

INDEPENDENT CONTRACTOR DATABASE

2008 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Dan R. Eastman

House Sponsor: Todd E. Kiser

LONG TITLE

General Description:

This bill modifies provisions related to commerce to provide for the creation of a database related to independent contractors.

Highlighted Provisions:

This bill:

▶ enacts the Independent Contractor Database Act, including:

- defining terms;
- limiting the scope of the chapter;
- creating an Independent Contractor Enforcement Council and establishing its duties;
- discussing study items including coordination with the Uninsured Motorist

Identification Database;

- requiring reporting;
- requiring the creation of a database;
- addressing confidentiality of the information on the database; and
- limiting liability;

▶ provides a repeal date for the Independent Contractor Database Act; and

▶ makes technical amendments.

Monies Appropriated in this Bill:

None



28 **Other Special Clauses:**

29 None

30 **Utah Code Sections Affected:**

31 AMENDS:

32 **63-55-213**, as last amended by Laws of Utah 2007, Chapter 216

33 ENACTS:

34 **13-46-101**, Utah Code Annotated 1953

35 **13-46-102**, Utah Code Annotated 1953

36 **13-46-103**, Utah Code Annotated 1953

37 **13-46-201**, Utah Code Annotated 1953

38 **13-46-202**, Utah Code Annotated 1953

39 **13-46-301**, Utah Code Annotated 1953

40 **13-46-302**, Utah Code Annotated 1953

41 **13-46-303**, Utah Code Annotated 1953



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

44 Section 1. Section **13-46-101** is enacted to read:

45 **CHAPTER 46. INDEPENDENT CONTRACTOR DATABASE ACT**

46 **Part 1. General Provisions**

47 **13-46-101. Title.**

48 This chapter is known as the "Independent Contractor Database Act."

49 Section 2. Section **13-46-102** is enacted to read:

50 **13-46-102. Definitions.**

51 As used in this chapter:

52 (1) "Accessing agency" means:

53 (a) the department;

54 (b) the Department of Workforce Services;

55 (c) the Labor Commission; and

56 (d) the State Tax Commission.

57 (2) "Council" means the Independent Contractor Enforcement Council created in

58 Section 13-46-201.

59 (3) "Database" means the Independent Contractor Database created under this chapter.

60 (4) "Department" means the Department of Commerce.

61 Section 3. Section **13-46-103** is enacted to read:

62 **13-46-103. Scope.**

63 Nothing in this chapter may be construed as limiting or modifying the ability of an
64 accessing agency or the attorney general to share information that is not part of the database,
65 but is allowed to be shared by a law other than this chapter.

66 Section 4. Section **13-46-201** is enacted to read:

67 **Part 2. Independent Contractor Enforcement Council**

68 **13-46-201. Creation.**

69 (1) (a) There is created within the department the Independent Contractor Enforcement
70 Council consisting of the following ~~§~~→ [three] four ←~~§~~ members:

71 (i) the executive director of the department or the executive director's designee;

72 (ii) the executive director of the Department of Workforce Services or the executive
73 director's designee; ~~§~~→ [and] ←~~§~~

74 (iii) the commissioner of the Labor Commission or the commissioner's designee ~~§~~→ ; and

74a (iv) the chief information officer of the Department of Technology Services ←~~§~~ .

75 (b) The following shall work cooperatively with the council:

76 (i) the Department of Public Safety; and

77 (ii) the State Tax Commission.

78 (2) The executive director of the department is chair of the council.

79 (3) (a) A majority of the council members constitutes a quorum.

80 (b) A vote of the majority of the council members present when a quorum is present is
81 an action of the council.

82 (4) The council shall meet at the call of the chair, except that the chair shall call a
83 meeting at least quarterly.

84 (5) The department shall staff the council.

85 Section 5. Section **13-46-202** is enacted to read:

86 **13-46-202. Duties of the council.**

87 (1) The council shall:

88 (a) direct the design of a database described in Part 3, Independent Contractor
89 Database, so that the database may be accessed by one or more accessing agencies by no later

90 than July 1, 2009;

91 (b) beginning July 1, 2009, meet quarterly:

92 (i) ~~§~~ → with: ← ~~§~~

92a (A) ~~§~~ → [with] ← ~~§~~ the attorney general or a designee of the attorney general; ~~§~~ → [and] ← ~~§~~

93 (B) the chair of the State Tax Commission or a designee of the chair; and

93a **~~§~~ → (C) the commissioner of the Department of Public Safety or the commissioner's designee; and ← ~~§~~**

94 (ii) (A) to review the most recent results from the database; and

95 (B) to coordinate regulatory and law enforcement efforts; and

96 (c) subject to Subsection (2), report by no later than November 30 of each year

97 concerning the effectiveness of the database to:

98 (i) the governor; and

99 (ii) the Business and Labor Interim Committee.

100 (2) The council may study how to do the following:

101 (a) reduce costs to the state resulting from the misclassification of workers as

102 independent contractors;

103 (b) extend outreach and education efforts regarding the nature and requirements of

104 independent contractor status;

105 (c) promote efficient and effective information sharing amongst the member agencies;

106 and

107 (d) coordinate with the Uninsured Motorist Identification Database.

108 (3) (a) The council shall make a report required by this Subsection (3) to the Business
109 and Labor Interim Committee by no later than November 30 of 2008, 2009, 2010, and 2011.

110 (b) As part of the report required by this Subsection (3), the chairs of the Business and
111 Labor Interim Committee shall provide an opportunity to the following to report to the
112 Business Labor Interim Committee on the usefulness of the database:

113 (i) each accessing agency; ~~§~~ → [and] ← ~~§~~

114 (ii) the attorney general ~~§~~ → ; and

114a **(iii) the Department of Public Safety ← ~~§~~ .**

115 (c) The council shall include in the report required by this Subsection (3):

116 (i) an update on the design, implementation, and operation of the database;

117 (ii) findings regarding the nature and extent of the misclassification of workers as
118 independent contractors in this state;

119 (iii) the results of regulatory and enforcement activities related to the database; and

120 (iv) recommended legislative changes, if any, related to Subsection (2) or this

121 Subsection (3).

122 Section 6. Section **13-46-301** is enacted to read:

123 **Part 3. Independent Contractor Database**

124 **13-46-301. Creation.**

125 (1) (a) By no later than July 1, 2009, the department shall administer a database:

126 (i) designed by the council to share data amongst accessing agencies ~~§~~ **[and]** , ~~←§~~ **the attorney**
 127 general ~~§~~ **, and the Department of Public Safety** ~~←§~~ ; and

128 (ii) to be used by an accessing agency to identify when a person:

129 (A) holds that person out as an independent contractor; or

130 (B) engages in the performance of work as an independent contractor not subject to an
 131 employer's right to control the person.

132 (b) Notwithstanding Subsection (1)(a), the department may contract in accordance with
 133 this chapter with a person other than the department:

134 (i) to the extent necessary to design, implement, or operate the database; and

135 (ii) in a manner consistent with Title 63, Chapter 56, Utah Procurement Code.

136 (c) If the department contracts with a person who is not a government agency to
 137 operate the database, the department:

138 (i) shall monitor the operations under the contract; and

139 (ii) ensure that the contract allows for termination of the contract if the person fails to
 140 operate the database in accordance with the contract and this chapter.

141 (2) An accessing agency shall cooperate with the department to provide information:

142 (a) to be included in the database; and

143 (b) to the extent that disclosure of the information is otherwise permitted by law other
 144 than this chapter.

145 (3) The database shall include a process to compare the information in the database at
 146 least monthly to:

147 (a) identify a worker who may be misclassified as an independent contractor;

148 (b) promote employer compliance with state and federal laws related to:

149 (i) withholding taxes;

150 (ii) making payments for Social Security, Medicare, and unemployment insurance;

151 (iii) providing the proper level of workers' compensation insurance;

- 152 (iv) preventing insurance fraud;
- 153 (v) paying overtime and minimum wages; and
- 154 (vi) including a worker in an employee benefit program;
- 155 (c) reduce employer intentional misclassification of a worker as an independent
- 156 contractor; and
- 157 (d) identify identity theft.

158 Section 7. Section **13-46-302** is enacted to read:

159 **13-46-302. Confidentiality of information on the database.**

160 (1) An accessing agency shall designate who within that accessing agency may access

161 the database.

162 (2) (a) A person not designated under Subsection (1) may not use the database.

163 (b) An individual designated under Subsection (1) may access the database only for a

164 purpose provided for in Section 13-46-301.

165 (3) The database, and the information in the database, is considered a protected record

166 under Title 63, Chapter 2, Government Records Access and Management Act, except that an

167 accessing agency may disclose the information to a person who is not a person designated

168 under Subsection (1):

169 (a) to the extent necessary to take an administrative action by an accessing agency;

170 (b) to the extent necessary to prosecute a criminal act; or

171 (c) to the extent that the information is:

172 (i) obtainable from a source other than the database; and

173 (ii) permitted to be disclosed by a law other than this chapter.

174 Section 8. Section **13-46-303** is enacted to read:

175 **13-46-303. Liability.**

176 The state and a person with whom the department contracts under Section 13-46-301 is

177 not liable to any person for:

178 (1) the design, implementation, or operation of the database as provided in this chapter;

179 or

180 (2) the collection and disclosure of information in the database as provided in this

181 chapter.

182 Section 9. Section **63-55-213** is amended to read:

183 **63-55-213. Repeal dates, Title 13.**
184 (1) Title 13, Chapter 16, Motor Fuel Marketing Act, is repealed July 1, 2012.
185 (2) Title 13, Chapter 46, Independent Contractor Database Act, is repealed July 1,
186 2013.

Legislative Review Note
as of 1-31-08 11:53 AM

Office of Legislative Research and General Counsel

S.B. 189 - Independent Contractor Database

**Revised
Fiscal Note**

2008 General Session
State of Utah

State Impact

Enactment of this bill will require an appropriation of \$264,000 in FY 2009 from the Federal Unemployment Insurance Administrative Grant and the Commerce Service Fund to build the database. In FY 2010 the bill will require an appropriation of \$114,000 from the Federal Unemployment Insurance Administrative Grant and the Commerce Service Fund to fund database maintenance. This would also result in a reduction in General Fund revenue of \$250,000 in FY 2009 and \$100,000 in FY 2010.

	<u>FY 2008 Approp.</u>	<u>FY 2009 Approp.</u>	<u>FY 2010 Approp.</u>	<u>FY 2008 Revenue</u>	<u>FY 2009 Revenue</u>	<u>FY 2010 Revenue</u>
General Fund	\$0	\$0	\$0	\$0	(\$250,000)	(\$100,000)
Restricted Funds	\$0	\$14,000	\$14,000	\$0	\$0	\$0
Commerce Service Fund	\$0	\$250,000	\$100,000	\$0	\$0	\$0
Total	\$0	\$264,000	\$114,000	\$0	(\$250,000)	(\$100,000)

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.