

Senator Karen Mayne proposes the following substitute bill:

**WORKERS' COMPENSATION FOR VOLUNTEERS**

2016 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Karen Mayne**

House Sponsor: Val L. Peterson

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**LONG TITLE**

**General Description:**

This bill modifies the Workers' Compensation Act to address volunteers.

**Highlighted Provisions:**

This bill:

- ▶ defines terms;
- ▶ provides that volunteers are not employees for purposes of workers' compensation unless the nongovernment entity for which the volunteer provides services elects to cover the volunteer with workers' compensation coverage;
- ▶ clarifies the application of the exclusive remedy;
- ▶ provides how disability compensation is to be determined;
- ▶ addresses how premiums are calculated;
- ▶ addresses affect of the failure or refusal of a nongovernment entity to elect workers'

compensation coverage for volunteers; ~~H~~→ [and]

▶ addresses insurance obtained by a volunteer; and ←~~H~~

- ▶ addresses notice to volunteers.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

1st Sub. S.B. 76



26 **Utah Code Sections Affected:**

27 ENACTS:

28 [34A-2-104.5](#), Utah Code Annotated 1953

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

31 Section 1. Section [34A-2-104.5](#) is enacted to read:

32 **[34A-2-104.5. Nongovernment entity volunteers.](#)**

33 (1) As used in this section:

34 (a) (i) "Intern" means a student or trainee who works without pay at a trade or  
35 occupation in order to gain work experience.

36 (ii) Notwithstanding Subsection (1)(a)(i), "intern" does not include an intern described  
37 in Section [53A-29-103](#) or [53B-16-403](#).

38 (b) "Nongovernment entity" means an entity or individual that:

39 (i) is an employer as provided in Section [34A-2-103](#); and

40 (ii) is not a government entity.

41 (c) "Utah minimum wage" means the highest wage designated as Utah's minimum  
42 wage under Title 34, Chapter 40, Utah Minimum Wage Act.

43 (d) (i) "Volunteer" means an individual who donates service without pay or other  
44 compensation except expenses actually and reasonably incurred as approved by the supervising  
45 nongovernment entity.

46 (ii) "Volunteer" includes an intern of a nongovernment entity.

47 (iii) "Volunteer" does not include an individual participating in human subjects  
48 research to the extent that the participation is governed by federal law or regulation inconsistent  
49 with this chapter.

50 (2) A volunteer for a nongovernment entity is not an employee of the nongovernment  
51 entity for purposes of this chapter and Chapter 3, Utah Occupational Disease Act, unless the  
52 nongovernment entity elects in accordance with this section to provide coverage under this  
53 chapter and Chapter 3, Utah Occupational Disease Act.

54 (3) (a) A nongovernment entity may elect to secure coverage for all of the  
55 nongovernment entity's volunteers by obtaining coverage for the volunteers in accordance with  
56 Section [34A-2-201](#) under the same policy it uses to cover the nongovernment entity's

57 employees.

58 (b) If a nongovernment entity obtains coverage under Section 34A-2-201 for the  
 59 nongovernment entity's volunteers, for purposes of receiving benefits under this chapter and  
 60 Chapter 3, Utah Occupational Disease Act:

61 (i) a volunteer is considered an employee of the nongovernment entity; and

62 (ii) these benefits are the exclusive remedy of the volunteer in accordance with Section  
 63 34A-2-105 for an industrial injury or disease covered by this chapter and Chapter 3, Utah  
 64 Occupational Disease Act.

65 (4) A nongovernment entity shall keep sufficient records of the nongovernment entity's  
 66 volunteers and the volunteers' duties to determine compliance with this section.

67 (5) To compute the disability compensation benefits under Subsection (3), the  
 68 disability compensation shall be calculated in accordance with Part 4, Compensation and  
 69 Benefits, with the average weekly wage of the nongovernment volunteer assumed to be the  
 70 Utah minimum wage at the time of the industrial accident or occupational disease that is the  
 71 basis for the volunteer's workers' compensation claim.

72 (6) A workers' compensation insurer shall calculate the premium for a nongovernment  
 73 entity's volunteer on the basis of the Utah minimum wage on the actual hours the volunteer  
 74 provides service to the nongovernment entity, except that a workers' compensation insurer may  
 75 assume 30 hours worked per week if the nongovernment entity does not provide a record of  
 76 actual hours worked. The imputed wages shall be assigned to the class code on the policy that  
 77 best describes the volunteer's duties.

78 (7) The failure or refusal of a nongovernment entity to make an election under this  
 79 section in regard to volunteers does not alter, have an effect on, or give rise to any implication  
 80 or presumption regarding:

81 (a) the nongovernment entity's duties or liabilities with respect to volunteers; or

82 (b) the rights of volunteers.

82a **Ĥ→ (8) Subject to Subsection (3)(b)(ii), nothing in this section affects a volunteer's right to**  
 82b **seek remedies available to the volunteer through a personal insurance policy that the volunteer**  
 82c **obtains for the volunteer in addition to any workers' compensation benefits obtained under**  
 82d **this section**

83 ~~[(8)]~~ **(9) ←Ĥ A nongovernment entity shall notify a volunteer of an election under**  
 83a **Subsection**

84 **(3)(a) by posting:**

85 **(a) printed notices where volunteers are likely to see the notices in conspicuous places**  
 86 **about the nongovernment entity's place of business; and**

87 **(b) notices on a website that the nongovernment entity uses to recruit or provide**

88 information to volunteers.