive agency that has not been expressly authorized by Congress or

253 upheld by a court of law.

254 (4) (a) For purposes of this chapter, a franchisor is not considered to be an employer of:

255 (i) a franchisee; or

256 (ii) a franchisee's employee.

257 (b) With respect to a specific claim for relief under this chapter made by a franchisee or

258 a franchisee's employee, this Subsection (4) does not apply to a franchisor under a franchise

259 that exercises a type or degree of control over the franchisee or the franchisee's employee not

260 customarily exercised by a franchisor for the purpose of protecting the franchisor's trademarks

261 and brand.

262 Section 5. Section **34A-2-103** is amended to read:

263 **34A-2-103. Employers enumerated and defined -- Regularly employed --**

264 **Statutory employers -- Exceptions.**

265 (1) (a) The state, and each county, city, town, and school district in the state are  
266 considered employers under this chapter and Chapter 3, Utah Occupational Disease Act.

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

272 (2) (a) Except as provided in Subsection (4), each person, including each public utility  
273 and each independent contractor, who regularly employs one or more workers or operatives in

274 the same business, or in or about the same establishment, under any contract of hire, express or  
275 implied, oral or written, is considered an employer under this chapter and Chapter 3, Utah  
276 Occupational Disease Act.

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

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

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

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

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

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

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

288 (3) (a) The client under a professional employer organization agreement regulated  
289 under Title 31A, Chapter 40, Professional Employer Organization Licensing Act:

290 (i) is considered the employer of a covered employee; and

291 (ii) subject to Section 31A-40-209, shall secure workers' compensation benefits for a  
292 covered employee by complying with Subsection 34A-2-201(1) or (2) and commission rules.

293 (b) The division shall promptly inform the Insurance Department if the division has  
294 reason to believe that a professional employer organization is not in compliance with  
295 Subsection 34A-2-201(1) or (2) and commission rules.

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

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

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

303 (B) notwithstanding Subsection (5)(a)(i)(A), only for purposes of determining who is a  
304 member of the employer's immediate family under Subsection (5)(a)(ii), if the agricultural

305 employer is a corporation, partnership, or other business entity, "agricultural employer" means  
306 an officer, director, or partner of the business entity;

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

308 (A) an agricultural employer's:

309 (I) spouse;

310 (II) grandparent;

311 (III) parent;

312 (IV) sibling;

313 (V) child;

314 (VI) grandchild;

315 (VII) nephew; or

316 (VIII) niece;

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

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

319 defined by rules of the commission; and

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

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

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

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

329 (ii) (A) for the previous calendar year the agricultural employer's total annual payroll  
330 for all nonimmediate family employees was equal to or greater than \$8,000 but less than  
331 \$50,000; and

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

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

335 (II) \$5,000 for health care benefits similar to benefits under health care insurance as

336 defined in Section 31A-1-301.

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

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

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

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

345 (6) An employer of agricultural laborers or domestic servants who is not considered an  
346 employer under this chapter and Chapter 3, Utah Occupational Disease Act, may come under  
347 this chapter and Chapter 3, Utah Occupational Disease Act, by complying with:

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

349 (b) the rules of the commission.

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

353 (A) a sole proprietorship;

354 (B) a corporation;

355 (C) a partnership;

356 (D) a limited liability company; or

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

358 (ii) If an employer procures any work to be done wholly or in part for the employer by  
359 a contractor over whose work the employer retains supervision or control, and this work is a  
360 part or process in the trade or business of the employer, the contractor, all persons employed by  
361 the contractor, all subcontractors under the contractor, and all persons employed by any of  
362 these subcontractors, are considered employees of the original employer for the purposes of  
363 this chapter and Chapter 3, Utah Occupational Disease Act.

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

367 (7)(a).

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

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

374 (ii) if a partnership or sole proprietorship with no employees other than a partner of the  
375 partnership or owner of the sole proprietorship, a workers' compensation coverage waiver  
376 issued pursuant to Part 10, Workers' Compensation Coverage Waivers Act, stating that:

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

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

382 (d) A director or officer of a corporation is not considered an employee under  
383 Subsection (7)(a) if the director or officer is excluded from coverage under Subsection  
384 34A-2-104(4).

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

388 (i) a valid certification of the contractor's or subcontractor's compliance with Section  
389 34A-2-201; or

390 (ii) if a partnership, corporation, or sole proprietorship with no employees other than a  
391 partner of the partnership, officer of the corporation, or owner of the sole proprietorship, a  
392 workers' compensation coverage waiver issued pursuant to Part 10, Workers' Compensation  
393 Coverage Waivers Act, stating that:

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

396 (B) the partner, corporate officer, or owner personally waives the partner's, corporate  
397 officer's, or owner's entitlement to the benefits of this chapter and Chapter 3, Utah

398 Occupational Disease Act, in the operation of the partnership's, corporation's, or sole  
399 proprietorship's enterprise under a contract of hire for services.

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

401 (A) is an employer; and

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

404 (I) all persons employed by the contractor;

405 (II) all subcontractors under the contractor; and

406 (III) all persons employed by any of these subcontractors.

407 (ii) Notwithstanding the other provisions in this Subsection (7), if the conditions of

408 Subsection (7)(f)(iii) are met, an eligible employer is considered an employer for purposes of

409 Section 34A-2-105 of the contractor, subcontractor, and all persons employed by the contractor

410 or subcontractor described in Subsection (7)(f)(i)(B).

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

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

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

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

419 (III) does the following with regard to a written workplace accident and injury

420 reduction program that meets the requirements of Subsection 34A-2-111(3)(d):

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

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

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

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

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

428 (Bb) a workers' compensation coverage waiver described in Subsection (7)(c)(ii) or

429 (7)(e)(ii); or

430 (Cc) proof that a director or officer is excluded from coverage under Subsection

431 [34A-2-104\(4\)](#);

432 (II) is liable under Subsection (7)(a) for the payment of workers' compensation benefits

433 if the contractor or subcontractor fails to comply with Section [34A-2-201](#);

434 (III) procures work to be done that is part or process in the trade or business of the

435 eligible employer; and

436 (IV) does the following with regard to a written workplace accident and injury

437 reduction program that meets the requirements of Subsection [34A-2-111\(3\)\(d\)](#):

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

439 (Bb) posts the workplace accident and injury reduction program at the work site at

440 which the eligible employer procures work; and

441 (Cc) enforces the workplace accident and injury reduction program according to the

442 terms of the workplace accident and injury reduction program.

443 (8) (a) For purposes of this Subsection (8), "unincorporated entity" means an entity

444 organized or doing business in the state that is not:

445 (i) an individual;

446 (ii) a corporation; or

447 (iii) publicly traded.

448 (b) For purposes of this chapter and Chapter 3, Utah Occupational Disease Act, an

449 unincorporated entity that is required to be licensed under Title 58, Chapter 55, Utah

450 Construction Trades Licensing Act, is presumed to be the employer of each individual who

451 holds, directly or indirectly, an ownership interest in the unincorporated entity.

452 Notwithstanding Subsection (7)(c) and Subsection [34A-2-104\(3\)](#), the unincorporated entity

453 shall provide the individual who holds the ownership interest workers' compensation coverage

454 under this chapter and Chapter 3, Utah Occupational Disease Act, unless the presumption is

455 rebutted under Subsection (8)(c).

456 (c) Pursuant to rules made by the commission in accordance with Title 63G, Chapter 3,

457 Utah Administrative Rulemaking Act, an unincorporated entity may rebut the presumption

458 under Subsection (8)(b) for an individual by establishing by clear and convincing evidence that

459 the individual:

460 (i) is an active manager of the unincorporated entity;  
461 (ii) directly or indirectly holds at least an 8% ownership interest in the unincorporated  
462 entity; or  
463 (iii) is not subject to supervision or control in the performance of work by:  
464 (A) the unincorporated entity; or  
465 (B) a person with whom the unincorporated entity contracts.  
466 (d) As part of the rules made under Subsection (8)(c), the commission may define:  
467 (i) "active manager";  
468 (ii) "directly or indirectly holds at least an 8% ownership interest"; and  
469 (iii) "subject to supervision or control in the performance of work."  
470 (9) (a) As used in this Subsection (9), "home and community based services" means  
471 one or more of the following services provided to an individual with a disability or to the  
472 individual's family that helps prevent the individual with a disability from being placed in a  
473 more restrictive setting:  
474 (i) respite care;  
475 (ii) skilled nursing;  
476 (iii) nursing assistant services;  
477 (iv) home health aide services;  
478 (v) personal care and attendant services;  
479 (vi) other in-home care, such as support for the daily activities of the individual with a  
480 disability;  
481 (vii) specialized in-home training for the individual with a disability or a family  
482 member of the individual with a disability;  
483 (viii) specialized in-home support, coordination, and other supported living services;  
484 and  
485 (ix) other home and community based services unique to the individual with a  
486 disability or the family of the individual with a disability that help prevent the individual with a  
487 disability from being placed in a more restrictive setting.  
488 (b) Notwithstanding Subsection (4) and subject to Subsection (9)(c), an individual with  
489 a disability or designated representative of the individual with a disability is considered an  
490 employer under this chapter and Chapter 3, Utah Occupational Disease Act, of an individual

491 who provides home and community based services if the individual with a disability or  
492 designated representative of the individual with a disability:

493 (i) employs the individual to provide home and community based services for seven  
494 hours per week or more; and

495 (ii) pays the individual providing the home and community based services from state or  
496 federal money received by the individual with a disability or designated representative of the  
497 individual with a disability to fund home and community based services, including through a  
498 person designated by the Secretary of the Treasury in accordance with Section 3504, Internal  
499 Revenue Code, as a fiduciary, agent, or other person who has the control, receipt, custody, or  
500 disposal of, or pays the wages of, the individual providing the home and community based  
501 services.

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

509 (10) (a) For purposes of this Subsection (10), "federal executive agency" means an  
510 executive agency, as defined in 5 U.S.C. Sec.105, of the federal government.

511 (b) In determining whether two or more persons are considered joint employers for  
512 purposes of this chapter and Chapter 3, Utah Occupational Disease Act, a person may not rely  
513 on an order or regulation of a federal agency that has not been expressly authorized by  
514 Congress or upheld by a court of law.

515 (11) (a) As used in this Subsection (11):

516 (i) "Franchise" means the same as that term is defined in 16 C.F.R. Sec. 436.1.

517 (ii) "Franchisee" means the same as that term is defined in 16 C.F.R. Sec. 436.1.

518 (iii) "Franchisor" means the same as that term is defined in 16 C.F.R. Sec. 436.1.

519 (b) For purposes of this chapter, a franchisor is not considered to be an employer of:

520 (i) a franchisee; or

521 (ii) a franchisee's employee.

522           (c) With respect to a specific claim for relief under this chapter made by a franchisee or  
523 a franchisee's employee, this Subsection (11) does not apply to a franchisor under a franchise  
524 that exercises a type or degree of control over the franchisee or the franchisee's employee not  
525 customarily exercised by a franchisor for the purpose of protecting the franchisor's trademarks  
526 and brand.

527           Section 6. Section **34A-5-102** is amended to read:

528           **34A-5-102. Definitions -- Unincorporated entities -- Joint employers --**  
529 **Franchisors.**

530           (1) As used in this chapter:

531           (a) "Affiliate" means the same as that term is defined in Section [16-6a-102](#).

532           (b) "Apprenticeship" means a program for the training of apprentices including a  
533 program providing the training of those persons defined as apprentices by Section [35A-6-102](#).

534           (c) "Bona fide occupational qualification" means a characteristic applying to an  
535 employee that:

536           (i) is necessary to the operation; or

537           (ii) is the essence of the employee's employer's business.

538           (d) "Court" means:

539           (i) the district court in the judicial district of the state in which the asserted unfair  
540 employment practice occurs; or

541           (ii) if the district court is not in session at that time, a judge of the court described in  
542 Subsection (1)(d)(i).

543           (e) "Director" means the director of the division.

544           (f) "Disability" means a physical or mental disability as defined and covered by the  
545 Americans with Disabilities Act of 1990, 42 U.S.C. Sec. 12102.

546           (g) "Division" means the Division of Antidiscrimination and Labor.

547           (h) "Employee" means a person applying with or employed by an employer.

548           (i) (i) "Employer" means:

549           (A) the state;

550           (B) a political subdivision;

551           (C) a board, commission, department, institution, school district, trust, or agent of the  
552 state or a political subdivision of the state; or

553 (D) a person employing 15 or more employees within the state for each working day in  
 554 each of 20 calendar weeks or more in the current or preceding calendar year.

555 (ii) "Employer" does not include:

556 (A) a religious organization, a religious corporation sole, a religious association, a  
 557 religious society, a religious educational institution, or a religious leader, when that individual  
 558 is acting in the capacity of a religious leader;

559 (B) any corporation or association constituting an affiliate, a wholly owned subsidiary,  
 560 or an agency of any religious organization, religious corporation sole, religious association, or  
 561 religious society; or

562 (C) the Boy Scouts of America or its councils, chapters, or subsidiaries.

563 (j) "Employment agency" means a person:

564 (i) undertaking to procure employees or opportunities to work for any other person; or

565 (ii) holding the person out to be equipped to take an action described in Subsection  
 566 (1)(j)(i).

567 (k) "Federal executive agency" means an executive agency, as defined in 5 U.S.C. Sec.  
 568 105, of the federal government.

569 (l) "Franchise" means the same as that term is defined in 16 C.F.R. Sec. 436.1.

570 (m) "Franchisee" means the same as that term is defined in 16 C.F.R. Sec. 436.1.

571 (n) "Franchisor" means the same as that term is defined in 16 C.F.R. Sec. 436.1.

572 ~~(k)~~ (o) "Gender identity" has the meaning provided in the Diagnostic and Statistical  
 573 Manual (DSM-5). A person's gender identity can be shown by providing evidence, including,  
 574 but not limited to, medical history, care or treatment of the gender identity, consistent and  
 575 uniform assertion of the gender identity, or other evidence that the gender identity is sincerely  
 576 held, part of a person's core identity, and not being asserted for an improper purpose.

577 ~~(h)~~ (p) "Joint apprenticeship committee" means an association of representatives of a  
 578 labor organization and an employer providing, coordinating, or controlling an apprentice  
 579 training program.

580 ~~(m)~~ (q) "Labor organization" means an organization that exists for the purpose in  
 581 whole or in part of:

582 (i) collective bargaining;

583 (ii) dealing with employers concerning grievances, terms or conditions of employment;

584 or

585 (iii) other mutual aid or protection in connection with employment.

586 [~~(r)~~] (r) "National origin" means the place of birth, domicile, or residence of an  
587 individual or of an individual's ancestors.

588 [~~(s)~~] (s) "On-the-job-training" means a program designed to instruct a person who,  
589 while learning the particular job for which the person is receiving instruction:

590 (i) is also employed at that job; or

591 (ii) may be employed by the employer conducting the program during the course of the  
592 program, or when the program is completed.

593 [~~(t)~~] (t) "Person" means:

594 (i) one or more individuals, partnerships, associations, corporations, legal  
595 representatives, trusts or trustees, or receivers;

596 (ii) the state; and

597 (iii) a political subdivision of the state.

598 [~~(u)~~] (u) "Pregnancy, childbirth, or pregnancy-related conditions" includes  
599 breastfeeding or medical conditions related to breastfeeding.

600 [~~(v)~~] (v) "Presiding officer" means the same as that term is defined in Section  
601 [63G-4-103](#).

602 [~~(w)~~] (w) "Prohibited employment practice" means a practice specified as  
603 discriminatory, and therefore unlawful, in Section [34A-5-106](#).

604 [~~(x)~~] (x) "Religious leader" means an individual who is associated with, and is an  
605 authorized representative of, a religious organization or association or a religious corporation  
606 sole, including a member of clergy, a minister, a pastor, a priest, a rabbi, an imam, or a spiritual  
607 advisor.

608 [~~(y)~~] (y) "Retaliate" means the taking of adverse action by an employer, employment  
609 agency, labor organization, apprenticeship program, on-the-job training program, or vocational  
610 school against one of its employees, applicants, or members because the employee, applicant,  
611 or member:

612 (i) opposes an employment practice prohibited under this chapter; or

613 (ii) files charges, testifies, assists, or participates in any way in a proceeding,  
614 investigation, or hearing under this chapter.

615           ~~[(v)]~~ (z) "Sexual orientation" means an individual's actual or perceived orientation as  
616 heterosexual, homosexual, or bisexual.

617           ~~[(w)]~~ (aa) "Unincorporated entity" means an entity organized or doing business in the  
618 state that is not:

- 619           (i) an individual;
- 620           (ii) a corporation; or
- 621           (iii) publicly traded.

622           ~~[(x)]~~ (bb) "Vocational school" means a school or institution conducting a course of  
623 instruction, training, or retraining to prepare individuals to follow an occupation or trade, or to  
624 pursue a manual, technical, industrial, business, commercial, office, personal services, or other  
625 nonprofessional occupations.

626           (2) (a) For purposes of this chapter, an unincorporated entity that is required to be  
627 licensed under Title 58, Chapter 55, Utah Construction Trades Licensing Act, is presumed to  
628 be the employer of each individual who, directly or indirectly, holds an ownership interest in  
629 the unincorporated entity.

630           (b) Pursuant to rules made by the commission in accordance with Title 63G, Chapter 3,  
631 Utah Administrative Rulemaking Act, an unincorporated entity may rebut the presumption  
632 under Subsection (2)(a) for an individual by establishing by clear and convincing evidence that  
633 the individual:

- 634           (i) is an active manager of the unincorporated entity;
- 635           (ii) directly or indirectly holds at least an 8% ownership interest in the unincorporated  
636 entity; or
- 637           (iii) is not subject to supervision or control in the performance of work by:
  - 638           (A) the unincorporated entity; or
  - 639           (B) a person with whom the unincorporated entity contracts.

640           (c) As part of the rules made under Subsection (2)(b), the commission may define:

- 641           (i) "active manager";
- 642           (ii) "directly or indirectly holds at least an 8% ownership interest"; and
- 643           (iii) "subject to supervision or control in the performance of work."

644           (3) In determining whether two or more persons are considered joint employers for  
645 purposes of this chapter, a person may not rely on an order or regulation of a federal executive

646 agency that has not been expressly authorized by Congress or upheld by a court of law.

647 (4) (a) For purposes of this chapter, a franchisor is not considered to be an employer of:

648 (i) a franchisee; or

649 (ii) a franchisee's employee.

650 (b) With respect to a specific claim for relief under this chapter made by a franchisee or  
651 a franchisee's employee, this Subsection (4) does not apply to a franchisor under a franchise  
652 that exercises a type or degree of control over the franchisee or the franchisee's employee not  
653 customarily exercised by a franchisor for the purpose of protecting the franchisor's trademarks  
654 and brand.

655 Section 7. Section 34A-6-103 is amended to read:

656 **34A-6-103. Definitions -- Unincorporated entities -- Joint employers --**

657 **Franchisors.**

658 (1) As used in this chapter:

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

661 (b) "Amendment" means such modification or change in a code, standard, rule, or  
662 order intended for universal or general application.

663 (c) "Commission" means the Labor Commission.

664 (d) "Division" means the Division of Occupational Safety and Health.

665 (e) "Employee" includes any person suffered or permitted to work by an employer.

666 (f) "Employer" means:

667 (i) the state;

668 (ii) a county, city, town, and school district in the state; and

669 (iii) a person, including a public utility, having one or more workers or operatives  
670 regularly employed in the same business, or in or about the same establishment, under any  
671 contract of hire.

672 (g) "Federal executive agency" means an executive agency, as defined in 5 U.S.C. Sec.  
673 105, of the federal government.

674 (h) "Franchise" means the same as that term is defined in 16 C.F.R. Sec. 436.1.

675 (i) "Franchisee" means the same as that term is defined in 16 C.F.R. Sec. 436.1.

676 (j) "Franchisor" means the same as that term is defined in 16 C.F.R. Sec. 436.1.

677           ~~[(g)]~~ (k) "Hearing" means a proceeding conducted by the commission.

678           ~~[(h)]~~ (l) "Imminent danger" means a danger exists which reasonably could be expected  
679 to cause an occupational disease, death, or serious physical harm immediately, or before the  
680 danger could be eliminated through enforcement procedures under this chapter.

681           ~~[(i)]~~ (m) "National consensus standard" means any occupational safety and health  
682 standard or modification:

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

686           (ii) formulated in a manner which affords an opportunity for diverse views to be  
687 considered; and

688           (iii) designated as such a standard by the Secretary of the United States Department of  
689 Labor.

690           ~~[(j)]~~ (n) "Person" means the general public, one or more individuals, partnerships,  
691 associations, corporations, legal representatives, trustees, receivers, and the state and its  
692 political subdivisions.

693           ~~[(k)]~~ (o) "Publish" means publication in accordance with Title 63G, Chapter 3, Utah  
694 Administrative Rulemaking Act.

695           ~~[(l)]~~ (p) "Secretary" means the Secretary of the United States Department of Labor.

696           ~~[(m)]~~ (q) "Standard" means an occupational health and safety standard or group of  
697 standards which requires conditions, or the adoption or use of one or more practices, means,  
698 methods, operations, or processes, reasonably necessary to provide safety and healthful  
699 employment and places of employment.

700           ~~[(n)]~~ (r) "Unincorporated entity" means an entity organized or doing business in the  
701 state that is not:

702           (i) an individual;

703           (ii) a corporation; or

704           (iii) publicly traded.

705           ~~[(o)]~~ (s) "Variance" means a special, limited modification or change in the code or  
706 standard applicable to the particular establishment of the employer or person petitioning for the  
707 modification or change.

708 ~~(p)~~ (t) "Workplace" means any place of employment.

709 (2) (a) For purposes of this chapter, an unincorporated entity that is required to be  
710 licensed under Title 58, Chapter 55, Utah Construction Trades Licensing Act, is presumed to  
711 be the employer of each individual who, directly or indirectly, holds an ownership interest in  
712 the unincorporated entity.

713 (b) Pursuant to rules made by the commission in accordance with Title 63G, Chapter 3,  
714 Utah Administrative Rulemaking Act, an unincorporated entity may rebut the presumption  
715 under Subsection (2)(a) for an individual by establishing by clear and convincing evidence that  
716 the individual:

717 (i) is an active manager of the unincorporated entity;

718 (ii) directly or indirectly holds at least an 8% ownership interest in the unincorporated  
719 entity; or

720 (iii) is not subject to supervision or control in the performance of work by:

721 (A) the unincorporated entity; or

722 (B) a person with whom the unincorporated entity contracts.

723 (c) As part of the rules made under Subsection (2)(b), the commission may define:

724 (i) "active manager";

725 (ii) "directly or indirectly holds at least an 8% ownership interest"; and

726 (iii) "subject to supervision or control in the performance of work."

727 (3) In determining whether two or more persons are considered joint employers for  
728 purposes of this chapter, a person may not rely on an order or regulation of a federal executive  
729 agency that has not been expressly authorized by Congress or upheld by a court of law.

730 (4) (a) For purposes of this chapter, a franchisor is not considered to be an employer of:

731 (i) a franchisee; or

732 (ii) a franchisee's employee.

733 (b) With respect to a specific claim for relief under this chapter made by a franchisee or  
734 a franchisee's employee, this Subsection (4) does not apply to a franchisor under a franchise  
735 that exercises a type or degree of control over the franchisee or the franchisee's employee not  
736 customarily exercised by a franchisor for the purpose of protecting the franchisor's trademarks  
737 and brand.

738 Section 8. Section 35A-4-203 is amended to read:

739 **35A-4-203. Definition of employer -- Joint employers -- Franchisors.**

740 (1) As used in this chapter "employer" means:

741 ~~[(1)]~~ (a) an individual or employing unit which employs one or more individuals for  
742 some portion of a day during a calendar year, or that, as a condition for approval of this chapter  
743 for full tax credit against the tax imposed by the Federal Unemployment Tax Act, is required,  
744 under the act, to be an employer;

745 ~~[(2)]~~ (b) an employing unit that, having become an employer under Subsection (1)(a),  
746 has not, under Sections 35A-4-303 and 35A-4-310, ceased to be an employer subject to this  
747 chapter; or

748 ~~[(3)]~~ (c) for the effective period of its election under Subsection 35A-4-310(3), an  
749 employing unit that has elected to become fully subject to this chapter.

750 (2) (a) For purposes of this Subsection (2), "federal executive agency" means an  
751 executive agency, as defined in 5 U.S.C. Sec. 105, of the federal government.

752 (b) In determining whether two or more persons are considered joint employers for  
753 purposes of this chapter, a person may not rely on an order or regulation of a federal agency  
754 that has not been expressly authorized by Congress or upheld by a court of law.

755 (3) (a) As used in this Subsection (3):

756 (i) "Franchise" means the same as that term is defined in 16 C.F.R. Sec. 436.1.

757 (ii) "Franchisee" means the same as that term is defined in 16 C.F.R. Sec. 436.1.

758 (iii) "Franchisor" means the same as that term is defined in 16 C.F.R. Sec. 436.1.

759 (b) For purposes of this chapter, a franchisor is not considered to be an employer of:

760 (i) a franchisee; or

761 (ii) a franchisee's employee.

762 (c) With respect to a specific claim for relief under this chapter made by a franchisee or  
763 a franchisee's employee, this Subsection (3) does not apply to a franchisor under a franchise  
764 that exercises a type or degree of control over the franchisee or the franchisee's employee not  
765 customarily exercised by a franchisor for the purpose of protecting the franchisor's trademarks  
766 and brand.