

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 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;

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

75 (iv) the chief information officer of the Department of Technology Services.

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

77 (i) the Department of Public Safety; and

78 (ii) the State Tax Commission.

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

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

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

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

85 (5) The department shall staff the council.

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

87 **13-46-202. Duties of the council.**

88 (1) The council shall:

89 (a) direct the design of a database described in Part 3, Independent Contractor

90 Database, so that the database may be accessed by one or more accessing agencies by no later
91 than July 1, 2009;

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

93 (i) with:

94 (A) the attorney general or a designee of the attorney general;

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

96 (C) the commissioner of the Department of Public Safety or the commissioner's
97 designee; and

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

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

100 (c) subject to Subsection (2), report by no later than November 30 of each year
101 concerning the effectiveness of the database to:

102 (i) the governor; and

103 (ii) the Business and Labor Interim Committee.

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

105 (a) reduce costs to the state resulting from the misclassification of workers as
106 independent contractors;

107 (b) extend outreach and education efforts regarding the nature and requirements of
108 independent contractor status;

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

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

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

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

- 117 (i) each accessing agency;
- 118 (ii) the attorney general; and
- 119 (iii) the Department of Public Safety.

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

- 121 (i) an update on the design, implementation, and operation of the database;
- 122 (ii) findings regarding the nature and extent of the misclassification of workers as
123 independent contractors in this state;

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

125 (iv) recommended legislative changes, if any, related to Subsection (2) or this
126 Subsection (3).

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

128 **Part 3. Independent Contractor Database**

129 **13-46-301. Creation.**

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

131 (i) designed by the council to share data amongst accessing agencies, the attorney
132 general, and the Department of Public Safety; and

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

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

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

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

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

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

141 (c) If the department contracts with a person who is not a government agency to

142 operate the database, the department:

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

144 (ii) ensure that the contract allows for termination of the contract if the person fails to

145 operate the database in accordance with the contract and this chapter.

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

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

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

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

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

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

154 (i) withholding taxes;

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

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

157 (iv) preventing insurance fraud;

158 (v) paying overtime and minimum wages; and

159 (vi) including a worker in an employee benefit program;

160 (c) reduce employer intentional misclassification of a worker as an independent
161 contractor; and

162 (d) identify identity theft.

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

164 **13-46-302. Confidentiality of information in the database.**

165 (1) An accessing agency shall designate who within that accessing agency may access
166 the database.

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

168 (b) An individual designated under Subsection (1) may access the database only for a
169 purpose provided for in Section 13-46-301.

170 (3) The database, and the information in the database, is considered a protected record
171 under Title 63, Chapter 2, Government Records Access and Management Act, except that an
172 accessing agency may disclose the information to a person who is not a person designated under
173 Subsection (1):

- 174 (a) to the extent necessary to take an administrative action by an accessing agency;
- 175 (b) to the extent necessary to prosecute a criminal act; or
- 176 (c) to the extent that the information is:
 - 177 (i) obtainable from a source other than the database; and
 - 178 (ii) permitted to be disclosed by a law other than this chapter.

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

180 **13-46-303. Liability.**

181 The state and a person with whom the department contracts under Section 13-46-301 is
182 not liable to any person for:

- 183 (1) the design, implementation, or operation of the database as provided in this chapter;
- 184 or
- 185 (2) the collection and disclosure of information in the database as provided in this
186 chapter.

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

188 **63-55-213. Repeal dates, Title 13.**

- 189 (1) Title 13, Chapter 16, Motor Fuel Marketing Act, is repealed July 1, 2012.
- 190 (2) Title 13, Chapter 46, Independent Contractor Database Act, is repealed July 1,
191 2013.