

Title 34. Labor in General

Chapter 19 Labor Disputes

34-19-1 Declaration of policy.

In the interpretation and application of this chapter, the public policy of this state is declared as follows:

- (1) It is not unlawful for employees to organize themselves into or carry on labor unions for the purpose of lessening hours of labor, increasing wages, bettering the conditions of members, or carrying out the legitimate purposes of such organizations as freely as they could do if acting singly.
- (2) The labor of a human being is not a commodity or article of commerce. Nothing contained in the antitrust laws shall be construed to forbid the existence and operation of labor, agricultural or horticultural organizations, instituted for the purpose of mutual help and not having capital stock or conducted for profit, or to forbid or restrain individual members of such organizations from lawfully carrying out the legitimate object thereof; nor shall such organizations or membership in them be held to be illegal combinations or conspiracies in restraint of trade under the antitrust laws.
- (3) Negotiations of terms and conditions of labor should result from voluntary agreement between employer and employee. Governmental authority has permitted and encouraged employers to organize in the corporate and other forms of capital control. In dealing with such employers the individual unorganized worker is helpless to exercise actual liberty of contract and to protect the individual unorganized worker's freedom of labor and thereby to obtain acceptable terms and conditions of employment. Therefore, it is necessary that the individual employee have full freedom of association, self-organization, and designation of representatives of the individual employee's own choosing to negotiate the terms and conditions of the individual employee's employment, and that the individual employee shall be free from the interference, restraint or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or their mutual aid or protection.

Amended by Chapter 297, 2011 General Session

34-19-2 Injunctive relief prohibited in certain cases.

No court, nor any judge or judges of it, shall have jurisdiction to issue any restraining order or temporary or permanent injunction which in specific or general terms prohibits any person or persons from doing, whether singly or in concert, any of the following acts:

- (1) ceasing or refusing to perform any work or to remain in any relation of employment regardless of any promise, undertaking, contract or agreement to do such work or to remain in such employment;
- (2) becoming or remaining a member of any labor organization or of any employer organization, regardless of any such undertaking or promise as is described in Section 34-19-3;
- (3) paying or giving to or withholding from any person any strike or unemployment benefits or insurance or other money or things of value;
- (4) by all lawful means aiding any person who is being proceeded against in or is prosecuting any action or suit in any court of the United States or of any state;

- (5) giving publicity to and obtaining or communicating information regarding the existence of or the facts involved in any dispute, whether by advertising, speaking, patrolling any public street or any place where any person or persons may lawfully be, without intimidation or coercion, or by any other method not involving fraud, violence, breach of the peace, or threat of same;
- (6) ceasing to patronize or to employ any person or persons;
- (7) assembling peaceably to do or to organize to do any of the acts heretofore specified or to promote lawful interests;
- (8) advising or notifying any person or persons of an intention to do any of the acts heretofore specified;
- (9) agreeing with other persons to do or not to do any of the acts heretofore specified;
- (10) advising, urging, or inducing without fraud, violence, or threat of same, others to do the acts heretofore specified, regardless of any such undertaking or promise as is described in Section 34-19-3;
- (11) doing any act or thing which might lawfully be done in the absence of labor dispute by any party thereto; or
- (12) doing in concert any or all of the acts heretofore specified on the ground that the persons engaged therein constitute an unlawful combination or conspiracy.

Amended by Chapter 10, 1997 General Session

34-19-3 Liability of organizations or their members for unlawful acts of individuals.

No officer or member of any association or organization or no association or organization participating or interested in a labor dispute shall be held responsible or liable in any civil action at law or suit in equity, or in any criminal prosecution, for the unlawful acts of individual officers, members, or agents, except upon proof by the weight of evidence and without the aid of any presumptions of law or fact, both of:

- (1) the doing of such acts by persons who are officers, members or agents of any such association or organization; and
- (2) actual participation in, or actual authorization of, such acts, or ratification of such acts after actual knowledge thereof by such association or organization.

Enacted by Chapter 85, 1969 General Session

34-19-4 Injunctive relief -- Reasons for prohibiting.

Equity procedure that permits a complaining party to obtain sweeping injunctive relief that is not preceded by or conditioned upon notice to and hearing of the responding party or parties, or that issues after hearing based upon written affidavits alone and not wholly or in part upon examination, confrontation and cross-examination of witnesses in open court, is peculiarly subject to abuse in labor litigation for the reasons that:

- (1) The status quo cannot be maintained but is necessarily altered by the injunction;
- (2) Determination of issues of veracity and/or probability of fact from affidavits of the opposing parties that are contradictory and, under the circumstances, untrustworthy rather than from oral examination in open court is subject to grave error;
- (3) Error in issuing the injunctive relief is usually irreparable to the opposing party; and
- (4) Delay incident to the normal course of appellate practice frequently makes ultimate correction of error in law or in fact unavailing in the particular case.

Enacted by Chapter 85, 1969 General Session

34-19-5 Injunctive relief -- When available -- Necessary findings -- Procedure.

- (1) No court, nor any judge or judges of a court, shall have jurisdiction to issue a temporary or permanent injunction in any case involving or growing out of a labor dispute, as defined in Section 34-19-11, except after hearing the testimony of witnesses in open court, with opportunity for cross-examination, in support of the allegations of a complaint made under oath and testimony in opposition to it, if offered, and except after findings of all of the facts described in Subsection (2) by the court, or a judge or judges.
- (2) The findings required by Subsection (1) are all of the following:
 - (a) that unlawful acts have been threatened or committed and will be executed or continued unless restrained;
 - (b) that substantial and irreparable injury to property or property rights of the complainant will follow unless the relief requested is granted;
 - (c) that as to each item of relief granted greater injury will be inflicted upon complainant by the denial of it than will be inflicted upon defendants by the granting of it;
 - (d) that no item of relief granted is relief that a court or judge of it has no jurisdiction to restrain or enjoin under Section 34-19-2;
 - (e) that the complainant has no adequate remedy at law; and
 - (f) that the public officers charged with the duty to protect complainant's property have failed or are unable to furnish adequate protection.
- (3) Subject to Subsection (4), the hearing required by Subsection (1) shall be held after due and personal notice of it has been given, in such manner as the court shall direct, to all known persons against whom relief is sought, and also to those public officers charged with the duty to protect complainant's property.
- (4)
 - (a) If a complainant shall also allege that unless a temporary restraining order shall be issued before a hearing may be had, a substantial and irreparable injury to complainant's property will be unavoidable, a temporary restraining order may be granted upon the expiration of such reasonable notice of application for the restraining order as the court may direct by order to show cause, but in no less than 48 hours. This order to show cause shall be served upon such party or parties as are sought to be restrained and as shall be specified in the order, and the restraining order shall issue only upon testimony, or in the discretion of the court, upon affidavits, sufficient, if sustained, to justify the court in issuing a temporary injunction upon a hearing as provided for in this section.
 - (b) Such a temporary restraining order shall be effective for no longer than five days, and at the expiration of said five days shall become void and not subject to renewal or extension, except that if the hearing for a temporary injunction shall have been begun before the expiration of the five days, the restraining order may in the court's discretion be continued until a decision is reached upon the issuance of the temporary injunction.
- (5) No temporary restraining order or temporary injunction shall be issued except on condition that the complainant shall first file an undertaking with adequate security sufficient to recompense those enjoined for any loss, expense, or damage caused by the improvident or erroneous issuance of such order or injunction, including all reasonable costs, together with reasonable attorney fees, and expense against the order or against the granting of any injunctive relief sought in the same proceeding and subsequently denied by the court. This undertaking shall be understood to signify an agreement entered into by the complainant and the surety upon which a decree may be rendered in the same suit or proceeding against such complainant and surety, the complainant and the surety submitting themselves to the jurisdiction of the court for

that purpose, except that nothing in this Subsection (5) shall deprive any party having a claim or cause of action under or upon such undertaking from electing to pursue the party's ordinary remedy by suit at law or in equity.

Amended by Chapter 348, 2016 General Session

34-19-6 Injunctive relief -- Compliance with law necessary.

No restraining order or injunctive relief shall be granted to any complainant who has failed to comply with any obligation imposed by law which is involved in the labor dispute in question, or who has failed to make every reasonable effort to settle such dispute either by negotiation or with the aid of any available machinery of governmental mediation or voluntary arbitration, but nothing herein contained shall be deemed to require the court to await the action of any such tribunal if irreparable injury is threatened.

Enacted by Chapter 85, 1969 General Session

34-19-7 Injunctive relief -- Findings of fact -- Limited application.

No restraining order or temporary or permanent injunction shall be granted in a case involving or growing out of a labor dispute, except on the basis of finding of fact made and filed by the court in the record of the case prior to the issuance of such restraining order or injunction. Every restraining order or injunction granted in a case involving or growing out of a labor dispute shall include only a prohibition of such specific act or acts as may be expressly complained of in the complaint or petition filed in such case and expressly included in the finding of fact made and filed by the court as provided herein and shall be binding only upon the parties to the suit, their agents, servants, employees and attorneys, or those in active concert and participation with them, and who shall by personal service or otherwise have received actual notice of the same.

Enacted by Chapter 85, 1969 General Session

34-19-8 Injunctive relief -- Appeals.

Whenever any court, or judge or judges of it, shall issue or deny any temporary injunction in a case involving or growing out of a labor dispute, the court shall, upon the request of any party to the proceedings, and on his filing the usual bond for costs, forthwith certify the entire record of the case, including a transcript of the evidence taken, to the appropriate appellate court for its review. Upon the filing of such record in the appropriate appellate court the appeal shall be heard with the greatest possible expedition, giving the proceeding precedence over all other matters except older matters of the same character.

Enacted by Chapter 85, 1969 General Session

34-19-9 Injunctive relief -- Contempt -- Rights of accused.

In all cases where a person shall be charged with indirect criminal contempt for violation of a restraining order or injunction issued by a court, or judge or judges of it, the accused shall enjoy:

- (1) the rights as to admission to bail that are accorded to persons accused of crime;
- (2) the right to be notified of the accusation and a reasonable time to make a defense, provided the alleged contempt is not committed in the immediate view of or in the presence of the court;
- (3) upon demand, the right to a speedy and public trial by an impartial jury of the judicial district in which the contempt shall have been committed. This requirement may not be construed to

- apply to contempts committed in the presence of the court or so near to it as to interfere directly with the administration of justice or to apply to the misbehavior, misconduct, or disobedience of any officer of the court in respect to the writs, orders or process of the court; and
- (4) the right to file with the court a demand for the retirement of the judge sitting in the proceeding, if the contempt arises from an attack upon the character or conduct of such judge and if the attack occurred otherwise than in open court. Upon the filing of any such demand the judge shall proceed no further, but another judge shall be designated by the presiding judge of the court. The demand shall be filed prior to the hearing in the contempt proceeding.

Amended by Chapter 297, 2011 General Session

34-19-10 Injunctive relief -- Contempt -- Penalty.

Punishment for a contempt, specified in Section 34-19-9, may be by fine, not exceeding \$100, or by imprisonment not exceeding 15 days in the jail of the county where the court is sitting, or both, in the discretion of the court. Where a person is committed to jail for the nonpayment of such a fine, the person shall be discharged at the expiration of 15 days; but if the person is also committed for a definite time, the 15 days shall be computed from the expiration of the definite time.

Amended by Chapter 297, 2011 General Session

34-19-11 "Labor dispute" defined.

- (1) The words "labor dispute" as used in this chapter include any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing or seeking to arrange terms or conditions of employment, or concerning employment relations, or any other controversy arising out of the respective interests of employer and employee, regardless of whether or not the disputants stand in the proximate relation of employer and employee.
- (2) A person or association shall be held to be a person participating or interested in a labor dispute if relief is sought against him or it and if he or it is engaged in the industry, trade, craft, or occupation in which such dispute occurs, or is a member, officer, or agent of any association of employers or employees engaged in such industry, trade, craft, or occupation.
- (3) A case shall be held to involve or grow out of a labor dispute when the case involves persons who are engaged in a single industry, trade, craft, or occupation; or who are employees of one employer; or who are members of the same or an affiliated organization of employers or employees whether such dispute is:
- (a) between one or more employers or associations of employers and one or more employees or associations of employees;
 - (b) between one or more employers or associations of employers and one or more employers or associations of employers; or
 - (c) between one or more employees or associations of employees and one or more employees or associations of employees; or when the case involves any conflicting or competing interests in a labor dispute of persons participating or interested in it.

Enacted by Chapter 85, 1969 General Session

34-19-12 Deputizing of employees prohibited.

No employee of any employer whose employees are on strike or lockout for any reason shall be deputized for any purpose arising from or in connection with such strike by any sheriff, chief of police, town marshal, officer of the highway patrol, or any other peace officer during the time such strike or lockout exists.

Any person who violates the provisions of this section shall be guilty of a misdemeanor.

Enacted by Chapter 85, 1969 General Session

34-19-13 Agreements against public policy.

Each of the following undertakings or promises hereafter made, whether written or oral, express or implied, between any employee or prospective employee and the employee's or prospective employee's employer, prospective employer, or any other individual, firm, company, association, or corporation, is contrary to public policy and may not be a basis for the granting of legal or equitable relief by any court against a party to the undertaking or promise, or against any other person who may advise, urge, or induce, without fraud, violence or threat of violence, either party to act in disregard of the undertaking or promise:

- (1) an undertaking or promise by either party to join or to remain a member of some specific labor organization or organizations or to join or remain a member of some specific employer organization or any employer organization or organizations;
- (2) an undertaking or promise by either party to not join or not remain a member of some specific labor organization or any labor organization or organizations, or of some specific employer organization or any employer organization or organizations; or
- (3) an undertaking or promise by either party to withdraw from an employment relation in the event that the party joins or remains a member of some specific labor organization or any labor organization or organizations, or of some specific employer organization or any employer organization or organizations.

Amended by Chapter 297, 2011 General Session

Chapter 20
Employment Relations and Collective Bargaining

34-20-1 Declaration of policy.

The public policy of the state as to employment relations and collective bargaining in the furtherance of which this chapter is enacted, is declared to be as follows:

- (1) It recognizes that there are three major interests involved, namely: that of the public, the employee, and the employer. These three interests are to a considerable extent interrelated. It is the policy of the state to protect and promote each of these interests with due regard to the situation and to the rights of the others.
- (2) Industrial peace, regular and adequate income for the employee, and uninterrupted production of goods and services are promotive of all of these interests. They are largely dependent upon the maintenance of fair, friendly, and mutually satisfactory employment relations and the availability of suitable machinery for the peaceful adjustment of whatever controversies may arise. It is recognized that certain employers, including farmers and farmer cooperatives, in addition to their general employer problems, face special problems arising from perishable commodities and seasonal production which require adequate consideration. It is also

recognized that whatever may be the rights of disputants with respect to each other in any controversy regarding employment relations, they should not be permitted in the conduct of their controversy to intrude directly into the primary rights of third parties to earn a livelihood, transact business, and engage in the ordinary affairs of life by any lawful means and free from molestation, interference, restraint, or coercion.

- (3) Negotiation of terms and conditions of work should result from voluntary agreement between employer and employee. For the purpose of such negotiation an employee has the right, if he desires, to associate with others in organizing and bargaining collectively through representatives of his own choosing, without intimidation or coercion from any source.
- (4) It is the policy of the state, in order to preserve and promote the interests of the public, the employee, and the employer alike, to establish standards of fair conduct in employment relations and to provide a convenient, expeditious and impartial tribunal by which these interests may have their respective rights and obligations adjudicated.

Enacted by Chapter 85, 1969 General Session

34-20-2 Definitions.

As used in this chapter:

- (1) "Affecting commerce" means in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce within the state.
- (2) "Commerce" means trade, traffic, commerce, transportation, or communication within the state.
- (3) "Election" means a proceeding in which the employees in a collective bargaining unit cast a secret ballot for collective bargaining representatives or for any other purpose specified in this chapter and includes elections conducted by the board or by any tribunal having competent jurisdiction or whose jurisdiction was accepted by the parties.
- (4)
 - (a) "Employee" includes any employee unless this chapter explicitly states otherwise, and includes an individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment.
 - (b) "Employee" does not include an individual employed as an agricultural laborer, or in the domestic service of a family or person at his home, or an individual employed by his parent or spouse.
- (5) "Employer" includes a person acting in the interest of an employer, directly or indirectly, but does not include:
 - (a) the United States;
 - (b) a state or political subdivision of a state;
 - (c) a person subject to the federal Railway Labor Act;
 - (d) a labor organization, other than when acting as an employer;
 - (e) a corporation or association operating a hospital if no part of the net earnings inures to the benefit of any private shareholder or individual; or
 - (f) anyone acting in the capacity of officer or agent of a labor organization.
- (6) "Federal executive agency" means an executive agency, as defined in 5 U.S.C. Sec.105, of the federal government.
- (7) "Franchise" means the same as that term is defined in 16 C.F.R. Sec. 436.1.
- (8) "Franchisee" means the same as that term is defined in 16 C.F.R. Sec. 436.1.
- (9) "Franchisor" means the same as that term is defined in 16 C.F.R. Sec. 436.1.

- (10) "Labor dispute" means any controversy between an employer and the majority of the employer's employees in a collective bargaining unit concerning the right or process or details of collective bargaining or the designation of representatives.
- (11) "Labor organization" means an organization of any kind or any agency or employee representation committee or plan in which employees participate that exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.
- (12) "Labor relations board" or "board" means the board created in Section 34-20-3.
- (13) "Person" includes an individual, partnership, association, corporation, legal representative, trustee, trustee in bankruptcy, or receiver.
- (14) "Representative" includes an individual or labor organization.
- (15) "Secondary boycott" includes combining or conspiring to cause or threaten to cause injury to one with whom no labor dispute exists, whether by:
 - (a) withholding patronage, labor, or other beneficial business intercourse;
 - (b) picketing;
 - (c) refusing to handle, install, use, or work on particular materials, equipment, or supplies; or
 - (d) by any other unlawful means, in order to bring him against his will into a concerted plan to coerce or inflict damage upon another.
- (16) "Unfair labor practice" means any unfair labor practice listed in Section 34-20-8.

Amended by Chapter 370, 2016 General Session

34-20-3 Labor relations board.

- (1)
 - (a) There is created the Labor Relations Board consisting of the following:
 - (i) the commissioner of the Labor Commission;
 - (ii) two members appointed by the governor with the consent of the Senate consisting of:
 - (A) a representative of employers, in the appointment of whom the governor shall consider nominations from employer organizations; and
 - (B) a representative of employees, in the appointment of whom the governor shall consider nominations from employee organizations.
 - (b)
 - (i) Except as provided in Subsection (1)(b)(ii), as terms of members appointed under Subsection (1)(a)(ii) expire, the governor shall appoint each new member or reappointed member to a four-year term.
 - (ii) Notwithstanding the requirements of Subsection (1)(b)(i), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of members appointed under Subsection (1)(a)(ii) are staggered so one member is appointed every two years.
 - (c) The commissioner shall serve as chair of the board.
 - (d) A vacancy occurring on the board for any cause of the members appointed under Subsection (1)(a)(ii) shall be filled by the governor with the consent of the Senate pursuant to this section for the unexpired term of the vacating member.
 - (e) The governor may at any time remove a member appointed under Subsection (1)(a)(ii) but only for inefficiency, neglect of duty, malfeasance or malfeasance in office, or for cause upon a hearing.

- (f) A member of the board appointed under Subsection (1)(a)(ii) may not hold any other office in the government of the United States, this state or any other state, or of any county government or municipal corporation within a state.
- (g) A member appointed under Subsection (1)(a)(ii) may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:
 - (i) Section 63A-3-106;
 - (ii) Section 63A-3-107; and
 - (iii) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.
- (2) A meeting of the board may be called:
 - (a) by the chair; or
 - (b) jointly by the members appointed under Subsection (1)(a)(ii).
- (3) The chair may provide staff and administrative support as necessary from the Labor Commission.
- (4) A vacancy in the board does not impair the right of the remaining members to exercise all the powers of the board, and two members of the board shall at all times constitute a quorum.
- (5) The board shall have an official seal which shall be judicially noticed.

Amended by Chapter 348, 2016 General Session

34-20-4 Labor relations board -- Employees -- Agencies -- Expenses.

- (1) The board may employ an executive secretary, attorneys, examiners, and may employ such other employees with regard to existing laws applicable to the employment and compensation of officers and employees of the state as it may from time to time find necessary for the proper performance of its duties. The board may establish or utilize such regional, local, or other agencies, and utilize such voluntary and uncompensated services, as may from time to time be needed. Attorneys employed under this section may, at the direction of the board, appear for and represent the board in any case in court. Nothing in this act shall be construed to authorize the board to employ individuals for the purpose of conciliation or mediation (or for statistical work) where and if such service may be obtained from the Labor Commission.
- (2) All of the expenses of the board, including the necessary traveling expenses, incurred by the members or employees of the board under its orders, shall be allowed and paid on the presentation of itemized vouchers therefor approved by the board or by any individual it designates for the purpose.

Amended by Chapter 375, 1997 General Session

34-20-5 Labor relations board -- Offices -- Jurisdiction -- Member's participation in case.

The principal office of the board shall be at the state capitol, but it may meet and exercise any or all of its powers at any other place. The board may, by one or more of its members or by the agents or agencies it may designate, prosecute any inquiry necessary to its functions in any part of the state. A member who participates in the inquiry may not be disqualified from subsequently participating in a decision of the board in the same case.

Amended by Chapter 297, 2011 General Session

34-20-6 Labor relations board -- Rules and regulations.

The board shall have authority from time to time to make, amend and rescind such rules and regulations as may be necessary to carry out the provisions of this act. Such rules and regulations shall be effective upon publication in the manner in which the board shall prescribe.

Enacted by Chapter 85, 1969 General Session

34-20-7 Organization and collective bargaining -- Employees' rights.

Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection; and such employees shall also have the right to refrain from any or all of such activities.

Enacted by Chapter 85, 1969 General Session

34-20-8 Unfair labor practices.

- (1) It shall be an unfair labor practice for an employer, individually or in concert with others:
 - (a) To interfere with, restrain or coerce employees in the exercise of the rights guaranteed in Section 34-20-7.
 - (b) To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it; provided, that subject to rules and regulations made and published by the board pursuant to Section 34-20-6, an employer is not prohibited from permitting employees to confer with the employer during working hours without loss of time or pay.
 - (c) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization; provided, that nothing in this act shall preclude an employer from making an agreement with a labor organization (not established, maintained or assisted by any action defined in this act as an unfair labor practice) to require as a condition of employment, membership therein, if such labor organization is the representative of the employees as provided in Subsection 34-20-9(1) in the appropriate collective bargaining unit covered by such agreement when made.
 - (d) To refuse to bargain collectively with the representative of a majority of the employer's employees in any collective bargaining unit; provided, that, when two or more labor organizations claim to represent a majority of the employees in the bargaining unit, the employer shall be free to file with the board a petition for investigation of certification of representatives and during the pendency of the proceedings the employer may not be considered to have refused to bargain.
 - (e) To bargain collectively with the representatives of less than a majority of the employer's employees in a collective bargaining unit.
 - (f) To discharge or otherwise discriminate against an employee because the employee has filed charges or given testimony under this chapter.
- (2) It shall be an unfair labor practice for an employee individually or in concert with others:
 - (a) To coerce or intimidate an employee in the enjoyment of the employee's legal rights, including those guaranteed in Section 34-20-7, or to intimidate the employee's family, picket the employee's domicile, or injure the person or property of the employee or the employee's family.
 - (b) To coerce, intimidate or induce an employer to interfere with any of the employer's employees in the enjoyment of their legal rights, including those guaranteed in Section 34-20-7, or to

engage in any practice with regard to the employer's employees which would constitute an unfair labor practice if undertaken by the employer on the employer's own initiative.

- (c) To co-operate in engaging in, promoting, or inducing picketing (not constituting an exercise of constitutionally guaranteed free speech), boycotting or any other overt concomitant of a strike unless a majority in a collective bargaining unit of the employees of an employer against whom such acts are primarily directed have voted by secret ballot to call a strike.
 - (d) To hinder or prevent, by mass picketing, threats, intimidation, force, or coercion of any kind the pursuit of any lawful work or employment, or to obstruct or interfere with entrance to or egress from any place of employment, or to obstruct or interfere with free and uninterrupted use of public roads, streets, highways, railways, airports, or other ways of travel or conveyance.
 - (e) To engage in a secondary boycott; or to hinder or prevent, by threats, intimidation, force, coercion, or sabotage, the obtaining, use or disposition of materials, equipment, or services; or to combine or conspire to hinder or prevent the obtaining, use or disposition of materials, equipment or services, provided, however, that nothing herein shall prevent sympathetic strikes in support of those in similar occupations working for other employers in the same craft.
 - (f) To take unauthorized possession of property of the employer.
- (3) It shall be an unfair labor practice for any person to do or cause to be done on behalf of or in the interest of employers or employees, or in connection with or to influence the outcome of any controversy as to employment relations, any act prohibited by Subsections (1) and (2) of this section.

Amended by Chapter 348, 2016 General Session

34-20-9 Collective bargaining -- Representatives -- Powers of board.

- (1)
 - (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for those purposes shall be the exclusive representatives of all the employees in that unit for the purposes of collective bargaining in respect to rate of pay, wages, hours of employment, and of other conditions of employment.
 - (b) Any individual employee or group of employees may present grievances to their employer at any time.
- (2) The board shall decide in each case whether, in order to ensure to employees the full benefit of their right to self-organization and to collective bargaining, and otherwise to effectuate the policies of this act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision of same.
- (3) Whenever a question affecting intrastate commerce or the orderly operation of industry arises concerning the representation of employees, the board may investigate such controversy and certify to the parties in writing, the name or names of the representatives that have been designated or selected. In any such investigation, the board shall provide for an appropriate hearing upon due notice, either in conjunction with a proceeding under Section 34-20-10, or otherwise, and may take a secret ballot of employees, or utilize any other suitable method to ascertain such representatives.
- (4)
 - (a) Whenever an order of the board made according to Section 34-20-10 is based in whole or in part upon facts certified following an investigation under Subsection (3), and there is a petition for the enforcement or review of such order, the certification and the record of the

investigation shall be included in the transcript of the entire record required to be filed under Section 34-20-10.

- (b) The decree of the court enforcing, modifying, or setting aside in whole or in part the order of the board shall be made and entered upon the pleadings, testimony, and proceedings set forth in the transcript.

Amended by Chapter 161, 1987 General Session

34-20-10 Unfair labor practices -- Powers of board to prevent -- Procedure.

- (1)
 - (a) The board may prevent any person from engaging in any unfair labor practice, as listed in Section 34-20-8, affecting intrastate commerce or the orderly operation of industry.
 - (b) This authority is exclusive and is not affected by any other means of adjustment or prevention that has been or may be established by agreement, code, law, or otherwise.
- (2) The board shall comply with the procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act, in its adjudicative proceedings.
- (3) When it is charged that any person has engaged in or is engaged in any unfair labor practice, the board, or any agent or agency designated by the board, may issue and serve a notice of agency action on that person.
- (4)
 - (a) If, upon all the testimony taken, the board finds that any person named in the complaint has engaged in or is engaging in an unfair labor practice, the board shall state its findings of fact and shall issue and serve on the person an order to cease and desist from the unfair labor practice and to take other affirmative action designated by the commission, including reinstatement of employees with or without back pay, to effectuate the policies of this chapter.
 - (b) The order may require the person to make periodic reports showing the extent to which it has complied with the order.
 - (c) If, upon all the testimony taken, the board determines that no person named in the complaint has engaged in or is engaging in any unfair labor practice, the board shall state its findings of fact and shall issue an order dismissing the complaint.
- (5)
 - (a) The board may petition the district court to enforce the order and for appropriate temporary relief or for a restraining order.
 - (b) The board shall certify and file in the court:
 - (i) a transcript of the entire record in the proceeding;
 - (ii) the pleadings and testimony upon which the order was entered; and
 - (iii) the findings and order of the board.
 - (c) When the petition is filed, the board shall serve notice on all parties to the action.
 - (d) Upon filing of the petition, the court has jurisdiction of the proceeding and of the question to be determined.
 - (e) The court may grant temporary relief or a restraining order, and, based upon the pleadings, testimony, and proceedings set forth in the transcript, order that the board's order be enforced, modified, or set aside in whole or in part.
 - (f) The court may not consider any objection that was not presented before the board, its member, agent, or agency, unless the failure or neglect to urge the objection is excused because of extraordinary circumstances.
 - (g) The board's findings of fact, if supported by evidence, are conclusive.
 - (h)

- (i) If either party applies to the court for leave to adduce additional evidence, and shows to the satisfaction of the court that the additional evidence is material and that there were reasonable grounds for the failure to adduce the evidence in the hearing before the board, its member, agent, or agency, the court may order additional evidence to be taken before the board, its member, agent, or agency, and to be made part of the transcript.
- (ii) The board may modify its findings as to the facts, or make new findings, because of the additional evidence taken and filed.
- (iii) The board shall file the modified or new findings, which, if supported by evidence, are conclusive, and shall file its recommendations, if any, for the modification or setting aside of its original order.

Amended by Chapter 382, 2008 General Session

34-20-11 Hearings and investigations -- Power of board -- Witnesses -- Procedure.

For the purpose of all hearings and investigations, which, in the opinion of the board, are necessary and proper for the exercise of the powers vested in it by Sections 34-20-9 and 34-20-10:

- (1) The board, or its duly authorized agents or agencies, shall at all reasonable times have access to, for the purpose of examination, and the right to copy, any evidence of any person being investigated or proceeded against that relates to any matter under investigation or in question. Any member of the board shall have power to issue subpoenas requiring the attendance and testimony of witnesses and the production of any evidence that relates to any matter under investigation or in question, before the board, its member, agent, or agency conducting the hearing or investigation. Any member of the board, or any agent or agency designated by the board, for these purposes, may administer oaths and affirmations, examine witnesses, and receive evidence. Attendance of witnesses and the production of evidence may be required from any place in the state at any duly designated place of hearing.
- (2) In case of contumacy or refusal to obey a subpoena issued to any person, any district court of Utah within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which the person guilty of contumacy or refusal to obey is found or resides or transacts business upon application by the board shall have jurisdiction to issue to the person an order requiring the person to appear before the board, its member, agent, or agency, to produce evidence if so ordered, or to give testimony touching the matter under investigation or in question; and any failure to obey the order of the court may be punished by the court as a contempt.
- (3) In the event a witness asserts a privilege against self-incrimination, testimony and evidence from the witness may be compelled pursuant to Title 77, Chapter 22b, Grants of Immunity.
- (4) Complaints, orders, and other processes and papers of the board, its member, agent, or agency, may be served either personally, by certified or registered mail, by telegraph, or by leaving a copy at the principal office or place of business of the person required to be served. The verified return by the individual serving the documents setting forth the manner of the service shall be proof of the service, and the return post office receipt or telegram receipt when certified or registered and mailed or telegraphed shall be proof of service. Witnesses summoned before the board, its member, agent, or agency, shall be paid the same fees and mileage that are paid witnesses in the courts of the state, and witnesses whose depositions are taken and the persons taking them shall be entitled to the same fees paid for the same services in the courts of the state.
- (5) All departments and agencies of the state, when directed by the governor, shall furnish to the board, upon its request, all records, papers, and information in their possession relating to any matter before the board.

Amended by Chapter 296, 1997 General Session

34-20-12 Willful interference -- Penalty.

Any person who shall willfully resist, prevent, impede or interfere with any member of the board, or any of its agents or agencies, in the performance of duties pursuant to this act shall be punished by a fine of not more than \$5,000, or by imprisonment for not more than one year, or both.

Enacted by Chapter 85, 1969 General Session

34-20-13 Right to strike.

This chapter does not interfere with, impede, or diminish in any way the right to strike.

Amended by Chapter 201, 1991 General Session

34-20-14 Determining joint employment status -- Franchisors excluded.

(1) For purposes of determining whether two or more persons are considered joint employers under this chapter, an administrative ruling of a federal executive agency may not be considered a generally applicable law unless that administrative ruling is determined to be generally applicable by a court of law, or adopted by statute or rule .

- (2)
- (a) For purposes of this chapter, a franchisor is not considered to be an employer of:
 - (i) a franchisee; or
 - (ii) a franchisee's employee.
 - (b) With respect to a specific claim for relief under this chapter made by a franchisee or a franchisee's employee, this Subsection (2) does not apply to a franchisor under a franchise that exercises a type or degree of control over the franchisee or the franchisee's employee not customarily exercised by a franchisor for the purpose of protecting the franchisor's trademarks and brand.

Enacted by Chapter 370, 2016 General Session

Chapter 20a
Utah Fire Fighters' Negotiations Act

34-20a-1 Title.

This chapter is known as the "Utah Fire Fighters' Negotiations Act."

Amended by Chapter 20, 1995 General Session

34-20a-2 Definitions.

As used in this chapter:

- (1) "Fire fighters" means the full-time, salaried, members of any regularly constituted fire department in any city, town, or county.
- (2) "Corporate authorities" means the council, commission, or other governing body of any city, town, or county which fixes hours, wages, salaries, and other conditions of employment.

Amended by Chapter 20, 1995 General Session

34-20a-3 Fire fighters' right to bargain collectively.

Fire fighters have the right to bargain collectively about wages, hours, and other conditions of employment with corporate authorities and to be represented in such negotiations by a bargaining representative chosen by such fire fighters.

Enacted by Chapter 102, 1975 General Session

34-20a-4 Exclusive bargaining representative -- Selection -- Exclusions from negotiating team.

The organization selected by a majority of fire fighters in an appropriate bargaining unit shall act as the exclusive bargaining representative for all members of the department until recognition of such bargaining representative is withdrawn by a vote of a majority of the fire fighters in the department. No negotiating team of the established bargaining unit is appropriate which includes any fire chief, assistant chief, battalion or deputy chief, captain or lieutenant.

Enacted by Chapter 102, 1975 General Session

34-20a-5 Corporate authority duty -- Collective bargaining agreement -- No-strike clause.

It is the duty of any corporate authority to meet and collectively bargain in good faith with the bargaining representative within 10 days after receipt of written notice from such representative that it represents a majority of the employees in the bargaining unit. No collective bargaining agreement shall be executed for a period of more than two years. Each bargaining agreement shall contain a no-strike clause.

Enacted by Chapter 102, 1975 General Session

34-20a-6 Notice of request for collective bargaining -- Time.

Whenever wages, rates of pay, or any other matter requiring appropriation of money by any city, town, or county are included as a matter of collective bargaining conducted under this chapter, it is the obligation of the bargaining representative to serve written notice of request for collective bargaining on the corporate authorities at least 120 days before the last day on which funds can be appropriated to cover the contract period which is the subject of collective bargaining.

Amended by Chapter 20, 1995 General Session

34-20a-7 Arbitration.

If the bargaining representative and the corporate authorities are unable to reach an agreement within 30 days after negotiations, all unresolved issues shall be submitted to arbitration.

Enacted by Chapter 102, 1975 General Session

34-20a-8 Procedure for arbitration.

If no agreement is reached within the period prescribed by Section 34-20a-7, each party within five days after the expiration of such period shall name one individual to serve as an arbitrator. Each party shall furnish written notification of the name and address of its arbitrator. The two

arbitrators within 10 days after their selection shall make application to the Federal Mediation and Conciliation Service for a list of seven names from which they shall name the third arbitrator who shall serve as chairman of the arbitration panel. The third arbitrator shall be chosen within five days after receipt of the list of arbitrators from the Federal Mediation and Conciliation Service with each party alternately striking one name until six names are stricken. The remaining unstricken name shall serve as the third member of the arbitration panel. Formal arbitration shall commence within four days after selection of the third arbitrator.

Enacted by Chapter 102, 1975 General Session

34-20a-9 Board of arbitration -- Determination -- Final and binding -- Exception -- Expense.

The determination of the majority of the board of arbitration thus established shall be final and binding on all matters in dispute except in salary or wage matters which shall be considered advisory only. Each party shall pay one-half of the expense of arbitration.

Enacted by Chapter 102, 1975 General Session

Chapter 23 Employment of Minors

Part 1 General Provisions

34-23-101 Policy of state.

It is a policy of the state of Utah to encourage the growth and development of minors through providing opportunities for work and for related work learning experience while at the same time adopting reasonable safeguards for their health, safety, and education.

Amended by Chapter 113, 1992 General Session

34-23-102 Chapter to be liberally construed.

When this chapter, or any part or section of it, is interpreted by a court, it shall be liberally construed by that court.

Enacted by Chapter 8, 1990 General Session

34-23-103 Definitions.

As used in this chapter:

- (1) "Casual work" is employment on an incidental, occasional, or nonregular basis which is not considered full-time or routine.
- (2) "Commission" means the Labor Commission.
- (3) "Division" means the Division of Antidiscrimination and Labor in the commission.
- (4) "Hazardous occupation" is any occupation defined as hazardous by the United States Department of Labor under 29 U.S.C. Sec. 201 et seq., the Fair Labor Standards Act.
- (5) "Minor" is a person under the age of 18 years.

Amended by Chapter 375, 1997 General Session

34-23-104 Duty of commission to establish hours and conditions -- Promulgation of rules.

- (1) The commission shall ascertain and establish the hours and the conditions of labor and employment for any occupation in which minors are employed.
- (2) The commission may promulgate rules consistent with this chapter in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

Amended by Chapter 382, 2008 General Session

**Part 2
Occupations of Minors**

34-23-201 Employment of minors in hazardous occupations prohibited -- Exceptions.

A minor may not be employed or permitted to work in any hazardous occupation except as authorized by the division in writing when the minor is under careful supervision in connection with or following completion of an apprentice program, vocational training, or rehabilitation program as approved by the division.

Amended by Chapter 240, 1996 General Session

34-23-202 Employment of minors under 16 during school hours -- Hours of work limited.

- (1) A minor under the age of 16 may not be employed or permitted to work during school hours except as authorized by the proper school authorities.
- (2) A minor under the age of 16 may not be permitted to work:
 - (a) before or after school in excess of four hours a day;
 - (b) before 5:00 a.m. or after 9:30 p.m., unless the next day is not a school day;
 - (c) in excess of eight hours in any 24-hour period; or
 - (d) more than 40 hours in any week.

Renumbered and Amended by Chapter 8, 1990 General Session

34-23-203 Permitted occupations for minors 16 or older.

Minors 16 years of age or older may work:

- (1) in all occupations not declared hazardous; and
- (2) in occupations which involve the use of motor vehicles if the minor is licensed to operate the motor vehicle for employment purposes under state law.

Renumbered and Amended by Chapter 8, 1990 General Session

34-23-204 Permitted occupations for minors 14 or older.

- (1) Minors 14 years of age or older may work in a wide variety of nonhazardous occupations including:
 - (a) retail food services;
 - (b) automobile service stations, except for the operation of motor vehicles and the use of hoists;
 - (c) public messenger service;

- (d) janitorial and custodial service;
 - (e) lawn care;
 - (f) the use of approved types of vacuum cleaners, floor polishers, power lawn mowers, and sidewalk snow removal equipment; and
 - (g) other similar work as approved by the division.
- (2) Minors 14 years of age or older may also work in nonhazardous areas in manufacturing, warehousing and storage, construction, and other such areas not determined harmful by the division.

Amended by Chapter 240, 1996 General Session

34-23-205 Permitted occupations for minors 12 or older.

Minors 12 years of age or older may work in occupations such as:

- (1) the sale and delivery of periodicals;
- (2) door-to-door sale and delivery of merchandise;
- (3) baby-sitting;
- (4) nonhazardous agricultural work; and
- (5) any other occupation not determined harmful by the division.

Amended by Chapter 240, 1996 General Session

34-23-206 Permitted occupations for minors 10 or older.

Minors 10 years of age or older may work in occupations such as:

- (1) delivery of handbills, newspapers, advertising, and advertising samples;
- (2) shoe-shining;
- (3) gardening and lawn care involving no power-driven lawn or snow removal equipment;
- (4) caddying; and
- (5) any occupation not determined harmful by the division.

Amended by Chapter 240, 1996 General Session

34-23-207 Permitted occupations with no specific age limitations or restrictions.

With consent of the minor's parent, guardian, or custodian, no specific age limitations or restrictions are imposed for:

- (1) home chores and other work done for parent or guardian;
- (2) any casual work not determined harmful by the division;
- (3) agricultural work including the operation of power-driven farm machinery in the production of agricultural products; or
- (4) work for which a specific, written authorization has been made by the division.

Amended by Chapter 240, 1996 General Session

34-23-208 Exceptions.

The provisions of this chapter do not apply to a person who is 16 years of age or older and for whom employment would not endanger the person's health and safety if that person:

- (1) has received a high school diploma;
- (2) has received a school release certificate;
- (3) is legally married; or

(4) is head of a household.

Amended by Chapter 297, 2011 General Session

34-23-209 Age certificates issued by schools -- Responsibility of employers.

- (1) All public and private schools and school districts within the state shall cooperate with employers or prospective employers by issuing age certificates or lists of students or recent students showing their dates of birth according to school records.
- (2) Such age certificates do not relieve employers of full responsibility for complying with all laws and rules pertaining to the employment of minors.

Renumbered and Amended by Chapter 8, 1990 General Session

**Part 3
Minimum Wages**

34-23-301 Minimum hourly wages.

The commission may establish minimum hourly wages for minors. If there is an established minimum hourly wage for adults, the minimum hourly wages for minors may be established at a lesser amount.

Amended by Chapter 375, 1997 General Session

34-23-302 Criminal penalty -- Enforcement.

- (1)
 - (a) Repeated violation of Section 34-23-301 is a class B misdemeanor.
 - (b) "Repeated violation" does not include separate violations as to individual employees arising out of the same investigation or enforcement action.
- (2) Upon the third violation of Section 34-23-301 by the same employer within a three-year period, the commission may prosecute a criminal action in the name of the state.
- (3) The county attorney, district attorney, or attorney general shall provide assistance in prosecutions under this section at the request of the commission.

Amended by Chapter 375, 1997 General Session

34-23-303 Civil action allowed.

- (1) In addition to the administrative action authorized by Section 34-23-401, and criminal actions authorized by Sections 34-23-302 and 34-23-402, a minor employee may bring a civil action to enforce his right to a minimum wage under Section 34-23-301.
- (2)
 - (a) An aggrieved minor employee is entitled to injunctive relief and may recover the difference between the wage paid and the minimum wage, plus interest.
 - (b) The court may award court costs and attorney fees to the prevailing party.
- (3) An action brought under this section shall be brought within two years of the alleged violation.

Enacted by Chapter 8, 1990 General Session

Part 4 Penalties

34-23-401 Investigation by division -- Administrative penalty.

- (1) The director of the division or the director's designee shall have authority to enter and inspect any place or establishment covered by this chapter and to have access to such records as may aid in the enforcement of this chapter.
- (2) The division may investigate any complaint under this chapter and may commence an administrative proceeding with a penalty of up to \$500 per violation. Administrative proceedings conducted under this section shall be consistent with Title 63G, Chapter 4, Administrative Procedures Act.

Amended by Chapter 382, 2008 General Session

34-23-402 Violation -- Criminal penalty.

- (1) The commission may prosecute a misdemeanor criminal action in the name of the state. The county attorney, district attorney, or attorney general shall provide assistance in prosecutions under this section at the request of the commission.
- (2) It is a class B misdemeanor for a person, whether individually or as an officer, agent, or employee of any person, firm, or corporation to:
 - (a) knowingly employ a minor or permit a minor to work in a repeated violation of this chapter;
 - (b) refuse or knowingly neglect to furnish to the commission, any information requested by the commission under this chapter;
 - (c) refuse access to that person's place of business or employment to the commission or its authorized representative when access has been requested in conjunction with an investigation related to this section;
 - (d) hinder the commission or its authorized representative in the securing of any information authorized by this section;
 - (e) refuse or knowingly omit or neglect to keep any of the records required by this chapter;
 - (f) knowingly make any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this chapter;
 - (g) discharge an employee or threaten to or retaliate against an employee because:
 - (i) the employee has testified;
 - (ii) is about to testify; or
 - (iii) the employer believes that the employee may testify in any investigation or proceedings relative to the enforcement of this chapter; and
 - (h) willfully violate any order issued under this chapter.
- (3) This section does not apply to violations of Section 34-23-301.

Amended by Chapter 347, 2009 General Session

Chapter 25 Fellow Servants

34-25-1 "Vice-principal" defined.

All persons engaged in the service of any person and entrusted by such employer with authority of superintendence, control or command of other persons in the employ or service of such employer, or with authority to direct any other employee in the performance of any duties of such employee, are vice-principals of such employer, and are not fellow servants.

Enacted by Chapter 85, 1969 General Session

34-25-2 "Fellow servant" defined.

All persons who are engaged in the service of any employer and who while so engaged are in the same grade of service and are working together at the same time and place and to a common purpose, neither of such persons being entrusted by such employer with any superintendence or control over the person's fellow employees, are fellow servants with each other; but nothing herein contained shall be so construed as to make the employees of such employer fellow servants with other employees engaged in any other department of service of such employer. Employees who do not come within the provisions of this section may not be considered fellow servants.

Amended by Chapter 297, 2011 General Session

Chapter 26
Wages A Preferred Debt

34-26-1 Extent and condition of preference.

If any property of any person is seized through any process of any court, or when his business is suspended by the act of creditors or is put into the hands of a receiver, assignee, or trustee, either by voluntary or involuntary action, the amount owing to workmen, clerks, traveling or city salesmen, or servants, for work or labor performed within five months next preceding the seizure or transfer of the property shall be considered and treated as preferred debts, and the workmen, clerks, traveling and city salesmen, and servants shall be preferred creditors, the first to be paid in full. If there are not sufficient proceeds to pay them in full, then the proceeds shall be paid to them pro rata, after paying costs. No officer, director, or general manager of a corporation employer or any member of an association employer or partner of a partnership employer is entitled to this preference.

Amended by Chapter 206, 1987 General Session

34-26-2 Claim -- Notice.

Any such employee, laborer or servant desiring to enforce his claim for wages under this chapter shall present a statement under oath to the officer, person or court charged with such property within 10 days after the seizure of it on any process, or within 30 days after the same may have been placed in the hands of any receiver, assignee or trustee, showing the amount due after allowing all just credits and setoffs, the kind of work for which such wages are due and when performed. Any person with whom any such claim shall have been filed shall give immediate notice thereof by mail to all persons interested, and, if the claim is not contested as provided in Section 34-26-3, it shall be the duty of the person or the court receiving such statement to pay the

amount of such claim or claims to the person or persons entitled thereto, after first paying all costs occasioned by the seizure of such property, out of the proceeds of the sale of the property seized.

Enacted by Chapter 85, 1969 General Session

34-26-3 Claim -- Exceptions -- Contest.

Any person interested may within 10 days after the notice of presentment of said statement contest such claims, or any part of them, by filing exceptions to them supported by affidavit with the officer or court having the custody of such property, and thereupon the claimant shall be required to reduce his claim to judgment in some court having jurisdiction before any part thereof shall be paid. The person contesting shall be made a party defendant in any such action and shall have the right to contest such claim, and the prevailing party shall recover proper costs.

Enacted by Chapter 85, 1969 General Session

34-26-4 "Wages" defined.

Whenever used in this chapter, "wages" shall mean all amounts due the employee for labor or services, whether the amount is fixed or ascertained on a time, task, piece, commission basis or other method of calculating such amount.

Enacted by Chapter 85, 1969 General Session

**Chapter 27
Attorneys' Fees in Suits for Wages**

34-27-1 Reasonable amount -- Taxed as costs.

Whenever a mechanic, artisan, miner, laborer, servant, or other employee shall have cause to bring suit for wages earned and due according to the terms of his employment and shall establish by the decision of the court that the amount for which he has brought suit is justly due, and that a demand has been made in writing at least 15 days before suit was brought for a sum not to exceed the amount so found due, then it shall be the duty of the court before which the case shall be tried to allow to the plaintiff a reasonable attorneys' fee in addition to the amount found due for wages, to be taxed as costs of suit.

Enacted by Chapter 85, 1969 General Session

**Chapter 28
Payment of Wages**

34-28-1 Public and certain other employments excepted.

None of the provisions of this chapter shall apply to the state, or to any county, incorporated city or town, or other political subdivision, or to employers and employees engaged in farm, dairy, agricultural, viticultural or horticultural pursuits or to stock or poultry raising, or to household domestic service, or to any other employment where an agreement exists between employer and employee providing for different terms of payment, except the provisions of Section 34-28-5 shall

apply to employers or employees engaged in farm, dairy, agricultural, viticultural, horticultural or stock or poultry raising.

Amended by Chapter 64, 1973 General Session

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

(1) As used in this chapter:

- (a) "Commission" means the Labor Commission.
- (b) "Division" means the Division of Antidiscrimination and Labor.
- (c) "Employer" includes every person, firm, partnership, association, corporation, receiver or other officer of a court of this state, and any agent or officer of any of the above-mentioned classes, employing any person in this state.
- (d) "Federal executive agency" means an executive agency, as defined in 5 U.S.C. Sec. 105, of the federal government.
- (e) "Franchise" means the same as that term is defined in 16 C.F.R. Sec. 436.1.
- (f) "Franchisee" means the same as that term is defined in 16 C.F.R. Sec. 436.1.
- (g) "Franchisor" means the same as that term is defined in 16 C.F.R. Sec. 436.1.
- (h) "Unincorporated entity" means an entity organized or doing business in the state that is not:
 - (i) an individual;
 - (ii) a corporation; or
 - (iii) publicly traded.
- (i) "Wages" means the amounts due the employee for labor or services, whether the amount is fixed or ascertained on a time, task, piece, commission basis or other method of calculating such amount.

(2)

- (a) For purposes of this chapter, an unincorporated entity that is required to be licensed under Title 58, Chapter 55, Utah Construction Trades Licensing Act, is presumed to be the employer of each individual who, directly or indirectly, holds an ownership interest in the unincorporated entity.
- (b) Pursuant to rules made by the commission in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, an unincorporated entity may rebut the presumption under Subsection (2)(a) for an individual by establishing by clear and convincing evidence that the individual:
 - (i) is an active manager of the unincorporated entity;
 - (ii) directly or indirectly holds at least an 8% ownership interest in the unincorporated entity; or
 - (iii) is not subject to supervision or control in the performance of work by:
 - (A) the unincorporated entity; or
 - (B) a person with whom the unincorporated entity contracts.
- (c) As part of the rules made under Subsection (2)(b), the commission may define:
 - (i) "active manager";
 - (ii) "directly or indirectly holds at least an 8% ownership interest"; and
 - (iii) "subject to supervision or control in the performance of work."
- (d) The commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, may establish a procedure, consistent with Section 34-28-7, under which an unincorporated entity may seek approval of a mutual agreement to pay wages on non-regular paydays.

(3) For purposes of determining whether two or more persons are considered joint employers under this chapter, an administrative ruling of a federal executive agency may not be

considered a generally applicable law unless that administrative ruling is determined to be generally applicable by a court of law, or adopted by statute or rule .

- (4)
- (a) For purposes of this chapter, a franchisor is not considered to be an employer of:
 - (i) a franchisee; or
 - (ii) a franchisee's employee.
 - (b) With respect to a specific claim for relief under this chapter made by a franchisee or a franchisee's employee, this Subsection (4) does not apply to a franchisor under a franchise that exercises a type or degree of control over the franchisee or the franchisee's employee not customarily exercised by a franchisor for the purpose of protecting the franchisor's trademarks and brand.

Amended by Chapter 370, 2016 General Session

34-28-3 Regular paydays -- Currency or negotiable checks required -- Deposit in financial institution -- Statement of total deductions -- Unlawful withholding or diversion of wages.

- (1)
- (a) An employer shall pay the wages earned by an employee at regular intervals, but in periods no longer than semimonthly on days to be designated in advance by the employer as the regular payday.
 - (b) An employer shall pay for services rendered during a pay period within 10 days after the close of that pay period.
 - (c) If a payday falls on a Saturday, Sunday, or legal holiday, an employer shall pay wages earned during the pay period on the day preceding the Saturday, Sunday, or legal holiday.
 - (d) If an employer hires an employee on a yearly salary basis, the employer may pay the employee on a monthly basis by paying on or before the seventh of the month following the month for which services are rendered.
 - (e) Wages shall be paid in full to an employee:
 - (i) in lawful money of the United States;
 - (ii) by a check or draft on a depository institution, as defined in Section 7-1-103, that is convertible into cash on demand at full face value; or
 - (iii) by electronic transfer to the depository institution designated by the employee.
- (2) An employer may not issue in payment of wages due or as an advance on wages to be earned for services performed or to be performed within this state an order, check, or draft unless:
- (a) it is negotiable and payable in cash, on demand, without discount, at a depository institution; and
 - (b) the name and address of the depository institution appears on the instrument.
- (3)
- (a) Except as provided in Subsection (3)(b), an employee may refuse to have the employee's wages deposited by electronic transfer under Subsection (1)(e)(iii) by filing a written request with the employer.
 - (b) An employee may not refuse to have the employee's wages deposited by electronic transfer under Subsection (3)(a) if:
 - (i) for the calendar year preceding the pay period for which the employee is being paid, the employer's federal employment tax deposits are equal to or in excess of \$250,000; and
 - (ii) at least two-thirds of the employees of the employer have their wages deposited by electronic transfer.

- (c) An employer may not designate a particular depository institution for the exclusive payment or deposit of a check or draft for wages.
- (4) If a deduction is made from the wages paid, the employer shall, on each regular payday, furnish the employee with a statement showing the total amount of each deduction.
- (5) An employer licensed under Title 58, Chapter 55, Utah Construction Trades Licensing Act, shall:
 - (a) on the day on which the employer pays an employee, give the employee a written or electronic pay statement that states:
 - (i) the employee's name;
 - (ii) the employee's base rate of pay;
 - (iii) the dates of the pay period for which the individual is being paid;
 - (iv) if paid hourly, the number of hours the employee worked during the pay period;
 - (v) the amount of and reason for any money withheld in accordance with state or federal law, including:
 - (A) state and federal income tax;
 - (B) Social Security tax;
 - (C) Medicare tax; and
 - (D) court-ordered withholdings; and
 - (vi) the total amount paid to the employee for that pay period; and
 - (b) comply with the requirements described in Subsection (5)(a) regardless of whether the employer pays the employee by check, cash, or other means.
- (6) An employer may not withhold or divert part of an employee's wages unless:
 - (a) the employer is required to withhold or divert the wages by:
 - (i) court order; or
 - (ii) state or federal law;
 - (b) the employee expressly authorizes the deduction in writing;
 - (c) the employer presents evidence that in the opinion of a hearing officer or an administrative law judge would warrant an offset; or
 - (d) subject to Subsection (8), the employer withholds or diverts the wages:
 - (i) as a contribution of the employee under a contract or plan that is:
 - (A) described in Section 401(k), 403(b), 408, 408A, or 457, Internal Revenue Code; and
 - (B) established by the employer; and
 - (ii) the contract or plan described in Subsection (6)(d)(i) provides that an employee's compensation is reduced by a specified contribution:
 - (A) under the contract or plan; and
 - (B) that is made for the employee unless the employee affirmatively elects:
 - (I) to not have a reduction made as a contribution by the employee under the contract or plan; or
 - (II) to have a different amount be contributed by the employee under the contract or plan.
- (7) An employer may not require an employee to rebate, refund, offset, or return a part of the wage, salary, or compensation to be paid to the employee except as provided in Subsection (6).
- (8)
 - (a) An employer shall notify an employee in writing of the right to make an election under Subsection (6)(d).
 - (b) An employee may make an election described in Subsection (6)(d) at any time by providing the employer written notice of the election.

- (c) An employer shall modify or terminate the withholding or diversion described in Subsection (6) (d) beginning with a pay period that begins no later than 30 days following the day on which the employee provides the employer the written notice described in Subsection (8)(b).
- (9) An employer is not prohibited from pursuing legitimate claims of damages, offsets, or recoupments in a civil action against an employee.

Amended by Chapter 188, 2014 General Session

34-28-4 Notice of paydays -- Failure to notify a misdemeanor.

- (1) It shall be the duty of every employer to notify his employees at the time of hiring of the day and place of payment, of the rate of pay, and of any change with respect to any of these items prior to the time of the change. Alternatively, however, every employer shall have the option of giving such notification by posting these facts and keeping them posted conspicuously at or near the place of work where such posted notice can be seen by each employee as he comes or goes to his place of work.
- (2) Failure to post and to keep posted any notice or failure to give notice as prescribed in this section shall be deemed a misdemeanor and punishable as such.

Enacted by Chapter 85, 1969 General Session

34-28-5 Separation from payroll -- Resignation -- Cessation because of industrial dispute.

- (1)
 - (a) When an employer separates an employee from the employer's payroll the unpaid wages of the employee become due immediately, and the employer shall pay the wages to the employee within 24 hours of the time of separation at the specified place of payment.
 - (b) An employer satisfies the 24-hour time requirement described in Subsection (1)(a) if:
 - (i)
 - (A) the employer mails the wages to the employee; and
 - (B) the envelope that contains the wages is postmarked with a date that is no more than one day after the day on which the employer separates the employee from the employer's payroll; or
 - (ii) within 24 hours after the employer separates the employee from the employer's payroll, the employer:
 - (A) initiates a direct deposit of the wages into the employee's account; or
 - (B) hand delivers the wages to the employee.
 - (c)
 - (i) In case of failure to pay wages due an employee within 24 hours of written demand, the wages of the employee shall continue from the date of demand until paid, but in no event to exceed 60 days, at the same rate that the employee received at the time of separation.
 - (ii) The employee may recover the penalty thus accruing to the employee in a civil action. This action shall be commenced within 60 days from the date of separation.
 - (iii) An employee who has not made a written demand for payment is not entitled to any penalty under this Subsection (1)(c).
- (2) If an employee does not have a written contract for a definite period and resigns the employee's employment, the wages earned and unpaid together with any deposit held by the employer and properly belonging to the resigned employee for the performance of the employee's employment duties become due and payable on the next regular payday.

- (3) If work ceases as the result of an industrial dispute, the wages earned and unpaid at the time of this cessation become due and payable at the next regular payday, as provided in Section 34-28-3, including, without abatement or reduction, all amounts due all persons whose work has been suspended as a result of the industrial dispute, together with any deposit or other guaranty held by the employer for the faithful performance of the duties of the employment.
- (4) This section does not apply to the earnings of a sales agent employed on a commission basis who has custody of accounts, money, or goods of the sales agent's principal if the net amount due the agent is determined only after an audit or verification of sales, accounts, funds, or stocks.

Amended by Chapter 376, 2015 General Session

34-28-6 Dispute over wages -- Notice and payment.

- (1) In case of a dispute over wages, the employer shall give written notice to the employee of the amount of wages that the employer concedes to be due and shall pay such amount without condition within the time set by this chapter.
- (2) Acceptance by an employee of a payment described in Subsection (1) does not constitute a release as to the balance of the employee's claim.

Amended by Chapter 297, 2011 General Session

34-28-7 Payment at more frequent intervals permitted -- Agreements to contravene chapter prohibited unless approved by division.

Nothing contained in this chapter shall in any way limit or prohibit the payment of wages or compensation at more frequent intervals, or in greater amounts or in full when or before due, but no provisions of this chapter can in any way be contravened or set aside by a mutual agreement unless the agreement is approved by the division.

Amended by Chapter 240, 1996 General Session

34-28-9 Enforcement of chapter -- Rulemaking authority.

- (1)
 - (a) The division shall:
 - (i) ensure compliance with this chapter;
 - (ii) investigate any alleged violations of this chapter; and
 - (iii) determine the validity of a claim for any violation of this chapter that is filed with the division by an employee.
 - (b) The commission may make rules consistent with this chapter governing wage claims and payment of wages.
 - (c) The minimum wage claim that the division may accept is \$50.
 - (d) The maximum wage claim that the division may accept is \$10,000.
 - (e) A wage claim shall be filed within one year after the day on which the wages were earned.
- (2)
 - (a) The division may assess against an employer who fails to pay an employee in accordance with this chapter, a penalty of 5% of the unpaid wages owing to the employee which shall be assessed daily until paid for a period not to exceed 20 days.
 - (b) The division shall:

- (i) retain 50% of the money received from a penalty payment under Subsection (2)(a) for the costs of administering this chapter;
 - (ii) pay all the sums retained under Subsection (2)(b)(i) to the state treasurer; and
 - (iii) pay the 50% not retained under Subsection (2)(b)(i) to the employee.
- (c) Subsections (2)(a) and (b) do not apply to a violation of Subsection 34-28-3(5).
- (3)
- (a) A person who violates Subsection 34-28-3(5) is subject to a civil fine of:
 - (i) \$50 for the first violation within a one-year period;
 - (ii) \$100 for the second violation within a one-year period;
 - (iii) \$100 for the third violation within a one-year period; and
 - (iv) \$500 for the fourth violation and each subsequent violation within a one-year period.
 - (b) The division shall deposit the money that the division receives under Subsection (3)(a) into the General Fund as a dedicated credit to the division to pay for the costs of administering this chapter.
- (4)
- (a) An abstract of any final award under this section may be filed in the office of the clerk of the district court of any county in the state. If so filed, the abstract shall be docketed in the judgment docket of that district court.
 - (b) The time of the receipt of the abstract shall be noted by the clerk and entered in the judgment docket.
 - (c) Unless the award was previously satisfied, if an abstract is filed and docketed, the award constitutes a lien upon the employer's real property that is situated in the county in which the abstract is filed for a period of eight years after the day on which the award is granted.
 - (d) Execution may be issued on the award within the same time and in the same manner and with the same effect as if the award were a judgment of the district court.
- (5)
- (a) The commission may employ counsel, appoint a representative, or request the attorney general, or the county attorney for the county in which the final award is filed and docketed, to represent the commission on all appeals and to enforce judgments.
 - (b) The counsel employed by the commission, the attorney general, or the county representing the commission, shall be awarded:
 - (i) reasonable attorney fees, as specified by the commission; and
 - (ii) costs for:
 - (A) appeals when the plaintiff prevails; and
 - (B) judgment enforcement proceedings.
- (6)
- (a) The commission may enter into reciprocal agreements with the labor department or a corresponding agency of any other state or with the person, board, officer, or commission authorized to act on behalf of that department or agency, for the collection in any other state of claims or judgments for wages and other demands based upon claims previously assigned to the commission.
 - (b) The commission may, to the extent provided by any reciprocal agreement entered into under Subsection (6)(a), or by the laws of any other state, maintain actions in the courts of the other states for the collection of any claims for wages, judgments, and other demands and may assign the claims, judgments, and demands to the labor department or an agency of any other state for collection to the extent that may be permitted or provided by the laws of that state or by reciprocal agreement.

- (c) The commission may maintain actions in the courts of this state upon assigned claims for wages, judgments, and demands arising in any other state in the same manner and to the same extent that the actions by the commission are authorized when arising in this state if:
 - (i) the labor department or a corresponding agency of any other state or of any person, board, officer, or commission of that state authorized to act on behalf of the labor department or corresponding agency requests in writing that the commission commence and maintain the action; and
 - (ii) the other state by legislation or reciprocal agreement extends the same comity to this state.

Amended by Chapter 188, 2014 General Session

34-28-10 Employers' records -- Inspection by division.

- (1)
 - (a) Every employer shall keep a true and accurate record of time worked and wages paid each pay period to each employee who is employed on an hourly or a daily basis in the form required by the commission rules.
 - (b) The employer shall keep the records on file for at least one year after the entry of the record.
- (2) An employer licensed under Title 58, Chapter 55, Utah Construction Trades Licensing Act, shall retain a copy of each pay statement described in Subsection 34-28-3(5) for at least three years after the day on which the employer gives a copy of the pay statement to the employee.
- (3) The director of the division or the director's designee may enter any place of employment during business hours to inspect the records described in this section and to ensure compliance with this section.
- (4) Any effort of any employer to obstruct the commission in the performance of its duties is considered to be a violation of this chapter and may be punished as any other violation of this chapter.

Amended by Chapter 188, 2014 General Session

34-28-12 Violations -- Misdemeanor.

- (1) Any employer who shall violate, or fail to comply with any of the provisions of this chapter shall be guilty of a misdemeanor.
- (2) Any employer who shall refuse to pay the wages due and payable when demanded as in this chapter provided, or who shall falsely deny the amount thereof, or that the same is due, with intent to secure for himself or any other person any discount upon such indebtedness or with intent to annoy, harass, oppress, hinder, delay or defraud the person to whom such indebtedness is due, or who hires additional employees without advising each of them of every wage claim due and unpaid and of every judgment that the employer has failed to satisfy, shall be guilty of a misdemeanor.

Enacted by Chapter 85, 1969 General Session

34-28-13 Assignment of wage claims -- Powers of division.

- (1) The division may take assignments of wage claims, rights of actions for penalties under Section 34-28-5, mechanics' and other liens of workers and rights of action against sureties, without being bound to any of the technical rules with reference to the validity of the assignments.

- (2) The division may prosecute actions for the collection of claims which are valid and enforceable in the courts. The division may join various claimants in one preferred claim or lien, and in case of suit to join them in one cause of action.

Amended by Chapter 240, 1996 General Session

34-28-14 Actions by division as assignee -- Costs need not be advanced.

- (1) In all actions brought by the division as assignee under Section 34-28-13, no court costs of any nature shall be required to be advanced nor shall any bond or other security be required from the division in connection with the same.
- (2) Any sheriff, constable, or other officer requested by the division to serve summons, writs, complaints, orders, including any garnishment papers, and all necessary and legal papers within his jurisdiction shall do so without requiring the division to advance the fees or furnish any security or bond.
- (3) Whenever the division shall require the sheriff, constable, or other officer whose duty it is to seize property or levy thereon in any attachment proceedings to satisfy any wage claim judgment to perform any such duty, this officer shall do so without requiring the division to furnish any security or bond in the action.
- (4) The officer in carrying out the provisions of this Subsection (4) is not responsible in damages for any wrongful seizure made in good faith.
- (5) Whenever anyone other than the defendant claims the right of possession or ownership to such seized property, then in such case the officer may permit such claimant to have the custody of such property pending a determination of the court as to who has right of possession or ownership of such property.
- (6) Any garnishee defendant shall be required to appear and make answer in any such action, as required by law, without having paid to the garnishee defendant in advance witness fees, but such witness fees shall be included as part of the taxable costs of such action. Out of any recovery on a judgment in such a suit, there shall be paid the following: first, the witness fees to the garnishee defendant; second, the wage claims involved; third, the sheriff's or constable's fees; and fourth, the court costs.

Amended by Chapter 297, 2011 General Session

34-28-19 Retaliation prohibited -- Administrative process -- Enforcement -- Rulemaking.

- (1)
 - (a) An employer violates this chapter if the employer takes an action described in Subsection (1)
 - (b) against an employee because:
 - (i) the employee files a complaint or testifies in a proceeding relative to the enforcement of this chapter;
 - (ii) the employee is going to file a complaint or testify in a proceeding relative to the enforcement of this chapter; or
 - (iii) the employer believes that the employee may file a complaint or testify in any proceeding relative to the enforcement of this chapter.
 - (b) Subsection (1)(a) applies to the following actions of an employer:
 - (i) the discharge of an employee;
 - (ii) the demotion of an employee; or
 - (iii) any other form of retaliation against an employee in the terms, privileges, or conditions of employment.

- (2)
 - (a) An employee claiming to be aggrieved by an action of the employer in violation of Subsection (1) may file with the division a request for agency action.
 - (b) On receipt of a request for agency action under Subsection (2)(a), the division:
 - (i) shall conduct an adjudicative proceeding pursuant to Title 63G, Chapter 4, Administrative Procedures Act; and
 - (ii) may attempt to reach a settlement between the parties through a settlement conference.
- (3) If the division determines that a violation has occurred, the division may require the employer to:
 - (a) cease and desist any retaliatory action;
 - (b) compensate the employee, which compensation may not exceed reimbursement for, and payment of, lost wages and benefits to the employee; or
 - (c) do both Subsections (3)(a) and (b).
- (4) The division may enforce this section in accordance with Subsections 34-28-9(4) and (5).
- (5) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission shall adopt rules, as required, to implement this section.

Amended by Chapter 188, 2014 General Session

Chapter 29

Employment Agencies

34-29-1 License required -- Agencies for teachers excepted.

It shall be unlawful for any person to open and establish in any city or town, or elsewhere within the limits of this state, any intelligence or employment office for the purpose of procuring or obtaining for money or other valuable consideration, either directly or indirectly, any work or employment for persons seeking the same, or to otherwise engage in such business, or in any way to act as a broker or go-between between employers and persons seeking work, without first having obtained a license so to do from the city, town, or, if not within any city or town, from the county where such intelligence or employment office is to be opened or such business is to be carried on. Any person performing any of these services shall be deemed to be an employment agent within the meaning of this chapter, but the provisions of Section 34-29-10 do not apply to any person operating agencies for schoolteachers; but it shall be a misdemeanor for any schoolteachers' employment agency to receive as commission for information or assistance such as is described herein any consideration in value in excess of 5% of the amount of the first year's salary of the person to whom such information is furnished.

Amended by Chapter 297, 2011 General Session

34-29-2 License -- Duty of cities, towns and counties to issue and regulate.

Every city, town and county shall by ordinance provide for the issuing of licenses as contemplated by this chapter and shall establish such rules and regulations as are not herein provided for the carrying on of the business or occupation for which such license may be issued.

Enacted by Chapter 85, 1969 General Session

34-29-3 License -- Application.

Any person applying for a license under the provisions of this chapter shall make application to the board of city commissioners, city council or board of town trustees, or the county executive for the same and shall deposit with the city, town or county treasurer in advance the annual fee for such license, to be evidenced by the receipt of the city, town or county treasurer endorsed on the application. If the board of city commissioners, city council, board of town trustees, or the county executive refuses to order the issuance of such license to the party applying for the same, the sum so deposited with the city, town or county treasurer shall be refunded to the applicant for license without any further action of the governing body.

Amended by Chapter 227, 1993 General Session

34-29-4 License -- Bond -- Transfer.

Any person licensed under the provisions of this chapter shall pay an annual license fee in such amount as may be determined by the board of city commissioners, city council, board of town trustees, or the county legislative body, and before such license shall be issued shall deposit with the city, town or county treasurer a bond in the penal sum of \$1,000, with two or more sureties to be approved by the officers designated by ordinance. The bond shall be made payable to the city, town or county where such business is to be carried on and shall be conditioned that the person applying for the license will comply with this chapter and will pay all damages occasioned to any person by reason of any misstatement, misrepresentation, fraud or deceit of any person, or by any other violation of this chapter, in carrying on the business for which a license is granted. If at any time in the opinion of the officers designated by ordinance to approve such bond, the sureties or any of them shall become irresponsible, the person holding such license shall, upon notice from the city, town or county treasurer, give a new bond, to be approved as hereinafter provided. Failure to give a new bond within 10 days after such notice shall operate as a revocation of such license, and the license certificate shall be immediately returned to the city, town or county treasurer, who shall destroy the same. Licenses granted under this chapter may be transferred by order of the board of city commissioners, city council, board of town trustees, or the county executive, but before such transfer shall be authorized, the applicant for the same shall deposit with the city, town or county treasurer the sum of \$5, which shall be endorsed upon the application, and the person to whom such license is transferred shall also deposit such a bond as is required by the applicant for an original license as hereinbefore prescribed, to be approved in the same manner.

Amended by Chapter 227, 1993 General Session

34-29-5 License -- Posting.

Upon the granting of a license by the board of city commissioners, city council, board of town trustees, or the county executive under this chapter, the city, town, or county treasurer shall within one week after payment of the license fee issue to the applicant entitled to the same a certificate setting forth the fact that such license has been granted. It shall be the duty of all persons who may obtain such license to keep the same publicly exposed to view in a conspicuous place in their offices or places of business.

Amended by Chapter 227, 1993 General Session

34-29-6 Referring employment to unlawful places -- Penalty.

Any employment agent who knowingly refers employment to any place of bad repute, house of ill fame, assignation house, or to any house or place of amusement kept for immoral purposes, is guilty of a misdemeanor. In addition to any other penalty, the agent's license shall be revoked.

Amended by Chapter 133, 1988 General Session

34-29-7 Referrals on bona fide orders only.

Any employment agent who sends out any help without having previously obtained a bona fide order therefor shall, for each and every offense, be subject to the penalties provided in Section 34-29-15.

Enacted by Chapter 85, 1969 General Session

34-29-8 Taking commission in advance unlawful -- Penalty.

- (1) It is unlawful for any employment agent to receive, directly or indirectly, any money or other valuable consideration from any person seeking employment for any information or assistance furnished or to be furnished by the agent to such person, enabling or tending to enable that person to secure employment, before the time the information or assistance is actually furnished.
- (2) An employment agent who violates Subsection (1) is liable to the person from whom the money or other valuable consideration is received for an amount equal to twice the amount of money or other valuable consideration paid to the employment agent.

Amended by Chapter 149, 2005 General Session

34-29-9 Commission to be returned if employment not secured.

It shall be unlawful for an employment agent to retain, directly or indirectly, any money or other valuable consideration received for any information or assistance described in Section 34-29-1, if the person for whom such information or assistance is furnished fails through no neglect or fault of his own to secure the employment regarding which such information or assistance is furnished; and the money or consideration shall be by the agent forthwith returned to the payer of the same upon demand.

Enacted by Chapter 85, 1969 General Session

34-29-10 Schedule of fees -- Fee limitations.

- (1)
 - (a) A private employment agency shall maintain a schedule of fees to be charged and collected in the conduct of its business.
 - (b) A private employment agency shall post the schedule described in Subsection (1)(a) in a conspicuous place in the private employment agency.
 - (c) A private employment agency may change the schedule described in Subsection (1)(a), but a change is not effective until the amended schedule is posted in accordance with Subsection (1)(b).
- (2) A private employment agency may not charge or collect a fee that is greater than:
 - (a) the fee on the schedule of fees in effect at the time the contract for employment is issued; or
 - (b) 25% of the amount actually earned in the employment during the first 30 days, if the employment ends during the 30-day period.

Amended by Chapter 240, 2008 General Session

34-29-11 Register of employers to be kept.

Each employment agent licensed under this chapter shall enter upon a register, to be kept for that purpose and to be known as an "employers' register," every order received from any corporation, company or individual desiring the service of any persons seeking work or employment, the name and address of the corporation, company or individual from whom such order was received, the number of persons wanted, the nature of the work or employment, the town or city (street and number, if any) where such work or employment is to be furnished and the wages to be paid.

Enacted by Chapter 85, 1969 General Session

34-29-12 Register of applicants to be kept -- Open for inspection.

Each employment agent shall keep a register, to be known as "labor applicants' register," which shall show the name of each person seeking work or employment to whom information or assistance is furnished and the amount of the commission received in each such case therefor; the name of each person who, having received and paid for any information or assistance described in Section 34-29-1, fails to secure the employment regarding which such information or assistance is furnished, together with the reason why such employment was not by such person secured, and the name of each to whom return is made in accordance with the provisions of Section 34-29-9 of any money or other consideration under Section 34-29-9, together with the amount or the value of consideration thus returned. The registers required by Section 34-29-11 and by this section shall be open at all reasonable hours to the inspection of any peace officer of this state.

Enacted by Chapter 85, 1969 General Session

34-29-13 Statements to be furnished applicants.

Every person securing information or intelligence from an employment agent relative to hiring or engagement to work for others as provided in Section 34-29-1 shall be furnished a written copy, in duplicate, of the terms of such hiring or engagement, by the employment agent, showing the amount of commissions or fees paid to such employment agent, the kind of service to be performed, the rate of wages or compensation, the length of time, if definite, and if indefinite, so stated, of such service, with full name and address of the person authorizing the hiring of such person. One of these copies shall be delivered to the person for whom the labor is to be performed and the other shall be retained by the person furnished with the information or intelligence; and the agent issuing the written copy of the conditions of service or employment shall make and keep in a book provided for the purpose a third copy of the same. Any person engaged in the business of keeping an employment office who fails to observe the provisions of this section shall be subject to the penalties provided in Section 34-29-15.

Enacted by Chapter 85, 1969 General Session

34-29-14 Dividing of fees prohibited.

Any employment agent sending out help to contractors or other employers of help and dividing the fees allowed under this chapter with subcontractors and employers of help, or their foremen or anyone in their employ, shall be subject to the penalties provided in Section 34-29-15.

Enacted by Chapter 85, 1969 General Session

34-29-15 False statements -- Failure to keep registers -- Other violations -- Penalty.

- (1) If a person engaged in the business of employment or intelligence agent or broker licensed under this chapter does the following, that person is liable under Subsection (2):
- (a) gives any false information or makes any misstatement or any false promises concerning any work, employment, or occupation;
 - (b) fails to keep the registers as prescribed in Sections 34-29-11 and 34-29-12;
 - (c) willfully makes any false entries in a register under Section 34-29-11 or 34-29-12; or
 - (d) violates any other provision of this chapter.
- (2) If a person violates Subsection (1) and no penalty is otherwise provided in this chapter, the person shall for each and every offense be fined in any sum not exceeding \$200, and in the discretion of the trial court, the person's license may be revoked.

Amended by Chapter 149, 2005 General Session

34-29-16 Action on bond -- Brought in name of injured party.

Any action brought in any court against any employment or intelligence agent upon the bond deposited with the city, town or county treasurer by this employment or intelligence agent as provided in Section 34-29-4 may be brought in the name of the party injured.

Enacted by Chapter 85, 1969 General Session

34-29-17 Religious or charitable associations excepted from chapter.

Nothing contained in this chapter shall be construed so as to require any religious or charitable association which may assist in procuring situations or employment for persons seeking the same to obtain a license therefor.

Enacted by Chapter 85, 1969 General Session

34-29-18 Copies of laws to be posted.

The keeper of an employment or intelligence office shall cause two copies of Sections 34-29-7 to 34-29-10, inclusive, and of Sections 34-29-13 to 34-29-15, inclusive, printed in type of sufficient size to be easily read, to be conspicuously posted in each room used or occupied for the purpose of such employment or intelligence office.

Enacted by Chapter 85, 1969 General Session

34-29-19 Deceptive or duplicate orders for employees -- Liability to applicants.

Any person who places with an employment agent an order for more employees than he actually desires, or who places with employment agents duplicate orders for employees, or who permits a standing order for employees to remain uncanceled at a time when he does not need such employees, shall be liable to persons who, in good faith, accept and act upon information furnished in good faith by employment agents under such excess, duplicate or standing order for the amount actually expended in traveling from the location of such employment agency to the place of such proposed employment and return.

Enacted by Chapter 85, 1969 General Session

34-29-20 False orders for employees -- Misdemeanor.

Any person who gives to an employment agent any false or unauthorized order for employees, or who causes to be published in any newspaper or otherwise any false or unauthorized notice or statement that employees are wanted by any person, is guilty of a misdemeanor.

Enacted by Chapter 85, 1969 General Session

Chapter 30
Employment on Public Works

34-30-1 Citizens to be given preference -- Provision to be included in contracts.

In employing workmen in the construction of public works by the state or any county or municipality, or by persons contracting with the state or any county or municipality, preference shall be given citizens of the United States, or those having declared their intention of becoming citizens. In each contract for the construction of public works a provision shall be inserted to the effect that, if the provisions of this section are not complied with, the contract shall be void.

Enacted by Chapter 85, 1969 General Session

34-30-8 Forty-hour work week -- Overtime at one and one-half regular rate.

Forty hours shall constitute a working week on all works and undertakings carried on by the state, county, or municipal governments, or by any officer of the state or of any county or municipal government. Any persons, corporation, firm, contractor, agent, manager, or foreman, who shall require or contract with any person to work upon such works or undertakings longer than 40 hours in one week shall pay such employees at a rate not less than one and one-half times the regular rate at which he is employed.

Enacted by Chapter 85, 1969 General Session

34-30-9 Violation of chapter -- Failure to keep or produce records -- Misdemeanor.

Any officer, agent or representative of the state, or of any political subdivision, district or municipality of it who shall violate, or omit to comply with any of the provisions of this chapter, and any contractor or subcontractor, or agent or representative thereof, doing such public work, who shall neglect to keep, or cause to be kept, an accurate record of the names, occupation and actual wages paid to each laborer, workman and mechanic employed by him, in connection with this public work or who shall refuse to allow access to same at any reasonable hour to any person authorized to inspect same under this chapter shall be guilty of a misdemeanor.

Enacted by Chapter 85, 1969 General Session

34-30-13 Compliance with federal requirements.

Notwithstanding any other provision in this chapter to the contrary, the governor of the state of Utah may, in the governor's discretion, elect to suspend the provisions of this chapter in whole or in part if it becomes necessary to do so in order to comply with requirements imposed by the

government of the United States, in order for the state of Utah to remain eligible for participation in programs which are financed in whole or in part by the United States government.

Amended by Chapter 348, 2016 General Session

34-30-14 Public works -- Wages.

- (1) For purposes of this section:
 - (a) "Political subdivision" means a county, city, town, school district, local district, special service district, public corporation, institution of higher education of the state, public agency of any political subdivision, or other entity that expends public funds for construction, maintenance, repair or improvement of public works.
 - (b) "Public works" or "public works project" means a building, road, street, sewer, storm drain, water system, irrigation system, reclamation project, or other facility owned or to be contracted for by the state or a political subdivision, and that is to be paid for in whole or in part with tax revenue paid by residents of the state.
- (2)
 - (a) Except as provided in Subsection (2)(b) or as required by federal or state law, the state or any political subdivision that contracts for the construction, maintenance, repair, or improvement of public works may not require that a contractor, subcontractor, or material supplier or carrier engaged in the construction, maintenance, repair, or improvement of public works pay its employees:
 - (i) a predetermined amount of wages or wage rate; or
 - (ii) a type, amount, or rate of employee benefits.
 - (b) Subsection (2)(a) does not apply when federal law requires the payment of prevailing or minimum wages to persons working on projects funded in whole or in part by federal funds.
- (3) The state or any political subdivision that contracts for the construction, maintenance, repair, or improvement of public works may not require that a contractor, subcontractor, or material supplier or carrier engaged in the construction, maintenance, repair or improvement of public works execute or otherwise become a party to any project labor agreement, collective bargaining agreement, prehire agreement, or any other agreement with employees, their representatives, or any labor organization as a condition of bidding, negotiating, being awarded, or performing work on a public works project.
- (4) This section applies to any contract executed after May 1, 1995.

Amended by Chapter 329, 2007 General Session

Chapter 32
Deductions for the Benefit of Labor Organizations

34-32-1 Assignments to labor unions -- Effect.

- (1) As used in this section:
 - (a) "Employee" means a person employed by any person, partnership, public, private, or municipal corporation, school district, the state, or any political subdivision of the state.
 - (b) "Employer" means the person or entity employing an employee.
 - (c)

- (i) "Labor organization" means a lawful organization of any kind that is composed, in whole or in part, of employees, and that exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other terms and conditions of employment.
- (ii) Except as provided in Subsection (1)(c)(iii), "labor organization" includes each employee association and union for employees of public and private sector employers.
- (iii) "Labor organization" does not include organizations governed by the National Labor Relations Act, 29 U.S.C. Sec. 151 et seq. or the Railroad Labor Act, 45 U.S.C. Sec. 151 et seq.
- (d) "Union dues" means dues, fees, money, or other assessments required as a condition of membership or participation in a labor organization.
- (2) An employee may direct an employer, in writing, to deduct from the employee's wages a specified sum for union dues, not to exceed 3% per month, to be paid to a labor organization designated by the employee.
- (3) An employer shall promptly commence or cease making deductions for union dues from the wages of an employee for the benefit of a labor organization when the employer receives a written communication from the employee directing the employer to commence or cease making deductions.
- (4) An employee's request that an employer cease making deductions may not be conditioned upon a labor organization's:
 - (a) receipt of advance notice of the request; or
 - (b) prior consent to cessation of the deductions.
- (5) A labor organization is not liable for any claim, service, or benefit that is:
 - (a) available only to a member of the labor organization; and
 - (b) terminated as a result of an employee's request that the employer cease making deductions for union dues.
- (6) An employee may join a labor organization or terminate membership at any time. A person may not place a restriction on the time that an employee may join, or terminate membership with, a labor organization.
- (7) An employee may not waive a provision of this section.

Amended by Chapter 220, 2011 General Session

34-32-1.1 Prohibiting public employers from making payroll deductions for political purposes.

- (1) As used in this section:
 - (a)
 - (i) "Labor organization" means a lawful organization of any kind that is composed, in whole or in part, of employees and that exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other terms and conditions of employment.
 - (ii) Except as provided in Subsection (1)(a)(iii), "labor organization" includes each employee association and union for public employees.
 - (iii) "Labor organization" does not include organizations governed by the National Labor Relations Act, 29 U.S.C. Sec. 151 et seq. or the Railroad Labor Act, 45 U.S.C. Sec. 151 et seq.

- (b) "Political purposes" means an act done with the intent or in a way to influence or tend to influence, directly or indirectly, any person to refrain from voting or to vote for or against any candidate for public office at any caucus, political convention, primary, or election.
 - (c) "Public employee" means a person employed by:
 - (i) the state of Utah or any administrative subunit of the state;
 - (ii) a state institution of higher education; or
 - (iii) a municipal corporation, a county, a municipality, a school district, a local district, a special service district, or any other political subdivision of the state.
 - (d) "Public employer" means an employer that is:
 - (i) the state of Utah or any administrative subunit of the state;
 - (ii) a state institution of higher education; or
 - (iii) a municipal corporation, a county, a municipality, a school district, a local district, a special service district, or any other political subdivision of the state.
 - (e) "Union dues" means dues, fees, assessments, or other money required as a condition of membership or participation in a labor organization.
- (2) A public employer may not deduct from the wages of its employees any amounts to be paid to:
- (a) a candidate as defined in Section 20A-11-101;
 - (b) a personal campaign committee as defined in Section 20A-11-101;
 - (c) a political action committee as defined in Section 20A-11-101;
 - (d) a political issues committee as defined in Section 20A-11-101;
 - (e) a registered political party as defined in Section 20A-11-101;
 - (f) a political fund as defined in Section 20A-11-1402; or
 - (g) any entity established by a labor organization to solicit, collect, or distribute money primarily for political purposes as defined in this chapter.
- (3) The attorney general may bring an action to require a public employer to comply with the requirements of this section.

Amended by Chapter 369, 2012 General Session

34-32-2 Assignments to farm organizations -- Effect.

Whenever any producer of farm products within the state executes and delivers to a dealer or processor of farm products, either as a clause in a sales agreement or other instrument in writing, whereby such processor or dealer is directed to deduct a sum or a rate not exceeding 3% of the price to be paid for any such produce, such processor or dealer shall deduct from the price to be paid for any farm product being sold by any such producer to any such processor or dealer, the amount so authorized and the producer or dealer shall pay the same to a farm organization as assignee.

Enacted by Chapter 85, 1969 General Session

34-32-3 Failure to comply -- Penalty.

Any employer, dealer or processor who willfully fails to comply with the duties imposed by this chapter shall be guilty of a misdemeanor.

Enacted by Chapter 85, 1969 General Session

34-32-4 Exceptions from chapter.

- (1) The provisions of this chapter do not apply to carriers as that term is defined in the Railway Labor Act passed by the Congress of the United States, June 21, 1934. 48 Stat. 1189, U.S. Code, Title 45, Section 151.
- (2) Nothing in this chapter is intended to, or may be construed to, preempt any requirement of federal law.

Amended by Chapter 297, 2011 General Session

Chapter 33

Medical Fees for Examinations

34-33-1 Unlawful for employer to charge employee medical examination fee.

It shall be unlawful for any person, firm, corporation or partnership to charge any person a medical fee for the physical examination of any applicant for employment with such person, firm, corporation or partnership, or to deduct the cost of such physical examination from the money earned by such employee or to make any charge for or to deduct from the earnings of such employee any medical fee for any physical examination upon the re-employment of any employee who may have discontinued such employment, or have been discharged or his employment otherwise terminated; nor shall any employer, as a condition of pre-employment, employment, or continued employment, require any employee or person applying for employment to submit to or obtain a physical examination, unless such employer shall pay all costs of such physical examination.

Enacted by Chapter 85, 1969 General Session

34-33-2 Violation a misdemeanor.

Any person, firm, corporation or partnership violating the provisions of this chapter shall be guilty of a misdemeanor.

Enacted by Chapter 85, 1969 General Session

Chapter 34

Utah Right to Work Law

34-34-1 Short title.

This chapter shall be known and may be cited as the "Utah Right to Work Law."

Enacted by Chapter 85, 1969 General Session

34-34-2 Public policy.

It is hereby declared to be the public policy of the state that the right of persons to work, whether in private employment or for the state, its counties, cities, school districts, or other political subdivisions, may not be denied or abridged on account of membership or nonmembership in any labor union, labor organization or any other type of association; and further, that the right to live

includes the right to work. The exercise of the right to work shall be protected and maintained free from undue restraints and coercion.

Amended by Chapter 297, 2011 General Session

34-34-3 "Employer" defined.

The word "employer" as used in this chapter includes all persons, firms, associations, corporations, the state, its counties, cities, school districts and other political subdivisions.

Enacted by Chapter 85, 1969 General Session

34-34-4 Agreement, understanding or practice denying right to work declared illegal.

Any express or implied agreement, understanding or practice between any employer and any labor union, labor organization or any other type of association, whereby any person not a member of such union, organization or any other type of association shall be denied the right to work for an employer, or whereby membership in such labor union, labor organization or any other type of association is made a condition of employment or continuation of employment by such employer, or whereby any such union, organization or any other type of association acquires an employment monopoly in any enterprise or industry, is hereby declared to be an illegal combination or conspiracy and against public policy.

Enacted by Chapter 85, 1969 General Session

34-34-5 Any agreement, understanding or practice designed to violate chapter declared illegal.

Any express or implied agreement, understanding or practice which is designed to cause or require, or has the effect of causing or requiring, any employer or labor union, labor organization or any other type of association, whether or not a party thereto, to violate any provision of this chapter is hereby declared an illegal agreement, understanding, or practice and contrary to public policy.

Enacted by Chapter 85, 1969 General Session

34-34-6 Conduct forcing violation of act illegal -- Peaceful and orderly solicitation excepted.

Any person, firm, association, corporation, labor union, labor organization or any other type of association engaging in lockouts, layoffs, boycotts, picketing, work stoppages, or other conduct, a purpose of which is to compel or force any other person, firm, association, corporation, labor union, labor organization or any other type of association to violate any provision of this chapter shall be guilty of illegal conduct contrary to public policy; but nothing herein contained shall be construed to prevent or make illegal the peaceful and orderly solicitation and persuasion by members of a labor union, labor organization or any other type of association of others to join a labor union, labor organization or any other type of association, unaccompanied by any intimidation, use of force, threat of use of force, reprisal, or threat of reprisal.

Enacted by Chapter 85, 1969 General Session

34-34-7 Compelling person to join or not join labor union unlawful.

It shall be unlawful for any employer, person, firm, association, corporation, employee, labor union, labor organization or any other type of association, officer or agent of such, or member of

same, to compel or force, or to attempt to compel or force, any person to join or refrain from joining any labor union, labor organization or any other type of association.

Enacted by Chapter 85, 1969 General Session

34-34-8 Employer not to require union membership.

No employer shall require any person to become or remain a member of any labor union, labor organization or any other type of association as a condition of employment or continuation of employment by such employer.

Enacted by Chapter 85, 1969 General Session

34-34-9 Employer not to require person to abstain from union membership.

No employer shall require any person to abstain or refrain from membership in any labor union, labor organization or any other type of association as a condition of employment or continuation of employment.

Enacted by Chapter 85, 1969 General Session

34-34-10 Employer not to require payment of dues, fees, or other charges to union.

No employer shall require any person to pay any dues, fees, or other charges of any kind to any labor union, labor organization or any other type of association as a condition of employment or continuation of employment.

Enacted by Chapter 85, 1969 General Session

34-34-11 Injunctive relief -- Damages.

Any employer, person, firm, association, corporation, employee, labor union, labor organization or any other type of association injured as a result of any violation or threatened violation of any provision of this chapter, or threatened with any such violation shall be entitled to injunctive relief against any and all violators or persons threatening violation and also to recover from such violator or violators, or person or persons, any and all damages of any character cognizable at common law resulting from such violations or threatened violations. Such remedies shall be independent of and in addition to the penalties and remedies prescribed in other provisions of this chapter.

Enacted by Chapter 85, 1969 General Session

34-34-12 Injunction against violating chapter.

In addition to the penal provisions of this chapter, any person, firm, corporation, association, or any labor union, labor organization or any other type of association, or any officer, representative, agent or member thereof may be restrained by injunction from doing or continuing to do any of the matters and things prohibited by this chapter.

Enacted by Chapter 85, 1969 General Session

34-34-13 Damages for denial or deprivation of continuation of employment.

Any person who may be denied employment or be deprived of continuation of his employment in violation of this chapter shall be entitled to recover from such employer and from any other

person, firm, corporation or association acting in concert with him by appropriate action in the courts of this state such damages as he may have sustained by reason of such denial or deprivation of employment.

Enacted by Chapter 85, 1969 General Session

34-34-14 Jurisdiction.

The jurisdiction of any action brought to enforce this chapter is hereby conferred upon and vested in the district court of the county in which any person, group of persons, firm, association, corporation, labor union, labor organization or any other type of association, or representatives thereof, who violates this chapter, or any part of it, resides or has a place of business, or may be found and served with process.

Enacted by Chapter 85, 1969 General Session

34-34-15 Existing contracts -- Chapter applicable upon renewal or extension.

The provisions of this chapter do not apply to any lawful contract in force on the effective date of this act, but they shall apply in all respects to contracts entered into after such date and to any renewal or extension of any existing contract.

Amended by Chapter 297, 2011 General Session

34-34-16 Right to bargain collectively not denied.

Nothing in this chapter shall be construed to deny the right of employees to bargain collectively with their employer by and through labor unions, labor organizations or any other type of associations.

Enacted by Chapter 85, 1969 General Session

34-34-17 Violation of act a misdemeanor.

A violation of this act shall constitute a misdemeanor, and each day such unlawful conduct, as defined in this chapter, is in effect or continued shall be deemed a separate offense and shall be punishable as such, as provided in this chapter.

Enacted by Chapter 85, 1969 General Session

**Chapter 36
Transportation of Workers**

34-36-1 Motor vehicles of employers -- Safe maintenance and operation.

Every motor vehicle furnished by an employer to be used to transport one or more workers to and from their places of employment shall be maintained in a safe condition and operated in a safe manner at all times, whether or not used on a public highway.

Enacted by Chapter 85, 1969 General Session

34-36-2 Motor vehicles of employers -- Rules.

- (1) The Labor Commission shall make and enforce reasonable rules relating to motor vehicles used to transport workers to and from their places of employment. These rules shall be embodied in a safety code and shall establish minimum standards.
- (2)
 - (a) A person who is an employee of an electrical corporation, a gas corporation, or a telephone corporation, as these corporations are defined in Section 54-2-1, is exempt from any hours of service rules and regulations for drivers while operating a public utility vehicle within the state during the emergency restoration of public utility service.
 - (b) As used in Subsection (2)(a), "emergency" means a condition that jeopardizes life or property, or that endangers public health and safety.

Amended by Chapter 375, 1997 General Session

34-36-3 Carriers and vehicles of United States exempt.

This chapter does not apply to motor carriers or to motor vehicles owned and operated by the United States.

Amended by Chapter 297, 2011 General Session

34-36-4 Agricultural workers exempt.

The provisions of this chapter do not apply to agricultural workers.

Enacted by Chapter 85, 1969 General Session

**Chapter 38
Drug and Alcohol Testing**

34-38-1 Legislative findings -- Purpose and intent of chapter.

- (1) The Legislature finds that a healthy and productive work force, safe working conditions free from the effects of drugs and alcohol, and maintenance of the quality of products produced and services rendered in this state, are important to employers, employees, and the general public. The Legislature further finds that the abuse of drugs and alcohol creates a variety of workplace problems, including increased injuries on the job, increased absenteeism, increased financial burden on health and benefit programs, increased workplace theft, decreased employee morale, decreased productivity, and a decline in the quality of products and services.
- (2) The Legislature does not intend to prohibit an employee from seeking damages or job reinstatement, if action is taken by the employer on the basis of an inaccurate test result.

Amended by Chapter 284, 2010 General Session

34-38-2 Definitions.

For purposes of this chapter:

- (1) "Alcohol" means ethyl alcohol or ethanol.

- (2) "Drugs" means a substance recognized as a drug in the United States Pharmacopoeia, the National Formulary, the Homeopathic Pharmacopoeia, or other drug compendia, or supplement to any of those compendia.
- (3) "Employee" means an individual in the service of an employer for compensation.
- (4)
 - (a) "Employer" means a person, including a public utility or transit district, that has one or more workers or operators employed in the same business, or in or about the same establishment, under any contract of hire, express or implied, oral or written.
 - (b) "Employer" does not include the federal or state government, or other local political subdivisions.
- (5) "Failed test" means a confirmed drug or alcohol test that indicates that the sample tested is:
 - (a) positive;
 - (b) adulterated; or
 - (c) substituted.
- (6) "Inaccurate test result" means a test result that is treated as a positive test result, when the sample should not have resulted in a positive test result.
- (7) "Licensed physician" means an individual who is licensed:
 - (a) as a doctor of medicine under Title 58, Chapter 67, Utah Medical Practice Act, or similar law of another state; or
 - (b) as an osteopathic physician or surgeon under Title 58, Chapter 68, Utah Osteopathic Medical Practice Act, or similar law of another state.
- (8) "Prospective employee" means an individual who applies to an employer, either in writing or orally, to become the employer's employee.
- (9) "Sample" means urine, blood, breath, saliva, or hair.

Amended by Chapter 348, 2016 General Session

34-38-3 Testing for drugs or alcohol.

- (1) If an employer tests an employee or prospective employee for the presence of drugs or alcohol as a condition of hiring or continued employment, the employer is protected from liability as provided in this chapter if the employer complies with this chapter. However, employers and management in general shall submit to the testing themselves on a periodic basis.
- (2)
 - (a) An organization that operates a storage facility or transfer facility or that is engaged in the transportation of high-level nuclear waste or greater than class C radioactive waste within the exterior boundaries of the state shall establish a mandatory drug testing program regarding drugs and alcohol for prospective and existing employees as a condition of hiring any employee or the continued employment of any employee. As a part of the program, employers and management in general shall submit to the testing themselves on a periodic basis. The program shall implement testing standards and procedures established under Subsection (2)(b).
 - (b) The executive director of the Department of Environmental Quality, in consultation with the Labor Commission under Section 34A-1-103, shall by rule establish standards for timing of testing and dosage for impairment for the drug and alcohol testing program under this Subsection (2). The standards shall address the protection of the safety, health, and welfare of the public.

Amended by Chapter 284, 2010 General Session

34-38-4 Samples -- Identification and collection.

In order to test reliably for the presence of drugs or alcohol, an employer may require samples from his employees and prospective employees, and may require presentation of reliable identification to the person collecting the samples. Collection of the sample shall be in conformance with the requirements of Section 34-38-6. The employer may designate the type of sample to be used for testing.

Enacted by Chapter 234, 1987 General Session

34-38-5 Time of testing -- Cost of testing and transportation.

- (1) Any drug or alcohol testing by an employer shall occur during or immediately after the regular work period of current employees and shall be deemed work time for purposes of compensation and benefits for current employees.
- (2) An employer shall pay all costs of testing for drugs or alcohol required by the employer, including the cost of transportation if the testing of a current employee is conducted at a place other than the workplace.

Enacted by Chapter 234, 1987 General Session

34-38-6 Requirements for collection and testing.

- (1) The collection and testing of a sample for drugs and alcohol under this chapter shall be performed in accordance with this chapter.
- (2) The collection of a sample shall be performed under reasonable and sanitary conditions.
- (3) A sample shall be collected and tested:
 - (a) with due regard to the privacy of the individual being tested; and
 - (b) in a manner reasonably calculated to prevent substitutions or interference with the collection or testing of a reliable sample.
- (4) The sample collection shall be documented. The documentation procedures required by this Subsection (4) include:
 - (a) labeling of a sample so as reasonably to preclude the probability of erroneous identification of test results; and
 - (b) an opportunity for the employee or prospective employee to provide notification of any information that the employee or prospective employee considers relevant to the test, including:
 - (i) identification of currently or recently used prescription or nonprescription drugs; or
 - (ii) other relevant medical information.
- (5) Sample collection, storage, and transportation to the place of testing shall be performed so as reasonably to preclude the probability of sample contamination or adulteration.
- (6)
 - (a) Testing of a sample shall conform to scientifically accepted analytical methods and procedures.
 - (b) Before a test of a sample may be considered a failed test and used as a basis for an action by an employer under Section 34-38-8, testing of the sample shall include a confirmation test:
 - (i) by gas chromatography, gas chromatography-mass spectroscopy, or other comparably reliable analytical method; and

- (ii) if the sample used for a test is a urine sample, by a laboratory that is certified by the United States Department of Health and Human Services under the National Laboratory Certification Program.

Amended by Chapter 284, 2010 General Session

34-38-7 Employer's written testing policy -- Purposes and requirements for collection and testing -- Employer's use of test results.

- (1) Testing or retesting for the presence of drugs or alcohol by an employer shall be carried out within the terms of a written policy which has been distributed to employees and is available for review by prospective employees.
- (2) Within the terms of his written policy, an employer may require the collection and testing of samples for the following purposes:
 - (a) investigation of possible individual employee impairment;
 - (b) investigation of accidents in the workplace or incidents of workplace theft;
 - (c) maintenance of safety for employees or the general public; or
 - (d) maintenance of productivity, quality of products or services, or security of property or information.
- (3) The collection and testing of samples shall be conducted in accordance with Sections 34-38-4, 34-38-5, and 34-38-6, and need not be limited to circumstances where there are indications of individual, job-related impairment of an employee or prospective employee.
- (4) The employer's use and disposition of all drug or alcohol test results are subject to the limitations of Sections 34-38-8 and 34-38-13.

Enacted by Chapter 234, 1987 General Session

34-38-8 Employer's disciplinary or rehabilitative actions.

- (1) An employer may take an action described in Subsection (2) if:
 - (a) the employer receives a test result that:
 - (i) indicates a failed test;
 - (ii) is confirmed as required by Subsection 34-38-6(6); and
 - (iii) indicates a violation of the employer's written policy; or
 - (b) an employee or prospective employee refuses to provide a sample.
- (2) An employer may use a test result or a refusal described in Subsection (1) as the basis for disciplinary or rehabilitative actions, which may include the following:
 - (a) a requirement that the employee enroll in an employer-approved rehabilitation, treatment, or counseling program, which may include additional drug or alcohol testing, as a condition of continued employment;
 - (b) suspension of the employee with or without pay for a period of time;
 - (c) termination of employment;
 - (d) refusal to hire a prospective employee; or
 - (e) other disciplinary measures in conformance with the employer's usual procedures, including a collective bargaining agreement.

Amended by Chapter 284, 2010 General Session

34-38-9 No cause of action for failure to test or detect substance or problem, or for termination of testing program.

No cause of action arises in favor of any person against an employer who has established a policy and initiated a testing program in accordance with this chapter, for any of the following:

- (1) failure to test for drugs or alcohol, or failure to test for a specific drug or other substance;
- (2) failure to test for, or if tested for, failure to detect, any specific drug or other substance, disease, infectious agent, virus, or other physical abnormality, problem, or defect of any kind; or
- (3) termination or suspension of any drug or alcohol testing program or policy.

Enacted by Chapter 234, 1987 General Session

**34-38-10 A cause of action does not arise against employer unless inaccurate test result --
Presumption and limitation of damages in claim against employer.**

- (1) A cause of action may not arise in favor of a person against an employer who establishes a program of drug or alcohol testing in accordance with this chapter, and who takes an action under Section 34-38-8, unless the employer takes the action on the basis of an inaccurate test result.
- (2) If a person bringing a claim, including a claim under Section 34-38-11, alleges that an employer's action is based on an inaccurate test result:
 - (a) there is a rebuttable presumption that the test result is valid if the employer complies with Section 34-38-6; and
 - (b) the employer is not liable for monetary damages if the employer's reliance on an inaccurate test result is reasonable and in good faith.
- (3)
 - (a) There is a rebuttable presumption that the employer complies with Section 34-38-6 if as part of the employer's drug and alcohol testing program a licensed physician who is trained in the interpretation of drug and alcohol test results:
 - (i) provides medical assessment of a result that indicates a failed test;
 - (ii) requests re-analysis of a test result if necessary; and
 - (iii) makes a determination whether or not alcohol or other drug use has occurred.
 - (b) A court may find that an employer complies with Section 34-38-6 notwithstanding that the employer's drug and alcohol testing program does not include an action described in Subsection (3)(a).

Amended by Chapter 284, 2010 General Session

34-38-11 Bases for cause of action for defamation, libel, slander, or damage to reputation.

No cause of action for defamation of character, libel, slander, or damage to reputation arises in favor of any person against an employer who has established a program of drug or alcohol testing in accordance with this chapter, unless:

- (1) the results of that test were disclosed to any person other than the employer, an authorized employee or agent of the employer, the tested employee, or the tested prospective employee;
- (2) the information disclosed is based on an inaccurate test result;
- (3) an inaccurate test result is disclosed with malice; and
- (4) all elements of an action for defamation of character, libel, slander, or damage to reputation as established by statute or common law, are satisfied.

Amended by Chapter 284, 2010 General Session

34-38-12 No cause of action for failure of employer to establish testing program.

No cause of action arises in favor of any person based upon the failure of an employer to establish a program or policy of drug or alcohol testing.

Enacted by Chapter 234, 1987 General Session

34-38-13 Confidentiality of test-related information.

- (1) For purposes of this section, "test-related information" means the following received by the employer through the employer's drug or alcohol testing program:
 - (a) information;
 - (b) interviews;
 - (c) reports;
 - (d) statements;
 - (e) memoranda; or
 - (f) test results.
- (2) Except as provided in Subsections (3) and (6), test-related information is a confidential communication and may not be:
 - (a) used or received in evidence;
 - (b) obtained in discovery; or
 - (c) disclosed in any public or private proceeding.
- (3) Test-related information:
 - (a) shall be disclosed to the Division of Occupational and Professional Licensing:
 - (i) in the manner provided in Subsection 58-13-5(3); and
 - (ii) only to the extent required under Subsection 58-13-5(3); and
 - (b) may only be used in a proceeding related to:
 - (i) an action taken by the Division of Occupational and Professional Licensing under Section 58-1-401 when the Division of Occupational and Professional Licensing is taking action in whole or in part on the basis of test-related information disclosed under Subsection (3)(a);
 - (ii) an action taken by an employer under Section 34-38-8; or
 - (iii) an action under Section 34-38-11.
- (4) Test-related information shall be the property of the employer.
- (5) An employer is entitled to use a drug or alcohol test result as a basis for action under Section 34-38-8.
- (6) An employer may not be examined as a witness with regard to test-related information, except:
 - (a) in a proceeding related to an action taken by the employer under Section 34-38-8;
 - (b) in an action under Section 34-38-11; or
 - (c) in an action described in Subsection (3)(b)(i).

Amended by Chapter 152, 2004 General Session

34-38-14 Employee not a person with a disability.

An employee or prospective employee whose drug or alcohol test result is confirmed as positive in accordance with this chapter may not, because of those results alone, be defined as a person with a disability for purposes of Title 34A, Chapter 5, Utah Antidiscrimination Act.

Amended by Chapter 366, 2011 General Session

34-38-15 No physician-patient relationship created.

A physician-patient relationship is not created between an employee or prospective employee, and the employer or any person performing the test, solely by the establishment of a drug or alcohol testing program in the workplace.

Enacted by Chapter 234, 1987 General Session

Chapter 39 Employment Inventions Act

34-39-1 Citation of act.

This act is known as the "Employment Inventions Act."

Enacted by Chapter 217, 1989 General Session

34-39-2 Definitions.

As used in this chapter:

- (1) "Employment invention" means any invention or part thereof conceived, developed, reduced to practice, or created by an employee which is:
 - (a) conceived, developed, reduced to practice, or created by the employee:
 - (i) within the scope of his employment;
 - (ii) on his employer's time; or
 - (iii) with the aid, assistance, or use of any of his employer's property, equipment, facilities, supplies, resources, or intellectual property;
 - (b) the result of any work, services, or duties performed by an employee for his employer;
 - (c) related to the industry or trade of the employer; or
 - (d) related to the current or demonstrably anticipated business, research, or development of the employer.
- (2) "Intellectual property" means any and all patents, trade secrets, know-how, technology, confidential information, ideas, copyrights, trademarks, and service marks and any and all rights, applications, and registrations relating to them.

Enacted by Chapter 217, 1989 General Session

34-39-3 Scope of act -- When agreements between an employee and employer are enforceable or unenforceable with respect to employment inventions -- Exceptions.

- (1) An employment agreement between an employee and his employer is not enforceable against the employee to the extent that the agreement requires the employee to assign or license, or to offer to assign or license, to the employer any right or intellectual property in or to an invention that is:
 - (a) created by the employee entirely on his own time; and
 - (b) not an employment invention.
- (2) An agreement between an employee and his employer may require the employee to assign or license, or to offer to assign or license, to his employer any or all of his rights and intellectual property in or to an employment invention.
- (3) Subsection (1) does not apply to:

- (a) any right, intellectual property or invention that is required by law or by contract between the employer and the United States government or a state or local government to be assigned or licensed to the United States; or
 - (b) an agreement between an employee and his employer which is not an employment agreement.
- (4) Notwithstanding Subsection (1), an agreement is enforceable under Subsection (1) if the employee's employment or continuation of employment is not conditioned on the employee's acceptance of such agreement and the employee receives a consideration under such agreement which is not compensation for employment.
- (5) Employment of the employee or the continuation of his employment is sufficient consideration to support the enforceability of an agreement under Subsection (2) whether or not the agreement recites such consideration.
- (6) An employer may require his employees to agree to an agreement within the scope of Subsection (2) as a condition of employment or the continuation of employment.
- (7) An employer may not require his employees to agree to anything unenforceable under Subsection (1) as a condition of employment or the continuation of employment.
- (8) Nothing in this chapter invalidates or renders unenforceable any employment agreement or provisions of an employment agreement unrelated to employment inventions.

Enacted by Chapter 217, 1989 General Session

Chapter 40 **Utah Minimum Wage Act**

Part 1

Title - Definitions - Minimum Wage - Exemptions

34-40-101 Short title.

This chapter is known as the "Utah Minimum Wage Act."

Enacted by Chapter 8, 1990 General Session

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

- (1) Subject to Subsection (3), this chapter and the terms used in it, including the computation of wages, shall be interpreted consistently with the Fair Labor Standards Act of 1938, 29 U.S.C. Sec. 201 et seq., as amended, to the extent that act relates to the payment of a minimum wage.
- (2) As used in this chapter:
- (a) "Cash wage obligation" means an hourly wage that an employer pays a tipped employee regardless of the tips or gratuities a tipped employee receives.
 - (b) "Commission" means the Labor Commission.
 - (c) "Division" means the Division of Antidiscrimination and Labor in the commission.
 - (d) "Federal executive agency" means an executive agency, as defined in 5 U.S.C. Sec. 105, of the federal government.
 - (e) "Franchise" means the same as that term is defined in 16 C.F.R. Sec. 436.1.
 - (f) "Franchisee" means the same as that term is defined in 16 C.F.R. Sec. 436.1.

- (g) "Franchisor" means the same as that term is defined in 16 C.F.R. Sec. 436.1.
 - (h) "Minimum wage" means the state minimum hourly wage for adult employees as established under this chapter, unless the context clearly indicates otherwise.
 - (i) "Tipped employee" means an employee who customarily and regularly receives tips or gratuities.
- (3) Notwithstanding Subsection (1), for purposes of determining whether two or more persons are considered joint employers under this chapter, an administrative ruling of a federal executive agency may not be considered a generally applicable law unless that administrative ruling is determined to be generally applicable by a court of law, or adopted by statute or rule .
- (4)
- (a) For purposes of this chapter, a franchisor is not considered to be an employer of:
 - (i) a franchisee; or
 - (ii) a franchisee's employee.
 - (b) With respect to a specific claim for relief under this chapter made by a franchisee or a franchisee's employee, this Subsection (4) does not apply to a franchisor under a franchise that exercises a type or degree of control over the franchisee or the franchisee's employee not customarily exercised by a franchisor for the purpose of protecting the franchisor's trademarks and brand.

Amended by Chapter 370, 2016 General Session

34-40-103 Minimum wage -- Commission to review and modify minimum wage.

- (1)
- (a) The minimum wage for all private and public employees within the state shall be \$3.35 per hour.
 - (b) Effective April 1, 1990, the minimum wage shall be \$3.80 per hour.
- (2)
- (a) After July 1, 1990, the commission may by rule establish the minimum wage or wages as provided in this chapter that may be paid to employees in public and private employment within the state.
 - (b) The minimum wage, as established by the commission, may not exceed the federal minimum wage as provided in 29 U.S.C. Sec. 201 et seq., the Fair Labor Standards Act of 1938, as amended, in effect at the time of implementation of this section.
 - (c) The commission:
 - (i) may review the minimum wage at any time;
 - (ii) shall review the minimum wage at least every three years; and
 - (iii) shall review the minimum wage whenever the federal minimum wage is changed.
- (3) The commission may provide for separate minimum hourly wages for minors.

Amended by Chapter 375, 1997 General Session

34-40-104 Exemptions.

- (1) The minimum wage established in this chapter does not apply to:
- (a) any employee who is entitled to a minimum wage as provided in 29 U.S.C. Sec. 201 et seq., the Fair Labor Standards Act of 1938, as amended;
 - (b) outside sales persons;
 - (c) an employee who is a member of the employer's immediate family;

- (d) companionship service for persons who, because of age or infirmity, are unable to care for themselves;
 - (e) casual and domestic employees as defined by the commission;
 - (f) seasonal employees of nonprofit camping programs, religious or recreation programs, and nonprofit educational and charitable organizations registered under Title 13, Chapter 22, Charitable Solicitations Act;
 - (g) an individual employed by the United States of America;
 - (h) any prisoner employed through the penal system;
 - (i) any employee employed in agriculture if the employee:
 - (i) is principally engaged in the range production of livestock;
 - (ii) is employed as a harvest laborer and is paid on a piece rate basis in an operation that has been and is generally recognized by custom as having been paid on a piece rate basis in the region of employment;
 - (iii) was employed in agriculture less than 13 weeks during the preceding calendar year; or
 - (iv) is a retired or semiretired person performing part-time or incidental work as a condition of the employee's residence on a farm or ranch;
 - (j) registered apprentices or students employed by the educational institution in which they are enrolled; or
 - (k) any seasonal hourly employee employed by a seasonal amusement establishment with permanent structures and facilities if the other direct monetary compensation from tips, incentives, commissions, end-of-season bonus, or other forms of pay is sufficient to cause the average hourly rate of total compensation for the season of seasonal hourly employees who continue to work to the end of the operating season to equal the applicable minimum wage if the seasonal amusement establishment:
 - (i) does not operate for more than seven months in any calendar year; or
 - (ii) during the preceding calendar year its average receipts for any six months of that year were not more than 33-1/3% of its average receipts for the other six months of that year.
- (2)
- (a) Persons with a disability whose earnings or productive capacities are impaired by age, physical or mental deficiencies, or injury may be employed at wages that are lower than the minimum wage, provided the wage is related to the employee's productivity.
 - (b) The commission may establish and regulate the wages paid or wage scales for persons with a disability.
- (3) The commission may establish or may set a lesser minimum wage for learners not to exceed the first 160 hours of employment.
- (4)
- (a) An employer of a tipped employee shall pay the tipped employee at least the minimum wage established by this chapter.
 - (b) In computing a tipped employee's wage under this Subsection (4), an employer of a tipped employee:
 - (i) shall pay the tipped employee at least the cash wage obligation as an hourly wage; and
 - (ii) may compute the remainder of the tipped employee's wage using the tips or gratuities the tipped employee actually receives.
 - (c) An employee shall retain all tips and gratuities except to the extent that the employee participates in a bona fide tip pooling or sharing arrangement with other tipped employees.
 - (d) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission shall by rule establish the cash wage obligation in conjunction with its review of the minimum wage under Section 34-40-103.

Amended by Chapter 382, 2008 General Session

34-40-105 Grant of rulemaking authority.

In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may issue rules that are consistent with this chapter.

Amended by Chapter 382, 2008 General Session

34-40-106 Limitations on minimum wage imposed by cities, towns, or counties.

- (1) A city, town, or county may not establish, mandate, or require a minimum wage that exceeds the federal minimum wage as provided in 29 U.S.C. Sec. 201 et seq., Fair Labor Standards Act of 1938.
- (2)
 - (a) A city, town, or county may not require that a person who contracts with the city, town, or county pay that person's employees a wage that exceeds the federal minimum wage as provided in 29 U.S.C. Sec. 201 et seq., Fair Labor Standards Act of 1938.
 - (b) Subsection (2)(a) does not apply when federal law requires the payment of a specified wage to persons working on projects funded in whole or in part by federal funds.
 - (c) Subsection (2)(a) applies to contracts executed on or after April 30, 2001.
- (3)
 - (a) If a city, town, or county contracts with a person for the direct purchase of goods or services, in awarding or otherwise executing that contract, the city, town, or county may not give any preferential treatment to a person on the basis that the person pays that person's employees a wage that exceeds the minimum wage as provided in 29 U.S.C. 201 et seq., Fair Labor Standards Act of 1938.
 - (b) This Subsection (3) does not apply when federal law requires the consideration of whether a person pays the person's employees a specified wage to persons working on projects funded in whole or in part by federal funds.
 - (c) This Subsection (3) applies to contracts executed on or after May 2, 2005.
- (4)
 - (a) The restrictions of this section on a city, town, or county apply to any entity created by the city, town, or county.
 - (b) This Subsection (4) applies to contracts executed on or after May 2, 2005.

Amended by Chapter 287, 2005 General Session

Part 2
Enforcement - Penalties

34-40-201 Recordkeeping.

Employers shall keep payroll records of employees covered by this chapter showing names, addresses, and dates of birth. Such records shall also show hours worked and wages paid to all covered employees. Records shall be maintained for three years.

Enacted by Chapter 8, 1990 General Session

34-40-202 Enforcement.

The division shall enforce this chapter and investigate complaints under this chapter. The division may commence administrative proceedings in accordance with Title 63G, Chapter 4, Administrative Procedures Act, and may impose a penalty of up to \$500 per violation of this chapter.

Amended by Chapter 382, 2008 General Session

34-40-203 Investigation authority.

- (1) The division shall have access to all payroll records of any place of business or establishment, required by this chapter to pay its employees a minimum wage, to investigate for compliance with this chapter.
- (2) The division shall have access to business records kept at the place of business or establishment which may aid in the enforcement of this chapter.

Amended by Chapter 240, 1996 General Session

34-40-204 Criminal penalty -- Enforcement.

- (1)
 - (a) Repeated violation of this chapter is a class B misdemeanor.
 - (b) "Repeated violations" does not include separate violations as to individual employees arising out of the same investigation or enforcement action.
- (2) Upon the third violation by the same employer within a three-year period, the commission may prosecute a criminal action in the name of the state.
- (3) The county attorney, district attorney, or attorney general shall provide assistance in prosecutions under this section at the request of the commission.

Amended by Chapter 375, 1997 General Session

34-40-205 Civil action allowed.

- (1) In addition to the administrative and criminal actions authorized by this chapter, an employee may bring a civil action to enforce his rights under this chapter.
- (2)
 - (a) An aggrieved employee is entitled to injunctive relief and may recover the difference between the wage paid and the minimum wage, plus interest.
 - (b) The court may award court costs and attorney fees to the prevailing party.
- (3) An action brought under this section shall be brought within two years of the alleged violation.

Enacted by Chapter 8, 1990 General Session

Chapter 41
Local Governmental Entity Drug-Free Workplace Policies

34-41-101 Definitions.

As used in this chapter:

- (1) "Drug" means any substance recognized as a drug in the United States Pharmacopeia, the National Formulary, the Homeopathic Pharmacopeia, or other drug compendia, including Title 58, Chapter 37, Utah Controlled Substances Act, or supplement to any of those compendia.
- (2) "Drug testing" means the scientific analysis for the presence of drugs or their metabolites in the human body in accordance with the definitions and terms of this chapter.
- (3) "Local governmental employee" means any person or officer in the service of a local governmental entity or state institution of higher education for compensation.
- (4)
 - (a) "Local governmental entity" means any political subdivision of Utah including any county, municipality, local school district, local district, special service district, or any administrative subdivision of those entities.
 - (b) "Local governmental entity" does not mean Utah state government or its administrative subdivisions provided for in Sections 67-19-33 through 67-19-38.
- (5) "Periodic testing" means preselected and preannounced drug testing of employees or volunteers conducted on a regular schedule.
- (6) "Prospective employee" means any person who has made a written or oral application to become an employee of a local governmental entity or a state institution of higher education.
- (7) "Random testing" means the unannounced drug testing of an employee or volunteer who was selected for testing by using a method uninfluenced by any personal characteristics other than job category.
- (8) "Reasonable suspicion for drug testing" means an articulated belief based on the recorded specific facts and reasonable inferences drawn from those facts that a local government employee or volunteer is in violation of the drug-free workplace policy.
- (9) "Rehabilitation testing" means unannounced but preselected drug testing done as part of a program of counseling, education, and treatment of an employee or volunteer in conjunction with the drug-free workplace policy.
- (10) "Safety sensitive position" means any local governmental or state institution of higher education position involving duties which directly affects the safety of governmental employees, the general public, or positions where there is access to controlled substances, as defined in Title 58, Chapter 37, Utah Controlled Substances Act, during the course of performing job duties.
- (11) "Sample" means urine, blood, breath, saliva, or hair.
- (12) "State institution of higher education" means the institution as defined in Section 53B-3-102.
- (13) "Volunteer" means any person who donates services as authorized by the local governmental entity or state institution of higher education without pay or other compensation except expenses actually and reasonably incurred.

Amended by Chapter 329, 2007 General Session

34-41-102 Governmental drug-free workplace policies.

- (1) Any local governmental entity or state institution of higher education may establish workplace policies and procedures designed to:
 - (a) educate, counsel, and increase awareness of the dangers of drugs; and
 - (b) prohibit and discourage the detrimental use of drugs among its various classes of employees and volunteers.
- (2) A local governmental entity or state institution of higher education may test employees, volunteers, prospective employees, and prospective volunteers for the presence of drugs or

their metabolites, in accordance with the provisions of this chapter, as a condition of hiring, continued employment, and voluntary services.

- (3) A drug-free workplace policy may include, but does not require, drug testing under the following circumstances:
 - (a) preemployment hiring or volunteer selection procedures;
 - (b) postaccident investigations;
 - (c) reasonable suspicion situations;
 - (d) preannounced periodic testing;
 - (e) rehabilitation programs;
 - (f) random testing in safety sensitive positions; or
 - (g) to comply with the federal Drug Free Workplace Act of 1988, 41 U.S.C. Sec. 8101 et seq., or other federally required drug policies.
- (4) This section may not be construed to prohibit local governmental entities or state institutions of higher education from establishing policies regarding other hazardous or intoxicating substances.

Amended by Chapter 348, 2016 General Session

34-41-103 Policy requirements.

- (1)
 - (a) Before testing or retesting for the presence of drugs, a local governmental entity or state institution of higher education shall:
 - (i) adopt a written policy or ordinance;
 - (ii) distribute it to employees and volunteers; and
 - (iii) make it available for review by prospective employees and prospective volunteers.
 - (b) The local governmental entity or state institution of higher education may only test or retest for the presence of drugs by following the procedures and requirements of that ordinance or policy.
- (2) The collection and testing of samples shall be conducted in accordance with Section 34-41-104 and not necessarily limited to circumstances where there are indications of individual, job-related impairment of an employee or volunteer.
- (3) The use and disposition of all drug test results are subject to the limitations of Title 63G, Chapter 2, Government Records Access and Management Act, and Americans with Disabilities Act of 1990, 42 U.S.C. 12101 through 12213.
- (4) An employee, prospective employee, volunteer, or prospective volunteer shall submit a split urine sample for testing or retesting.
- (5) A split urine sample shall consist of at least 45 ml of urine. The urine shall be divided into two specimen bottles, with at least 30 ml of urine in one bottle and at least 15 ml of urine in the other. If the test results of the 30 ml urine sample indicate the presence of drugs, the donor of the test shall have 72 hours from the time the donor is so notified to request, at the donor's option that the 15 ml urine sample be tested for the indicated drugs, the expense of which shall be divided equally between the donor and employer. In addition to the test results of the 30 ml urine sample, the test results of the 15 ml urine sample shall be considered at any subsequent disciplinary hearing if the requirements of this section and Section 34-41-104 have been complied with in the collection, handling, and testing of these samples.

Amended by Chapter 382, 2008 General Session

34-41-104 Requirements for identification, collection, and testing of samples.

- (1) The local governmental entity or state institution of higher education shall ensure that:
 - (a) all sample collection under this chapter is performed by an entity independent of the local government or state institution of higher education;
 - (b) all testing for drugs under this chapter is performed by an independent laboratory certified for employment drug testing by either the Substance Abuse and Mental Health Services Administration or the College of American Pathology;
 - (c) the instructions, chain of custody forms, and collection kits, including bottles and seals, used for sample collection are prepared by an independent laboratory certified for employment drug testing by either the Substance Abuse and Mental Health Services Administration or the College of American Pathology; and
 - (d) sample collection and testing for drugs under this chapter is in accordance with the conditions established in this section.
- (2) The local governmental entity or state institution of higher education may:
 - (a) require samples from its employees, volunteers, prospective employees, or prospective volunteers;
 - (b) require presentation of reliable identification to the person collecting the samples; and
 - (c) in order to dependably test for the presence of drugs, designate the type of sample to be used for testing.
- (3) The local governmental entity or state institution of higher education shall ensure that its ordinance or policy requires that:
 - (a) the collection of samples is performed under reasonable and sanitary conditions;
 - (b) samples are collected and tested:
 - (i) to ensure the privacy of the individual being tested; and
 - (ii) in a manner reasonably calculated to prevent substitutions or interference with the collection or testing of reliable samples;
 - (c) sample collection is appropriately documented to ensure that:
 - (i) samples are labeled and sealed so as reasonably to preclude the probability of erroneous identification of test results; and
 - (ii) employees, volunteers, prospective employees, or prospective volunteers have the opportunity to provide notification of any information:
 - (A) that any person named in Subsection (3)(c)(ii) considers relevant to the test, including identification of currently or recently used prescription or nonprescription drugs or other relevant medical information; and
 - (B) in compliance with the Americans with Disabilities Act of 1990, 42 U.S.C. 12101 through 12213;
 - (d) sample collection, storage, and transportation to the place of testing are performed in a manner that reasonably precludes the probability of sample misidentification, contamination, or adulteration; and
 - (e) sample testing conforms to scientifically accepted analytical methods and procedures.
- (4) Before the result of any test may be used as a basis for any action by a local governmental entity or state institution of higher education under Section 34-41-105, the local governmental entity or state institution of higher education shall verify or confirm any positive initial screening test by gas chromatography, gas chromatography-mass spectroscopy, or other comparably reliable analytical methods and shall provide that the employee, prospective employee, volunteer, or prospective volunteer be notified as soon as possible by telephone or in writing at the last-known address or telephone number of the result of the initial test, if it is positive, and told of his option to have the 15 ml urine sample tested, at an expense equally divided between

the donor and the employer. In addition to the initial test results, the test results of the 15 ml urine sample shall be considered at any subsequent disciplinary hearing if the requirements of this section and Section 34-41-104 have been complied with in the collection, handling, and testing of these samples.

- (5) Any drug testing by a local governmental entity or state institution of higher education shall occur during or immediately after the regular work period of the employee or volunteer and shall be considered as work time for purposes of compensation and benefits.
- (6) The local governmental entity or state institution of higher education shall pay all costs of sample collection and testing for drugs required under its ordinance or policy, including the costs of transportation if the testing of a current employee or volunteer is conducted at a place other than the workplace.

Amended by Chapter 13, 1998 General Session

34-41-105 Rehabilitative and disciplinary actions.

- (1) If a verified or confirmed positive drug test result indicates a violation of the local governmental entity's or state institution of higher education's written drug-free workplace policy, if an employee, volunteer, prospective employee, or prospective volunteer refuses to provide a sample in accordance with the written policy, or otherwise violates the written policy, an employer may use that test result, refusal, or violation as the basis for imposing any rehabilitative and disciplinary actions authorized by this section.
- (2) If the conditions required by Subsection (1) are met, the employer may:
 - (a) require the employee to enroll in a rehabilitation, treatment, or counseling and educational program, approved by the local governmental entity or state institution of higher education as a condition of continued employment or volunteer service;
 - (b) suspend the employee with or without pay for a period of time;
 - (c) terminate the employment or voluntary services;
 - (d) refuse to hire a prospective employee or use the services of a volunteer; and
 - (e) impose disciplinary measures in conformance with the usual procedures, including employment contracts of the local governmental entity or state institution of higher education.

Enacted by Chapter 18, 1994 General Session

34-41-106 Employee not a person with a disability.

An employee, volunteer, prospective employee, or prospective volunteer whose drug test results are verified or confirmed as positive in accordance with the provisions of this chapter may not, by virtue of those results alone, be defined as a person with a disability for purposes of:

- (1) Title 34A, Chapter 5, Utah Antidiscrimination Act; or
- (2) the Americans with Disabilities Act of 1990, 42 U.S.C. Sec. 12101 through 12213.

Amended by Chapter 297, 2011 General Session

Amended by Chapter 366, 2011 General Session

34-41-107 No physician-patient relationship created.

A physician-patient relationship is not created between an employee, volunteer, prospective employee, or prospective volunteer, and the local governmental entity, state institution of higher education, or any person performing the test, solely by the establishment of a drug testing program in the workplace.

Enacted by Chapter 18, 1994 General Session

Chapter 42

Employer Reference Immunity

34-42-1 Employer references -- Civil liability -- Rebuttable presumption -- Common law.

- (1) An employer who in good faith provides information about the job performance, professional conduct, or evaluation of a former or current employee to a prospective employer of that employee, at the request of the prospective employer of that employee, may not be held civilly liable for the disclosure or the consequences of providing the information.
- (2) There is a rebuttable presumption that an employer is acting in good faith when the employer provides information about the job performance, professional conduct, or evaluation of a former or current employee to a prospective employer of that employee, at the request of the prospective employer of that employee.
- (3) The presumption of good faith is rebuttable only upon showing by clear and convincing evidence that the employer disclosed the information with actual malice or with intent to mislead.
- (4) For purposes of this section "actual malice" means knowledge that the information was false or reckless disregard of whether the information was false.
- (5) This section does not alter any privileges that exist under common law.

Enacted by Chapter 346, 1995 General Session

Chapter 43

Disaster Service Volunteer Leave Act

34-43-101 Title.

This chapter is known as the "Disaster Service Volunteer Leave Act."

Enacted by Chapter 186, 1998 General Session

34-43-102 Definitions.

As used in this chapter:

- (1) "Certified disaster service volunteer" means any person who has completed the necessary training for and has been certified as a disaster service specialist by the American Red Cross.
- (2) "Disaster" means any disaster designated at Level III or higher in the American National Red Cross Regulations and Procedures.
- (3) "State agency" means any state office, officer, official, department, board, commission, institution, bureau, agency, division, or unit of the state, including those within the legislative and judicial branches of the state government.

Enacted by Chapter 186, 1998 General Session

34-43-103 Leave of absence -- Request for leave -- Approval by agency.

- (1) An employee of a state agency who is a certified disaster service volunteer may be granted leave from work with pay for an aggregate of up to 15 work days, consecutively or nonconsecutively, in any 12-month period to participate in disaster relief services for the American Red Cross in connection with any disaster, upon the request of the American Red Cross for such employee's services.
- (2) An employee of a state agency requesting leave under this chapter shall file a written request with the employing state agency which includes:
 - (a) the anticipated duration of the leave of absence;
 - (b) the type of service the employee is to provide on behalf of the American Red Cross;
 - (c) the nature and location of the disaster where the employee's services will be provided; and
 - (d) a copy of the written request for the employee's services from an official of the American Red Cross.
- (3) Nothing contained in this chapter shall be construed to require any state agency to grant a public employee's request for voluntary disaster service leave if the employing state agency determines that the grant of leave would pose a hardship on the employing state agency.

Enacted by Chapter 186, 1998 General Session

Chapter 44
Sales Representative Commission Payment Act

Part 1
General Provisions

34-44-101 Title.

This chapter is known as the "Sales Representative Commission Payment Act."

Enacted by Chapter 65, 2007 General Session

34-44-102 Definitions.

As used in this chapter:

- (1) "Business relationship" means an agreement that governs the relationship of principal and sales representative.
- (2) "Commission" means:
 - (a) compensation:
 - (i) that accrues to a sales representative;
 - (ii) for payment by a principal; and
 - (iii) at a rate expressed as a percentage of the dollar amount of sales, orders, or profits; or
 - (b) any other method of compensation agreed to between a sales representative and a principal including:
 - (i) fees for services; and
 - (ii) a retainer.
- (3) "Principal" means a person who:
 - (a) engages in any of the following activities with regard to a product or service:
 - (i) manufactures;

- (ii) produces;
 - (iii) imports;
 - (iv) sells; or
 - (v) distributes;
 - (b) establishes a business relationship with a sales representative to solicit orders for a product or a service described in Subsection (3)(a); and
 - (c) agrees to compensate a sales representative, in whole or in part, by commission.
- (4)
- (a) Except as provided in Subsection (4)(b), "sales representative" means a person who enters into a business relationship with a principal:
 - (i) to solicit orders for a product or a service described in Subsection (3)(a); and
 - (ii) under which the person is compensated, in whole or in part, by commission.
 - (b) "Sales representative" does not include:
 - (i) an employee of a principal;
 - (ii) a person licensed under Title 31A, Insurance Code;
 - (iii) a person licensed under Title 41, Chapter 3, Part 2, Licensing;
 - (iv) a person licensed under Title 61, Chapter 2f, Real Estate Licensing and Practices Act;
 - (v) a person who provides a product or service under a business relationship with a principal that is incident to the purchase or sale of real property; or
 - (vi) a person who places an order or purchases a product or service for that person's own account for resale.
- (5) "Terminates" or "termination" means the end of a business relationship between a sales representative and a principal, whether by:
- (a) agreement;
 - (b) expiration of a time period; or
 - (c) exercise of a right of termination by either the principal or the sales representative.

Amended by Chapter 379, 2010 General Session

34-44-103 Jurisdiction in courts.

An action under this chapter may be brought against a principal in a court of this state if:

- (1) the principal enters into a business relationship in this state with a sales representative to solicit orders for a product or a service; or
- (2)
 - (a) a product of the principal is:
 - (i) manufactured, distributed, sold, or received in this state; or
 - (ii) imported to or from this state; or
 - (b) a service of the principal is provided in this state.

Enacted by Chapter 65, 2007 General Session

34-44-104 Void provisions.

Any of the following provisions in an agreement between a sales representative and a principal is void:

- (1) an express waiver of any right under this chapter;
- (2) for a writing required by Section 34-44-201 that is entered into in this state, a provision that makes the sales representative subject to the laws of another state; or

- (3) a requirement that the sales representative pursue a claim under this chapter in a court not located in the state.

Enacted by Chapter 65, 2007 General Session

Part 2 Requirements and Prohibitions

34-44-201 Written business relationship.

- (1) The business relationship between a sales representative and a principal shall be in a writing signed by both the principal and the sales representative.
- (2) The writing required by Subsection (1) shall set forth the method by which the sales representative's commission is:
 - (a) computed; and
 - (b) paid.
- (3) The principal shall provide the sales representative with a copy of the signed writing required by Subsection (1).

Enacted by Chapter 65, 2007 General Session

34-44-202 Payment of commission -- Payment on termination -- Settlement.

- (1) The principal shall pay a sales representative all commissions due to the sales representative during the time the business relationship between the principal and sales representative is in effect in accordance with the writing required by Section 34-44-201.
- (2) If a business relationship between a principal and sales representative terminates, the principal shall pay to the sales representative:
 - (a) within 30 days after the day on which the termination is effective, all commissions due on the day on which the termination is effective; and
 - (b) within 14 days after the day on which a commission becomes due if the commission is due after the day on which the termination is effective.
- (3)
 - (a) Unless payment is made pursuant to a binding and final written settlement agreement and release, the acceptance by a sales representative of a partial commission paid by the principal under the business relationship does not constitute a release as to the balance of any commission that the sales representative claims is due because of the business relationship.
 - (b) A full release of all commission claims required by a principal as a condition to a partial commission payment is void.

Enacted by Chapter 65, 2007 General Session

34-44-203 Revocable offer of commission.

If a principal makes a revocable offer of a commission to a sales representative, the sales representative is entitled to the commission agreed upon under the business relationship if:

- (1) the principal revokes the offer of commission;

- (2) the sales representative establishes that the revocation is for a purpose of avoiding payment of the commission;
- (3) the revocation occurs after the principal obtains an order for the principal's product or service through the efforts of the sales representative; and
- (4) the principal's product or service that is the subject of the order is provided to and paid for by a customer.

Enacted by Chapter 65, 2007 General Session

Part 3 Remedies

34-44-301 Failure to pay commission.

- (1) A sales representative may bring a civil action in a court of competent jurisdiction against a principal for failure by the principal to comply with:
 - (a) any provision of an agreement relating to the payment of commission; or
 - (b) Subsection 34-44-202(1) or (2).
- (2) If a principal is found liable under Subsection (1), the principal is liable to the sales representative for:
 - (a) three times an amount calculated by:
 - (i) determining the sum of unpaid commission owed to the sales representative; and
 - (ii) subtracting from the amount determined under Subsection (2)(a)(i) money the sales representative owes the principal;
 - (b) reasonable attorney fees; and
 - (c) court costs.

Enacted by Chapter 65, 2007 General Session

34-44-302 Other remedies.

This chapter does not:

- (1) invalidate or restrict any alternative or additional right or remedy available to a sales representative; or
- (2) preclude a sales representative from seeking to recover in an action on all claims against a principal.

Enacted by Chapter 65, 2007 General Session

Chapter 45 Protection of Activities in Private Vehicles

34-45-101 Title.

This chapter is known as "Protection of Activities in Private Vehicles."

Enacted by Chapter 379, 2009 General Session

34-45-102 Definitions.

As used in this chapter:

- (1) "Firearm" has the same meaning as provided in Section 76-10-501.
- (2) "Motor vehicle" has the same meaning as provided in Section 41-1a-102.
- (3) "Person" means an individual, property owner, landlord, tenant, employer, business entity, or other legal entity.

Enacted by Chapter 379, 2009 General Session

34-45-103 Protection of certain activities -- Firearms -- Free exercise of religion.

- (1) Except as provided in Subsection (2), a person may not establish, maintain, or enforce any policy or rule that has the effect of:
 - (a) prohibiting any individual from transporting or storing a firearm in a motor vehicle on any property designated for motor vehicle parking, if:
 - (i) the individual is legally permitted to transport, possess, purchase, receive, transfer, or store the firearm;
 - (ii) the firearm is locked securely in the motor vehicle or in a locked container attached to the motor vehicle while the motor vehicle is not occupied; and
 - (iii) the firearm is not in plain view from the outside of the motor vehicle; or
 - (b) prohibiting any individual from possessing any item in or on a motor vehicle on any property designated for motor vehicle parking, if the effect of the policy or rule constitutes a substantial burden on that individual's free exercise of religion.
- (2) A person may establish, maintain, or enforce a policy or rule that has the effect of placing limitations on or prohibiting an individual from transporting or storing a firearm in a motor vehicle on property the person has designated for motor vehicle parking if:
 - (a) the person provides, or there is otherwise available, one of the following, in a location reasonably proximate to the property the person has designated for motor vehicle parking:
 - (i) alternative parking for an individual who desires to transport, possess, receive, transfer, or store a firearm in the individual's motor vehicle that:
 - (A) imposes no additional cost on the individual; and
 - (B) is in a location that is legal and safe for parking; or
 - (ii) a secured and monitored storage location where the individual may securely store a firearm before proceeding with the vehicle into the secured parking area; or
 - (b) the person complies with Subsection 34-45-107(5).

Amended by Chapter 251, 2014 General Session

34-45-104 Protection from liability.

A person that owns or controls a parking area that is subject to this chapter and that complies with the requirements of Section 34-45-103 is not liable in any civil action for any occurrence resulting from, connected with, or incidental to the use of a firearm, by any person, unless the use of the firearm involves a criminal act by the person who owns or controls the parking area.

Enacted by Chapter 379, 2009 General Session

34-45-105 Cause of action for noncompliance -- Remedies.

- (1) An individual who is injured, physically or otherwise, as a result of any policy or rule prohibited by Section 34-45-103, may bring a civil action in a court of competent jurisdiction against any person that violates the provisions of Section 34-45-103.
- (2) Any individual who asserts a claim under this section is entitled to request:
 - (a) declaratory relief;
 - (b) temporary or permanent injunctive relief to prevent the threatened or continued violation;
 - (c) recovery for actual damages sustained; and
 - (d) punitive damages, if:
 - (i) serious bodily injury or death occurs as a result of the violation of Section 34-45-103; or
 - (ii) the person who violates Section 34-45-103 has previously been notified by the attorney general that a policy or rule violates Section 34-45-103.
- (3) The prevailing party in an action brought under this chapter may recover its court costs and reasonable attorney fees incurred.
- (4) Nothing in this chapter shall be construed or held to affect any rights or claims made in relation to Title 34A, Chapter 2, Workers' Compensation Act.

Enacted by Chapter 379, 2009 General Session

34-45-106 Enforcement by attorney general.

- (1) The attorney general may bring an action to enforce this chapter and may request any relief that is provided for under Section 34-45-105, including a request for damages on behalf of any individual suffering loss because of a violation of this chapter.
- (2) Upon entry of final judgment for a cause of action brought under this section, the court may award restitution, when appropriate, to any individual suffering loss because of a violation of this chapter if proof of loss is submitted to the satisfaction of the court.

Enacted by Chapter 379, 2009 General Session

34-45-107 Exemptions -- Limitations on chapter -- School premises -- Government entities -- Religious organizations -- Single family detached residential units.

- (1)
 - (a) School premises, as defined in Subsection 76-3-203.2(1), are exempt from the provisions of this chapter.
 - (b) Possession of a firearm on or about school premises is subject to the provisions of Section 76-10-505.5.
- (2) Government entities, including a local authority or state entity, are subject to the requirements of Title 53, Chapter 5a, Firearm Laws, but are otherwise exempt from the provisions of this chapter.
- (3) Religious organizations, including religious organizations acting as an employer, are exempt from, and are not subject to the provisions of this chapter.
- (4) Owner-occupied single family detached residential units and tenant-occupied single family detached residential units are exempt from the provisions of this chapter.
- (5) A person who is subject to federal law that specifically forbids the presence of a firearm on property designated for motor vehicle parking, or a person who is subject to Section 550 of the United States Department of Homeland Security Appropriations Act of 2007, Pub. L. No. 109-295 or regulations enacted in accordance with that section, is exempt from Section 34-45-103 if:

- (a) providing alternative parking or a storage location under Subsection 34-45-103(2)(a) would pose an undue burden on the person; and
 - (b) the person files a statement with the attorney general citing the federal law that forbids the presence of a firearm and detailing the reasons why providing alternative parking or a storage location poses an undue burden.
- (6) A person who is subject to Section 550 of the United States Department of Homeland Security Appropriations Act of 2007, Pub. L. No. 109-295 or regulations enacted in accordance with that section is exempt from this chapter if:
- (a) the person has attempted to provide alternative parking or a storage location in accordance with Subsection 34-45-103(2)(a);
 - (b) the secretary of the federal Department of Homeland Security notifies the person that the provision of alternative parking or a storage location causes the person to be out of compliance with Section 550 of the United States Department of Homeland Security Appropriations Act of 2007, Pub. L. No. 109-295 or regulations enacted in accordance with that section and the person may be subject to punitive measures; and
 - (c) the person files a detailed statement with the attorney general notifying the attorney general of the facts under Subsections (6)(a) and (b).

Amended by Chapter 348, 2016 General Session

Chapter 46

Employment Selection Procedures Act

Part 1

General Provisions

34-46-101 Title.

This chapter is known as the "Employment Selection Procedures Act."

Enacted by Chapter 174, 2009 General Session

34-46-102 Definitions.

As used in this chapter:

- (1) "Applicant" means an individual that provides information to an employer for the purpose of obtaining employment.
- (2) "Division" means the Labor Commission's Division of Antidiscrimination and Labor.
- (3) "Employer" means a person employing 15 or more employees within the state for each working day in each of 20 calendar weeks or more in the current or preceding calendar year.
- (4) "Employment selection process" means the process by which an employer selects an individual to be an employee for the employer.
- (5) "Initial selection process" means the receipt of information in a record from an applicant that the employer uses to determine whether the applicant will be considered for a second review for the position for which the applicant is applying.
- (6) "Record" means information that is:
 - (a) inscribed on a tangible medium; or
 - (b)

- (i) received or stored in an electronic or other medium; and
- (ii) retrievable in perceivable form.

Amended by Chapter 218, 2010 General Session

Part 2

Requirements Related to Information

34-46-201 Information collected.

- (1) Except as provided in Subsection (2), an employer may not request the following information before an applicant is offered a job:
 - (a) Social Security number;
 - (b) date of birth; or
 - (c) driver license number.
- (2) An employer may request the information listed in Subsection (1) before an applicant is offered a job only if:
 - (a) the request for information is applicable to any applicant applying for the position for which the applicant is applying;
 - (b) the information is requested during the time in the employer's employment selection process when the employer:
 - (i) obtains a criminal background check;
 - (ii) obtains a credit history of an applicant for employment, subject to the requirements of the Fair Credit Reporting Act, 15 U.S.C. Sec. 1681 et seq.;
 - (iii) obtains a driving record of a driver from the Driver License Division in accordance with Section 53-3-104 or 53-3-420;
 - (iv) subject to Subsection (3), conducts a review of the internal records of the employer to determine whether:
 - (A) the applicant was previously employed by the employer; or
 - (B) the applicant previously applied for employment with the employer; or
 - (v) collects the information to provide it to a government entity for the purpose of:
 - (A) determining eligibility for a government service, benefit, or program that requires that the information is collected on or before the day on which an offer of employment is made; or
 - (B) participating in a government service, benefit, or program that requires that the information is collected on or before the day on which an offer of employment is made;
 - (c) the applicant consents to the employer taking the action described in Subsection (2)(b).
- (3) If the information listed in Subsection (1) is requested under Subsection (2)(b)(iv), the employer may only request that information listed in Subsection (1) that is necessary to conduct the review of the employer's internal records.
- (4) An employer violates this section if pursuant to Subsection (2) the employer requests the information listed in Subsection (1), but fails to take the action described in Subsection (2)(b) for which the information is requested.

Amended by Chapter 2, 2009 Special Session 1

Amended by Chapter 2, 2009 Special Session 1

34-46-202 Use of information collected in initial selection process.

- (1)
 - (a) An employer may not:
 - (i) use information about an applicant obtained through an initial selection process for a purpose other than to determine whether or not the employer will hire the applicant as an employee; or
 - (ii) except as provided in Subsection (2), provide information about an applicant obtained through an initial selection process to a person other than the employer.
 - (b) A use prohibited under this Subsection (1) includes:
 - (i) marketing;
 - (ii) profiling;
 - (iii) reselling of the information; or
 - (iv) a similar use.
- (2) Notwithstanding the other provisions of this section, an employer may provide information:
 - (a) as required by law;
 - (b) to a government entity for the purpose of:
 - (i) determining eligibility for a government service, benefit, or program; or
 - (ii) participating in a government service, benefit, or program;
 - (c) if the applicant applies for another position with the employer; or
 - (d) if the applicant becomes an employee and the information is used for one or more of the following, that is also applied to other employees in a similar position:
 - (i) a performance review; or
 - (ii) a promotion application.

Amended by Chapter 2, 2009 Special Session 1

Amended by Chapter 2, 2009 Special Session 1

34-46-203 Retention of information collected during an initial selection process.

- (1) Subject to Subsection (2), with regard to information collected about an applicant obtained through an initial selection process, an employer shall:
 - (a) maintain a specific policy regarding the retention, disposition, access, and confidentiality of the information; and
 - (b) if an applicant requests to see the policy described in Subsection (1)(a), provide an opportunity for the applicant to review the policy before being required to provide information as part of the initial selection process.
- (2) Except to the extent required by law, an employer may not retain the information described in Subsection (1) more than two years after the day on which the applicant provides the information to the employer, if the employer does not hire the applicant within that two-year period.

Enacted by Chapter 174, 2009 General Session

**Part 3
Enforcement**

34-46-301 Investigations -- Complaints -- Sanctions -- Rulemaking.

- (1) The division may investigate an alleged violation of this chapter.
- (2)
 - (a) An individual claiming to be aggrieved by an action of an employer in violation of this chapter may file with the division a request for agency action.
 - (b) On receipt of a request for agency action under Subsection (2)(a), the division:
 - (i) shall conduct an adjudicative proceeding pursuant to Title 63G, Chapter 4, Administrative Procedures Act; and
 - (ii) may attempt to reach a settlement between the parties through a settlement conference.
- (3)
 - (a) If the division determines that a violation has occurred, the division may order that the employer:
 - (i) cease and desist the action;
 - (ii) pay a fine to the division of up to \$500 for a violation, regardless of the number of applicants affected by the violation; or
 - (iii) comply with a combination of Subsections (3)(a)(i) and (ii).
 - (b) Money received under this section shall be deposited as a dedicated credit to the division to pay for the costs of administering this chapter.
- (4) The commission may make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, regarding:
 - (a) the process to file a written complaint with the division; and
 - (b) the terms defined in Section 34-46-102.

Enacted by Chapter 174, 2009 General Session

34-46-302 Inspection of records by division.

- (1) A representative of the division may enter a place of employment during business hours to inspect a record as part of an investigation described in Section 34-46-301.
- (2) An effort of an employer to obstruct the division in the performance of its duties under this section is a violation of this chapter and subject to sanctions under Section 34-46-301.

Enacted by Chapter 174, 2009 General Session

Chapter 47
Worker Classification Coordinated Enforcement Act

Part 1
General Provisions

34-47-101 Title.

This chapter is known as the "Worker Classification Coordinated Enforcement Act."

Enacted by Chapter 15, 2011 General Session

34-47-102 Definitions.

As used in this chapter:

- (1) "Commission" means the Labor Commission.
- (2) "Commissioner" means the commissioner of the Labor Commission.
- (3) "Council" means the Worker Classification Coordinated Enforcement Council created in Section 34-47-201.
- (4) "Member agency" means an agency that is represented on the council.
- (5) "Misclassification" means to classify an individual as something other than an employee, if under the relevant law the individual is required to be classified as an employee.

Enacted by Chapter 15, 2011 General Session

Part 2

Worker Classification Coordinated Enforcement Council

34-47-201 Creation.

- (1)
 - (a) There is created within the commission the Worker Classification Coordinated Enforcement Council consisting of the following four members:
 - (i) the commissioner, or the commissioner's designee;
 - (ii) the executive director of the Department of Commerce, or the executive director's designee;
 - (iii) the executive director of the Department of Workforce Services, or the executive director's designee; and
 - (iv) the chair of the State Tax Commission, or the chair's designee.
 - (b) The Office of the Attorney General shall work cooperatively with the council.
- (2) The commissioner, or the commissioner's designee, is chair of the council.
- (3)
 - (a) A majority of the council members constitutes a quorum.
 - (b) A vote of the majority of the council members present when a quorum is present is an action of the council.
 - (c) Subject to Section 34-47-202, the council shall meet at the call of the chair, except that the chair shall call a meeting at least quarterly.
 - (d) The council may adopt additional procedures or requirements for:
 - (i) voting, when there is a tie of the council members;
 - (ii) how meetings are to be called; and
 - (iii) the frequency of meetings.

Enacted by Chapter 15, 2011 General Session

34-47-202 Duties and powers of the council.

- (1) The council shall meet at least quarterly with the attorney general or a designee of the attorney general to coordinate regulatory and law enforcement efforts related to misclassification.
- (2)
 - (a) The council shall provide a written report by no later than September 1 of each year regarding the previous fiscal year to:
 - (i) the governor; and
 - (ii) the Business and Labor Interim Committee.
 - (b) The report required by this Subsection (2) shall include:

- (i) the nature and extent of misclassification in this state;
 - (ii) the results of regulatory and law enforcement efforts related to the council;
 - (iii) the status of sharing information by member agencies; and
 - (iv) recommended legislative changes, if any.
- (c) As part of the report required by this Subsection (2), the council shall provide an opportunity to the following to include in the report comments on the effectiveness of the council:
- (i) the attorney general; and
 - (ii) each member agency.
- (3) The council may study:
- (a) how to reduce costs to the state resulting from misclassification;
 - (b) how to extend outreach and education efforts regarding the nature and requirements of classifying an individual;
 - (c) how to promote efficient and effective information sharing amongst the member agencies; and
 - (d) the need, if any, to create by statute a database or other method to facilitate sharing of information related to misclassification.
- (4) A member agency shall cooperate with the commission and council to provide information related to misclassification to the extent that:
- (a) the information is public information; or
 - (b) providing the information is otherwise permitted by law other than this chapter.
- (5)
- (a) A record provided to the commission or council under this chapter is a protected record under Title 63G, Chapter 2, Government Records Access and Management Act, unless otherwise classified as private or controlled under Title 63G, Chapter 2, Government Records Access and Management Act.
 - (b) Notwithstanding Subsection (5)(a), the commission or council may disclose the record to the extent:
 - (i) necessary to take an administrative action by a member agency;
 - (ii) necessary to prosecute a criminal act; or
 - (iii) that the record is:
 - (A) obtainable from a source other than the member agency that provides the record to the commission or council; or
 - (B) public information or permitted to be disclosed by a law other than this chapter.

Amended by Chapter 187, 2016 General Session

Chapter 48 **Internet Employment Privacy Act**

Part 1 **General Provisions**

34-48-101 Title.

This chapter is known as the "Internet Employment Privacy Act."

Enacted by Chapter 94, 2013 General Session

34-48-102 Definitions.

As used in this chapter:

- (1) "Adverse action" means to discharge, threaten, or otherwise discriminate against an employee in any manner that affects the employee's employment, including compensation, terms, conditions, location, rights, immunities, promotions, or privileges.
- (2) "Employer" means a person, including the state or a political subdivision of the state, that has one or more workers or operators employed in the same business, or in or about the same establishment, under any contract of hire, express or implied, oral or written.
- (3) "Law enforcement agency" is as defined in Section 53-1-102.
- (4)
 - (a) "Personal Internet account" means an online account that is used by an employee or applicant exclusively for personal communications unrelated to any business purpose of the employer.
 - (b) "Personal Internet account" does not include an account created, maintained, used, or accessed by an employee or applicant for business related communications or for a business purpose of the employer.

Enacted by Chapter 94, 2013 General Session

Part 2
Prohibited and Permitted Activities

34-48-201 Employer may not request disclosure of information related to personal Internet account.

An employer may not do any of the following:

- (1) request an employee or an applicant for employment to disclose a username and password, or a password that allows access to the employee's or applicant's personal Internet account; or
- (2) take adverse action, fail to hire, or otherwise penalize an employee or applicant for employment for failure to disclose information described in Subsection (1).

Enacted by Chapter 94, 2013 General Session

34-48-202 Permitted actions by an employer.

- (1) This chapter does not prohibit an employer from doing any of the following:
 - (a) requesting or requiring an employee to disclose a username or password required only to gain access to the following:
 - (i) an electronic communications device supplied by or paid for in whole or in part by the employer; or
 - (ii) an account or service provided by the employer, obtained by virtue of the employee's employment relationship with the employer, and used for the employer's business purposes;
 - (b) disciplining or discharging an employee for transferring the employer's proprietary or confidential information or financial data to an employee's personal Internet account without the employer's authorization;
 - (c) conducting an investigation or requiring an employee to cooperate in an investigation in any of the following:

- (i) if there is specific information about activity on the employee's personal Internet account, for the purpose of ensuring compliance with applicable laws, regulatory requirements, or prohibitions against work-related employee misconduct; or
 - (ii) if the employer has specific information about an unauthorized transfer of the employer's proprietary information, confidential information, or financial data to an employee's personal Internet account;
 - (d) restricting or prohibiting an employee's access to certain websites while using an electronic communications device supplied by, or paid for in whole or in part by, the employer or while using an employer's network or resources, in accordance with state and federal law; or
 - (e) monitoring, reviewing, accessing, or blocking electronic data stored on an electronic communications device supplied by, or paid for in whole or in part by, the employer, or stored on an employer's network, in accordance with state and federal law.
- (2) Conducting an investigation or requiring an employee to cooperate in an investigation as specified in Subsection (1)(c) includes requiring the employee to share the content that has been reported in order to make a factual determination.
- (3) This chapter does not prohibit or restrict an employer from complying with a duty to screen employees or applicants before hiring or to monitor or retain employee communications that is established under federal law, by a self-regulatory organization under the Securities and Exchange Act of 1934, 15 U.S.C. Sec. 78c(a)(26), or in the course of a law enforcement employment application or law enforcement officer conduct investigation performed by a law enforcement agency.
- (4) This chapter does not prohibit or restrict an employer from viewing, accessing, or using information about an employee or applicant that can be obtained without the information described in Subsection 34-48-201(1) or that is available in the public domain.

Amended by Chapter 258, 2015 General Session

34-48-203 Chapter does not create duties.

- (1) This chapter does not create a duty for an employer to search or monitor the activity of a personal Internet account.
- (2) An employer is not liable under this chapter for failure to request or require that an employee or applicant for employment grant access to, allow observation of, or disclose information that allows access to or observation of the employee's or applicant for employment's personal Internet account.

Enacted by Chapter 94, 2013 General Session

**Part 3
Remedy**

34-48-301 Private right of action.

- (1) A person aggrieved by a violation of this chapter may bring a civil cause of action against an employer in a court of competent jurisdiction.
- (2) In an action brought under Subsection (1), if the court finds a violation of this chapter, the court shall award the aggrieved person not more than \$500.

Enacted by Chapter 94, 2013 General Session

Chapter 49 Nursing Mothers in the Workplace

Part 1 General Provisions

34-49-101 Title.

- (1) This chapter is known as "Nursing Mothers in the Workplace."
- (2) This part is known as "General Provisions."

Enacted by Chapter 156, 2015 General Session

34-49-102 Definitions.

As used in this chapter:

- (1) "Public employee" means a person:
 - (a) employed by a public employer; and
 - (b) who is breastfeeding.
- (2) "Public employer" means the following entities:
 - (a) a department, division, board, council, committee, institution, office, bureau, or other similar administrative unit of the executive branch of state government;
 - (b) a municipality;
 - (c) a county;
 - (d) a school district; or
 - (e) an institution of higher education as described in Section 53B-2-101.

Enacted by Chapter 156, 2015 General Session

Part 2 Breastfeeding in the Workplace

34-49-201 Title.

This part is known as "Breastfeeding in the Workplace."

Enacted by Chapter 156, 2015 General Session

34-49-202 Reasonable breaks and private room required.

- (1)
 - (a) A public employer shall:
 - (i) provide for at least one year after the birth of a public employee's child reasonable breaks for each time the public employee needs to breast feed or express milk; and
 - (ii) consult with the public employee to determine the frequency and duration of the breaks.

- (b) A break required under Subsection (1)(a) shall, to the extent possible, run concurrent with any other break period otherwise provided to the public employee.
- (2)
- (a) A public employer shall provide for a public employee a room or other location in close proximity to the public employee's work area.
 - (b) The room described in Subsection (2)(a):
 - (i) may not be a bathroom or toilet stall; and
 - (ii) shall:
 - (A) be maintained in a clean and sanitary condition;
 - (B) provide privacy shielded from the view of and intrusion from coworkers or the public;
 - (C) be available at the times and for a duration required by the public employee as determined in consultation with the public employee under Subsection (1)(a)(ii); and
 - (D) have an electrical outlet.
 - (c)
 - (i) Notwithstanding Subsection (2)(a), an employer is not required to comply with the requirements of Subsections (2)(a) and (b) if compliance would create an undue hardship on the operations of the employer.
 - (ii) For purposes of Subsection (2)(c)(i), an undue hardship is a requirement that would cause the employer significant difficulty or expense when considered in relation to the size, financial resources, nature, or structure of the employer's operations.
- (3)
- (a) A public employer shall provide access to a clean and well-maintained refrigerator or freezer for the temporary storage of the public employee's breast milk.
 - (b) Notwithstanding Subsection (3)(a), a public employer with a public employee not working in an office building may, in the alternative, provide a nonelectric insulated container for storage of the public employee's breast milk.

Amended by Chapter 330, 2016 General Session

34-49-203 Policies.

A public employer shall adopt written policies that:

- (1) support breastfeeding; and
- (2) identify the means by which the public employer will comply with Section 34-49-202.

Enacted by Chapter 156, 2015 General Session

34-49-204 Discrimination prohibited.

A public employer may not refuse to hire, promote, discharge, demote, or terminate a person, or may not retaliate against, harass, or discriminate in matters of compensation or in terms, privileges, and conditions of employment against a person otherwise qualified because the person breastfeeds or expresses milk in the workplace.

Enacted by Chapter 156, 2015 General Session

Chapter 50

Veterans Preference in Private Employment Act

34-50-101 Title.

This chapter is known as the "Veterans Preference in Private Employment Act."

Enacted by Chapter 263, 2015 General Session

34-50-102 Definitions.

As used in this chapter:

- (1) "Department" means the same as that term is defined in Section 71-11-2.
- (2) "Discharge document" means a document received by a servicemember upon separation from military service, including:
 - (a) a DD 214, United States Department of Defense Certificate of Release or Discharge from Active Duty;
 - (b) a DD 256, United States Department of Defense Honorable Discharge Certificate;
 - (c) a DD 257, United States General Discharge Certificate; or
 - (d) an NGB 22, Utah National Guard Certificate of Release or Discharge.
- (3) "Preference eligible" means the same as that term is defined in Section 71-10-1.
- (4) "Private employer" means the same as that term is defined in Section 63G-12-102.
- (5) "Veteran" means the same as that term is defined in Section 68-3-12.5.

Amended by Chapter 230, 2016 General Session

34-50-103 Voluntary veterans preference employment policy -- Private employment -- Antidiscrimination requirements.

- (1) A private sector employer may create a veterans employment preference policy.
- (2) The veterans employment preference policy shall be:
 - (a) in writing; and
 - (b) applied uniformly to employment decisions regarding hiring, promotion, or retention including during a reduction in force.
- (3) A private employer may require a veteran to submit a discharge document form to be eligible for the preference.
- (4) A private employer's veterans employment preference policy shall be publicly posted by the employer at the place of employment or on the Internet if the employer has a website or uses the Internet to advertise employment opportunities.

Amended by Chapter 230, 2016 General Session

34-50-104 Antidiscrimination act.

The granting of a veterans preference by a private employer in accordance with this chapter is not a violation of:

- (1) Title 34A, Chapter 5, Utah Antidiscrimination Act; or
- (2) any other state or local equal employment opportunity law.

Enacted by Chapter 263, 2015 General Session

34-50-105 Verification of eligibility.

The department and the Department of Workforce Services may assist, as permitted under state and federal laws governing privacy, a private employer in verifying if an applicant is a veteran.

Enacted by Chapter 263, 2015 General Session

Chapter 51 Post-employment Restrictions Act

Part 1 General Provisions

34-51-101 Title.

This chapter is known as the "Post-Employment Restrictions Act."

Enacted by Chapter 153, 2016 General Session

34-51-102 Definition.

As used in this chapter:

- (1)
 - (a) "Post-employment restrictive covenant," also known as a "covenant not to compete" or "noncompete agreement," means an agreement, written or oral, between an employer and employee under which the employee agrees that the employee, either alone or as an employee of another person, will not compete with the employer in providing products, processes, or services that are similar to the employer's products, processes, or services.
 - (b) "Post-employment restrictive covenant" does not include nonsolicitation agreements or nondisclosure or confidentiality agreements.
- (2) "Sale of a business" means a transfer of the ownership by sale, acquisition, merger, or other method of the tangible or intangible assets of a business entity, or a division or segment of the business entity.

Enacted by Chapter 153, 2016 General Session

Part 2 Scope of Post-employment Restrictions

34-51-201 Post-employment restrictive covenants.

In addition to any requirements imposed under common law, for a post-employment restrictive covenant entered into on or after May 10, 2016, an employer and an employee may not enter into a post-employment restrictive covenant for a period of more than one year from the day on which the employee is no longer employed by the employer. A post-employment restrictive covenant that violates this section is void.

Enacted by Chapter 153, 2016 General Session

34-51-202 Exceptions.

- (1) This chapter does not prohibit a reasonable severance agreement mutually and freely agreed upon in good faith at or after the time of termination that includes a post-employment restrictive covenant. A severance agreement remains subject to any requirements imposed under common law.
- (2) This chapter does not prohibit a post-employment restrictive covenant related to or arising out of the sale of a business, if the individual subject to the restrictive covenant receives value related to the sale of the business.

Enacted by Chapter 153, 2016 General Session

**Part 3
Remedies**

34-51-301 Award of arbitration costs, attorney fees and court costs, and damages.

If an employer seeks to enforce a post-employment restrictive covenant through arbitration or by filing a civil action and it is determined that the post-employment restrictive covenant is unenforceable, the employer is liable for the employee's:

- (1) costs associated with arbitration;
- (2) attorney fees and court costs; and
- (3) actual damages.

Enacted by Chapter 153, 2016 General Session