

**WORKERS' COMPENSATION EXEMPTION FOR
INDEPENDENT INSURANCE AGENTS**

1998 GENERAL SESSION

STATE OF UTAH

Sponsor: John L. Valentine

AN ACT RELATING TO LABOR; AMENDING EXEMPTIONS FROM WORKERS'
COMPENSATION REQUIREMENTS; AND MAKING TECHNICAL CORRECTIONS.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

34A-2-104, as renumbered and amended by Chapter 375, Laws of Utah 1997

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

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

34A-2-104. "Employee," "worker," or "operative" defined -- Mining lessees and sublessees -- Corporate officers and directors -- Real estate agents and brokers -- Prison inmates -- Insurance agents.

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

(a) each elective and appointive officer and any other person, in the service of the state, or of any county, city, town, or school district within the state, serving the state, or any county, city, town, or school district under any election or appointment, or under any contract of hire, express or implied, written or oral, including each officer and employee of the state institutions of learning and members of the National Guard while on state active duty; and

(b) each person in the service of any employer, as defined in Section 34A-2-103, who employs one or more workers or operatives regularly in the same business, or in or about the same establishment, under any contract of hire, express or implied, oral or written, including aliens and minors, whether legally or illegally working for hire, but not including any person whose employment is casual and not in the usual course of the trade, business, or occupation of the employee's employer.

(2) Unless a lessee provides coverage as an employer under this chapter and Chapter 3,

any lessee in mines or of mining property and each employee and sublessee of the lessee shall be covered for compensation by the lessor under this chapter and Chapter 3, and shall be subject to this chapter and Chapter 3 and entitled to its benefits to the same extent as if they were employees of the lessor drawing the wages paid employees for substantially similar work. The lessor may deduct from the proceeds of ores mined by the lessees an amount equal to the insurance premium for that type of work.

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

(b) If a partnership or sole proprietorship makes an election under Subsection (3)(a), it shall serve written notice upon its insurance carrier naming the persons to be covered. A partner of a partnership or owner of a sole proprietorship may not be considered an employee of the partner's partnership or the owner's sole proprietorship under this chapter or Chapter 3, Utah Occupational Disease Act, until this notice has been given.

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

(4) (a) A corporation may elect not to include any director or officer of the corporation as an employee under this chapter and Chapter 3, Utah Occupational Disease Act.

(b) If a corporation makes an election under Subsection (4)(a), it shall serve written notice upon its insurance carrier naming the persons to be excluded from coverage. A director or officer of a corporation is considered an employee under this chapter and Chapter 3, Utah Occupational Disease Act, until this notice has been given.

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

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

(i) substantially all of the real estate sales agent's or associated broker's income for services

is from real estate commissions; and

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

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

~~[(iii) the contract states that]~~ (B) the real estate sales agent or associated broker is not to be treated as an employee for federal income tax purposes; ~~[or]~~

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

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

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

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

(A) is an independent contractor;

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

(C) can derive income from more than one insurance company.