

WORKERS' COMPENSATION AMENDMENTS

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 workers' compensation.

Highlighted Provisions:

This bill:

- ▶ modifies provisions related to workers' compensation and a workers' compensation coverage waiver;
- ▶ modifies provisions related to workers' compensation insurance fraud; and
- ▶ makes technical and conforming amendments.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

31A-21-104, as last amended by Laws of Utah 2007, Chapters 89 and 307

31A-22-501.1, as enacted by Laws of Utah 2005, Chapter 125

34A-2-103, as last amended by Laws of Utah 2006, Chapter 295

34A-2-110, as last amended by Laws of Utah 2007, Chapter 339

ENACTS:

31A-22-1011, Utah Code Annotated 1953



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

Section 1. Section **31A-21-104** is amended to read:

31A-21-104. Insurable interest and consent -- Scope.

(1) As used in this chapter:

(a) For purposes of this section, "exchange" means an exchange made pursuant to Section 1035, Internal Revenue Code, as may be amended.

(b) "Insurable interest" in a person means the following, including a circumstance described in Subsection (3):

(i) for ~~[persons]~~ a person closely related by blood or by law, a substantial interest engendered by love and affection; or

(ii) in the case of ~~[other persons]~~ a person not described in Subsection (1)(b)(i), a lawful and substantial interest in having the life, health, and bodily safety of the person insured continue.

(c) "Insurable interest" in property or liability means any lawful and substantial economic interest in the nonoccurrence of the event insured against.

(d) "Viatical settlement" is as defined in Section 31A-36-102.

(2) (a) An insurer may not knowingly provide insurance to a person who does not have or expect to have an insurable interest in the subject of the insurance.

(b) A person may not knowingly procure, directly, by assignment, or otherwise, an interest in the proceeds of an insurance policy unless that person has or expects to have an insurable interest in the subject of the insurance.

(c) In the case of life insurance, the insurable interest requirements of Subsections (2)(a) and (b):

(i) are satisfied if the requirements are met:

(A) at the effective date of the insurance policy; and

(B) at the time of a later procurement, if any, of an interest in the proceeds of an insurance policy; and

(ii) do not need to be met at the time that proceeds of an insurance policy are payable if the requirements are met at the times specified in Subsection (2)(c)(i).

(d) Except as provided in Subsections (7)~~;~~ and (8), ~~[and (9), any]~~ insurance provided

59 in violation of this Subsection (2) is subject to Subsection (6).

60 (e) A policy holder in a group insurance policy does not need an insurable interest if a
61 certificate holder or a person other than the group policyholder who is specified by the
62 certificate holder is the recipient of the proceeds of the group insurance policy.

63 (3) The following is a nonexhaustive list of insurable interests:

64 (a) Each person has an unlimited insurable interest in that person's own life and health.

65 (b) A shareholder, member, or partner has an insurable interest in the life of [~~other~~
66 ~~shareholders, members, or partners~~] another shareholder, member, or partner for purposes of an
67 insurance [~~contracts that are~~] contract that is an integral part of a legitimate buy-sell agreement
68 respecting shares, membership interests, or partnership interests in the business.

69 (c) A trust has an insurable interest in the subject of the insurance to the extent that a
70 beneficiary of the trust has the insurable interest.

71 (d) (i) Subject to Subsection (3)(d)(v), an employer or an employer sponsored trust:

72 (A) has an insurable interest in the lives of the employer's:

73 (I) directors;

74 (II) officers;

75 (III) managers;

76 (IV) nonmanagement employees; and

77 (V) retired employees; and

78 (B) may insure [~~the lives~~] a life listed in Subsection (3)(d)(i)(A):

79 (I) on an individual or group basis; and

80 (II) with the written consent of the insured.

81 (ii) (A) A trustee of a trust established by an employer for the sole benefit of the
82 employer has the same insurable interest in the life and health of any person as does the
83 employer.

84 (B) Without limiting the general principle in Subsection (3)(d)(ii)(A), a trustee of a
85 trust established by an employer that provides life, health, disability, retirement, or similar
86 benefits to an individual identified in Subsection (3)(d)(i)(A) has an insurable interest in the
87 life of the individual described in Subsection (3)(d)(i)(A) for whom the benefits are provided.

88 (iii) (A) For the purpose of exchanging life insurance, [~~the individuals~~] an individual
89 described in Subsection (3)(d)(i)(A) [~~include~~] includes an individual who was formerly

90 included under Subsection (3)(d)(i)(A) if the life insurance to be exchanged:

91 (I) is purchased or acquired while the individual is a current director, officer, manager,
92 or employee; and

93 (II) is exchanged for life insurance in an amount that does not exceed the amount of the
94 insurance being exchanged.

95 (B) Written consent of an individual described in this Subsection (3)(d)(iii) is not
96 required at the time of the exchange of the life insurance.

97 (C) This Subsection (3)(d)(iii) shall be interpreted in a manner consistent with
98 Subsection (2)(c).

99 (iv) (A) If an employer or trustee establishes an insurable interest as provided in this
100 Subsection (3)(d) and all of the employer's business is acquired, purchased, merged into, or
101 otherwise transferred to a subsequent employer, the insurable interest of the original employer
102 or trustee in an individual described in Subsection (3)(d)(i)(A) is automatically transferred to:

103 (I) the subsequent employer; or

104 (II) the trustee of a trust established by the subsequent employer for the subsequent
105 employer's sole benefit.

106 (B) A subsequent employer or a trustee of a trust described in Subsection
107 (3)(d)(iv)(A)(II) may exchange life insurance that is purchased or acquired in an individual
108 described in Subsection (3)(d)(i)(A) by the original employer or trustee without establishing a
109 new insurable interest at the time of the exchange of the insurance.

110 (v) The extent of an employer's or employer sponsored trust's insurable interest for a
111 nonmanagement or retired employee under Subsection (3)(d)(i) is limited to an amount
112 commensurate with the employer's unfunded liabilities at the time insurance on the
113 nonmanagement or retired employee is procured.

114 (4) (a) Except as provided in Subsection (5), an insurer may not knowingly issue an
115 individual life or accident and health insurance policy to a person other than the one whose life
116 or health is at risk unless that person:

117 (i) is 18 years of age or older;

118 (ii) is not under guardianship under Title 75, Chapter 5, Protection of Persons Under
119 Disability and Their Property; and

120 (iii) gives written consent to the issuance of the policy.

- 121 (b) A person shall express consent:
- 122 (i) by signing an application for the insurance with knowledge of the nature of the
- 123 document; or
- 124 (ii) in any other reasonable way.
- 125 (c) [~~Any insurance~~] Insurance provided in violation of this Subsection (4) is subject to
- 126 Subsection (6).
- 127 (5) (a) A life or accident and health insurance policy may be taken out without consent
- 128 in a circumstance described in this Subsection (5)(a).
- 129 (i) A person may obtain insurance on a dependent who does not have legal capacity.
- 130 (ii) A creditor may, at the creditor's expense, obtain insurance on the debtor in an
- 131 amount reasonably related to the amount of the debt.
- 132 (iii) A person may obtain life and accident and health insurance on an immediate
- 133 family member who is living with or dependent on the person.
- 134 (iv) A person may obtain an accident and health insurance policy on others that would
- 135 merely indemnify the policyholder against expenses the person would be legally or morally
- 136 obligated to pay.
- 137 (v) The commissioner may adopt rules permitting issuance of insurance for a limited
- 138 term on the life or health of a person serving outside the continental United States who is in the
- 139 public service of the United States, if the policyholder is related within the second degree by
- 140 blood or by marriage to the person whose life or health is insured.
- 141 (b) Consent may be given by another in a circumstance described in this Subsection
- 142 (5)(b).
- 143 (i) A parent, a person having legal custody of a minor, or a guardian of a person under
- 144 Title 75, Chapter 5, Protection of Persons Under Disability and Their Property, may consent to
- 145 the issuance of a policy on a dependent child or on a person under guardianship under Title 75,
- 146 Chapter 5, Protection of Persons Under Disability and Their Property.
- 147 (ii) A grandparent may consent to the issuance of life or accident and health insurance
- 148 on a grandchild.
- 149 (iii) A court of general jurisdiction may give consent to the issuance of a life or
- 150 accident and health insurance policy on an ex parte application showing facts the court
- 151 considers sufficient to justify the issuance of that insurance.

- 152 (6) (a) An insurance policy is not invalid because:
- 153 (i) the insurance policy is issued or procured in violation of Subsection (2); or
- 154 (ii) consent has not been given.
- 155 (b) Notwithstanding Subsection (6)(a), a court with appropriate jurisdiction may:
- 156 (i) order the proceeds to be paid to some person who is equitably entitled to the
- 157 proceeds, other than the one to whom the policy is designated to be payable; or
- 158 (ii) create a constructive trust in the proceeds or a part of the proceeds on behalf of a
- 159 person who is equitably entitled to the proceeds, subject to all the valid terms and conditions of
- 160 the policy other than those relating to insurable interest or consent.
- 161 (7) This section does not prevent [~~any~~] an organization described under [~~26 U.S.C.~~
- 162 ~~Sec.~~] Section 501(c)(3), (e), or (f), Internal Revenue Code, as amended, and the regulations
- 163 made under this section, and which is regulated under Title 13, Chapter 22, Charitable
- 164 Solicitations Act, from soliciting and procuring, by assignment or designation as beneficiary, a
- 165 gift or assignment of an interest in life insurance on the life of the donor or assignor or from
- 166 enforcing payment of proceeds from that interest.
- 167 (8) An insurance policy transferred pursuant to Chapter 36, Viatical Settlements Act, is
- 168 not subject to Subsection (6)(b) and nothing else in this section shall prevent:
- 169 (a) [~~any~~] a policyholder of life insurance, whether or not the policyholder is also the
- 170 subject of the insurance, from entering into a viatical settlement;
- 171 (b) [~~any~~] a person from soliciting a person to enter into a viatical settlement;
- 172 (c) a person from enforcing payment of proceeds from the interest obtained under a
- 173 viatical settlement; or
- 174 (d) a viatical settlement provider, a viatical settlement purchaser, a financing entity, a
- 175 related provider trust, or a special purpose entity from executing any of the following with
- 176 respect to the death benefit or ownership of any portion of a viaticated policy as provided for in
- 177 Section 31A-36-109:
- 178 (i) an assignment;
- 179 (ii) a sale;
- 180 (iii) a transfer;
- 181 (iv) a devise; or
- 182 (v) a bequest.

183 ~~[(9) Notwithstanding Subsection (2), an insurer authorized under this title to issue a~~
 184 ~~workers' compensation policy may issue a workers' compensation policy to a sole~~
 185 ~~proprietorship, corporation, or partnership that elects not to include any owner, corporate~~
 186 ~~officer, or partner as an employee under the policy even if at the time the policy is issued the~~
 187 ~~sole proprietorship, corporation, or partnership has no employees.]~~

188 ~~[(10)]~~ (9) (a) The insurable interests described in this section:

189 (i) are not exclusive;

190 (ii) are cumulative of an insurable interest that is not expressly included in this section
 191 but exists in common law; and

192 (iii) are not in lieu of an insurable interest that is not expressly included in this section
 193 but exists in common law.

194 (b) The inclusion of an insurable interest in this section may not be considered to be
 195 excluding another insurable interest that is similar to the insurable interest included in this
 196 section.

197 (c) (i) The recognition of an insurable interest in this section by Chapter 89, Laws of
 198 Utah 2007, does not imply or create a presumption that the insurable interest did not exist
 199 before April 30, 2007.

200 (ii) An insurable interest shall be presumed with respect to a life insurance policy
 201 issued before April 30, 2007 to a person whose insurable interest is recognized in this section
 202 by Chapter 89, Laws of Utah 2007.

203 Section 2. Section **31A-22-501.1** is amended to read:

204 **31A-22-501.1. Employer groups.**

205 (1) The lives of a group of individuals may be insured under a policy:

206 (a) issued as a policyholder, to:

207 (i) an employer; or

208 (ii) an employer sponsored trust for the benefit of the employer's employees;

209 (b) having an insurable interest as stated in Subsection 31A-21-104~~[(2)(a)(v)]~~(3)(d);

210 and

211 (c) subject to the requirement of Subsection 31A-21-104~~[(9)]~~(3)(d)(v).

212 (2) A policy issued under this section is not subject to:

213 (a) Section 31A-21-311; and

214 (b) Sections 31A-22-516 through 31A-22-522.

215 Section 3. Section **31A-22-1011** is enacted to read:

216 **31A-22-1011. Workers' compensation coverage waivers.**

217 (1) As used in this section:

218 (a) "Business entity" means:

219 (i) a sole proprietorship;

220 (ii) a corporation;

221 (iii) a partnership;

222 (iv) a limited liability company; or

223 (v) an entity similar to one described in Subsections (1)(a)(i) through (iv).

224 (b) "Waiver" means a workers' compensation coverage waiver issued under this
225 section.

226 (2) (a) Notwithstanding Section 31A-21-104, if the information required by Subsection
227 (3) is provided, an insurer authorized under this title to issue a workers' compensation policy
228 may issue a workers' compensation coverage waiver to a business entity that:

229 (i) elects not to include an owner, partner, or corporate officer or director as an
230 employee under a workers' compensation policy in accordance with Section 34A-2-103 and
231 Subsection 34A-2-104(4); and

232 (ii) employs no other employee on the day on which the insurer issues the waiver to the
233 business entity.

234 (b) As of the day on which a business entity described in Subsection (2)(a) employs an
235 employee other than an owner, partner, or corporate officer or director described in Subsection
236 (2)(a):

237 (i) the business entity's waiver is invalid; and

238 (ii) the business entity is required to provide workers' compensation coverage for that
239 employee in accordance with Section 34A-2-201.

240 (3) To obtain a waiver, a business entity shall submit to the insurer that issues the
241 waiver:

242 (a) a copy of two or more of the following:

243 (i) the business entity's federal or state income tax return that shows business income
244 for the complete taxable year that immediately precedes the day on which the business entity

245 submits the information;
246 (ii) a valid business license;
247 (iii) a license to engage in an occupation or profession, including a license under Title
248 59, Occupations and Professions; or
249 (iv) documentation of an active liability insurance policy that covers the business
250 entity's activities; or
251 (b) a copy of an item listed in Subsection (3)(a) and a copy of two or more of the
252 following:
253 (i) proof of a bank account for the business entity;
254 (ii) proof that for the business entity there is:
255 (A) a telephone number; and
256 (B) a physical location; or
257 (iii) an advertisement of services in a newspaper of general circulation or telephone
258 directory showing the business entity's:
259 (A) name; and
260 (B) contact information.
261 (4) (a) An insurer that issues a waiver shall report to the Labor Commission for each
262 business entity to which the insurer issues a waiver:
263 (i) the name, address, and telephone number of the business entity;
264 (ii) a name of an individual who can be contacted on behalf of the business entity; and
265 (iii) other information required by the Labor Commission, by rule made in accordance
266 with Title 63, Chapter 46a, Utah Administrative Rulemaking Act.
267 (b) The Labor Commission, by rule made in accordance with Title 63, Chapter 46a,
268 Utah Administrative Rulemaking Act, shall determine how frequently an insurer shall make a
269 report required by Subsection (4)(a), except that the Labor Commission shall require that a
270 report be submitted at least monthly.
271 (5) (a) The Labor Commission may investigate a business entity to determine whether
272 the business entity validly elects to not cover an owner, partner, or corporate officer or director
273 as an employee under a workers' compensation policy in accordance with Section 34A-2-103.
274 (b) If the Labor Commission determines that a business entity's election as provided in
275 this section is invalid, the Labor Commission may:

276 (i) prohibit a business entity from using a waiver obtained under this section; and
277 (ii) take any action provided for under Title 34A, Chapter 2 or 3 for failure to obtain
278 workers' compensation coverage for an employee.

279 Section 4. Section **34A-2-103** is amended to read:

280 **34A-2-103. Employers enumerated and defined -- Regularly employed --**
281 **Statutory employers.**

282 (1) (a) The state, and each county, city, town, and school district in the state are
283 considered employers under this chapter and Chapter 3, Utah Occupational Disease Act.

284 (b) For the purposes of the exclusive remedy in this chapter and Chapter 3, Utah
285 Occupational Disease Act prescribed in Sections 34A-2-105 and 34A-3-102, the state is
286 considered to be a single employer and includes any office, department, agency, authority,
287 commission, board, institution, hospital, college, university, or other instrumentality of the
288 state.

289 (2) (a) Except as provided in Subsection (4), each person, including each public utility
290 and each independent contractor, who regularly employs one or more workers or operatives in
291 the same business, or in or about the same establishment, under any contract of hire, express or
292 implied, oral or written, is considered an employer under this chapter and Chapter 3, Utah
293 Occupational Disease Act.

294 (b) As used in this Subsection (2):

295 (i) "Independent contractor" means any person engaged in the performance of any work
296 for another who, while so engaged, is:

297 (A) independent of the employer in all that pertains to the execution of the work;

298 (B) not subject to the routine rule or control of the employer;

299 (C) engaged only in the performance of a definite job or piece of work; and

300 (D) subordinate to the employer only in effecting a result in accordance with the
301 employer's design.

302 (ii) "Regularly" includes all employments in the usual course of the trade, business,
303 profession, or occupation of the employer, whether continuous throughout the year or for only a
304 portion of the year.

305 (3) (a) The client company in an employee leasing arrangement under Title 58, Chapter
306 59, Professional Employer Organization Registration Act, is considered the employer of leased

307 employees and shall secure workers' compensation benefits for them by complying with
308 Subsection 34A-2-201(1) or (2) and commission rules.

309 (b) An insurance carrier may underwrite workers' compensation secured in accordance
310 with Subsection (3)(a) showing the leasing company as the named insured and each client
311 company as an additional insured by means of individual endorsements.

312 (c) Endorsements shall be filed with the division as directed by commission rule.

313 (d) The division shall promptly inform the Division of Occupation and Professional
314 Licensing within the Department of Commerce if the division has reason to believe that an
315 employee leasing company is not in compliance with Subsection 34A-2-201(1) or (2) and
316 commission rules.

317 (4) A domestic employer who does not employ one employee or more than one
318 employee at least 40 hours per week is not considered an employer under this chapter and
319 Chapter 3, Utah Occupational Disease Act.

320 (5) (a) As used in this Subsection (5):

321 (i) (A) "agricultural employer" means a person who employs agricultural labor as
322 defined in Subsections 35A-4-206(1) and (2) and does not include employment as provided in
323 Subsection 35A-4-206(3); and

324 (B) notwithstanding Subsection (5)(a)(i)(A), only for purposes of determining who is a
325 member of the employer's immediate family under Subsection (5)(a)(ii), if the agricultural
326 employer is a corporation, partnership, or other business entity, "agricultural employer" means
327 an officer, director, or partner of the business entity;

328 (ii) "employer's immediate family" means:

329 (A) an agricultural employer's:

330 (I) spouse;

331 (II) grandparent;

332 (III) parent;

333 (IV) sibling;

334 (V) child;

335 (VI) grandchild;

336 (VII) nephew; or

337 (VIII) niece;

338 (B) a spouse of any person provided in Subsection (5)(a)(ii)(A)(II) through (VIII); or

339 (C) an individual who is similar to those listed in Subsections (5)(a)(ii)(A) or (B) as
340 defined by rules of the commission; and

341 (iii) "nonimmediate family" means a person who is not a member of the employer's
342 immediate family.

343 (b) For purposes of this chapter and Chapter 3, Utah Occupational Disease Act, an
344 agricultural employer is not considered an employer of a member of the employer's immediate
345 family.

346 (c) For purposes of this chapter and Chapter 3, Utah Occupational Disease Act, an
347 agricultural employer is not considered an employer of a nonimmediate family employee if:

348 (i) for the previous calendar year the agricultural employer's total annual payroll for all
349 nonimmediate family employees was less than \$8,000; or

350 (ii) (A) for the previous calendar year the agricultural employer's total annual payroll
351 for all nonimmediate family employees was equal to or greater than \$8,000 but less than
352 \$50,000; and

353 (B) the agricultural employer maintains insurance that covers job-related injuries of the
354 employer's nonimmediate family employees in at least the following amounts:

355 (I) \$300,000 liability insurance, as defined in Section 31A-1-301; and

356 (II) \$5,000 for health care benefits similar to benefits under health care insurance as
357 defined in Section 31A-1-301.

358 (d) For purposes of this chapter and Chapter 3, Utah Occupational Disease Act, an
359 agricultural employer is considered an employer of a nonimmediate family employee if:

360 (i) for the previous calendar year the agricultural employer's total annual payroll for all
361 nonimmediate family employees is equal to or greater than \$50,000; or

362 (ii) (A) for the previous year the agricultural employer's total payroll for nonimmediate
363 family employees was equal to or exceeds \$8,000 but is less than \$50,000; and

364 (B) the agricultural employer fails to maintain the insurance required under Subsection
365 (5)(c)(ii)(B).

366 (6) An employer of agricultural laborers or domestic servants who is not considered an
367 employer under this chapter and Chapter 3, Utah Occupational Disease Act, may come under
368 this chapter and Chapter 3, Utah Occupational Disease Act, by complying with:

369 (a) this chapter and Chapter 3, Utah Occupational Disease Act; and

370 (b) the rules of the commission.

371 (7) (a) (i) As used in this Subsection (7)(a), "employer" includes any of the following

372 persons that procures work to be done by a contractor notwithstanding whether or not the

373 person directly employs a person:

374 (A) a sole proprietorship;

375 (B) a corporation;

376 (C) a partnership;

377 (D) a limited liability company; or

378 (E) a person similar to one described in Subsections (7)(a)(i)(A) through (D).

379 ~~[(7) (a)]~~ (ii) If ~~[any person who is]~~ an employer procures any work to be done wholly

380 or in part for the employer by a contractor over whose work the employer retains supervision or

381 control, and this work is a part or process in the trade or business of the employer, the

382 contractor, all persons employed by the contractor, all subcontractors under the contractor, and

383 all persons employed by any of these subcontractors, are considered employees of the original

384 employer for the purposes of this chapter and Chapter 3, Utah Occupational Disease Act.

385 (b) Any person who is engaged in constructing, improving, repairing, or remodelling a

386 residence that the person owns or is in the process of acquiring as the person's personal

387 residence may not be considered an employee or employer solely by operation of Subsection

388 (7)(a).

389 (c) A partner in a partnership or an owner of a sole proprietorship is not considered an

390 employee under Subsection (7)(a) if the employer who procures work to be done by the

391 partnership or sole proprietorship obtains and relies on either:

392 (i) a valid certification of the partnership's or sole proprietorship's compliance with

393 Section 34A-2-201 indicating that the partnership or sole proprietorship secured the payment of

394 workers' compensation benefits pursuant to Section 34A-2-201; or

395 (ii) if a partnership or sole proprietorship with no employees other than a partner of the

396 partnership or owner of the sole proprietorship, a workers' compensation ~~[policy]~~ coverage

397 waiver issued by an insurer pursuant to ~~[Subsection 31A-21-104(8)]~~ Section 31A-22-1011

398 stating that:

399 (A) the partnership or sole proprietorship is customarily engaged in an independently

400 established trade, occupation, profession, or business; and

401 (B) the partner or owner personally waives the partner's or owner's entitlement to the
402 benefits of this chapter and Chapter 3, Utah Occupational Disease Act, in the operation of the
403 partnership or sole proprietorship.

404 (d) A director or officer of a corporation is not considered an employee under
405 Subsection (7)(a) if the director or officer is excluded from coverage under Subsection
406 34A-2-104(4).

407 (e) A contractor or subcontractor is not an employee of the employer under Subsection
408 (7)(a), if the employer who procures work to be done by the contractor or subcontractor obtains
409 and relies on either:

410 (i) a valid certification of the contractor's or subcontractor's compliance with Section
411 34A-2-201; or

412 (ii) if a partnership, corporation, or sole proprietorship with no employees other than a
413 partner of the partnership, officer of the corporation, or owner of the sole proprietorship, a
414 workers' compensation [~~policy~~] coverage waiver issued by an insurer pursuant to [~~Subsection~~
415 ~~31A-21-104(8)~~] Section 31A-22-1011 stating that:

416 (A) the partnership, corporation, or sole proprietorship is customarily engaged in an
417 independently established trade, occupation, profession, or business; and

418 (B) the partner, corporate officer, or owner personally waives the partner's, corporate
419 officer's, or owner's entitlement to the benefits of this chapter and Chapter 3, Utah
420 Occupational Disease Act, in the operation of the partnership's, corporation's, or sole
421 proprietorship's enterprise under a contract of hire for services.

422 (f) (i) For purposes of this Subsection (7)(f), "eligible employer" means a person who:

423 (A) is an employer; and

424 (B) procures work to be done wholly or in part for the employer by a contractor,
425 including:

426 (I) all persons employed by the contractor;

427 (II) all subcontractors under the contractor; and

428 (III) all persons employed by any of these subcontractors.

429 (ii) Notwithstanding the other provisions in this Subsection (7), if the conditions of
430 Subsection (7)(f)(iii) are met, an eligible employer is considered an employer for purposes of

431 Section 34A-2-105 of the contractor, subcontractor, and all persons employed by the contractor
432 or subcontractor described in Subsection (7)(f)(i)(B).

433 (iii) Subsection (7)(f)(ii) applies if the eligible employer:

434 (A) under Subsection (7)(a) is liable for and pays workers' compensation benefits as an
435 original employer under Subsection (7)(a) because the contractor or subcontractor fails to
436 comply with Section 34A-2-201;

437 (B) (I) secures the payment of workers' compensation benefits for the contractor or
438 subcontractor pursuant to Section 34A-2-201;

439 (II) procures work to be done that is part or process of the trade or business of the
440 eligible employer; and

441 (III) does the following with regard to a written workplace accident and injury
442 reduction program that meets the requirements of Subsection 34A-2-111(3)(d):

443 (Aa) adopts the workplace accident and injury reduction program;

444 (Bb) posts the workplace accident and injury reduction program at the work site at
445 which the eligible employer procures work; and

446 (Cc) enforces the workplace accident and injury reduction program according to the
447 terms of the workplace accident and injury reduction program; or

448 (C) (I) obtains and relies on:

449 (Aa) a valid certification described in Subsection (7)(c)(i) or (7)(e)(i);

450 (Bb) a workers' compensation [~~policy~~] coverage waiver described in Subsection
451 (7)(c)(ii) or (7)(e)(ii); or

452 (Cc) proof that a director or officer is excluded from coverage under Subsection
453 34A-2-104(4);

454 (II) is liable under Subsection (7)(a) for the payment of workers' compensation benefits
455 if the contractor or subcontractor fails to comply with Section 34A-2-201;

456 (III) procures work to be done that is part or process in the trade or business of the
457 eligible employer; and

458 (IV) does the following with regard to a written workplace accident and injury
459 reduction program that meets the requirements of Subsection 34A-2-111(3)(d):

460 (Aa) adopts the workplace accident and injury reduction program;

461 (Bb) posts the workplace accident and injury reduction program at the work site at

462 which the eligible employer procures work; and

463 (Cc) enforces the workplace accident and injury reduction program according to the
464 terms of the workplace accident and injury reduction program.

465 Section 5. Section **34A-2-110** is amended to read:

466 **34A-2-110. Workers' compensation insurance fraud -- Elements -- Penalties --**
467 **Notice.**

468 (1) As used in this section:

469 (a) "Corporation" has the same meaning as in Section 76-2-201.

470 (b) "Intentionally" has the same meaning as in Section 76-2-103.

471 (c) "Knowingly" has the same meaning as in Section 76-2-103.

472 (d) "Person" has the same meaning as in Section 76-1-601.

473 (e) "Recklessly" has the same meaning as in Section 76-2-103.

474 (f) "Thing of value" means one or more of the following obtained under this chapter or

475 Chapter 3, Utah Occupational Disease Act:

476 (i) workers' compensation insurance coverage;

477 (ii) disability compensation;

478 (iii) a medical benefit;

479 (iv) a good;

480 (v) a professional service;

481 (vi) a fee for a professional service; or

482 (vii) anything of value.

483 (2) (a) ~~[Any]~~ A person is guilty of workers' compensation insurance fraud if that person
484 intentionally, knowingly, or recklessly:

485 (i) ~~devises [any] a scheme or artifice to [obtain workers' compensation insurance~~
486 ~~coverage, disability compensation, medical benefits, goods, professional services, fees for~~
487 ~~professional services, or anything of value under this chapter or Chapter 3, Utah Occupational~~
488 ~~Disease Act, by means of false or fraudulent pretenses, representations, promises, or material~~
489 ~~omissions; and] do the following by means of a false or fraudulent pretense, representation,~~
490 ~~promise, or material omission:~~

491 (A) obtain a thing of value under this chapter or Chapter 3;

492 (B) avoid paying the premium that an insurer charges, for an employee on the basis of

493 the underwriting criteria applicable to that employee, to obtain a thing of value under this
 494 chapter or Chapter 3; or

495 (C) deprive an employee of a thing of value under this chapter or Chapter 3; and

496 (ii) communicates or causes a communication with another in furtherance of the
 497 scheme or artifice.

498 (b) A violation of this Subsection (2) includes a scheme or artifice to:

499 (i) make or cause to be made a false written or oral statement with the intent to obtain
 500 insurance coverage as mandated by this chapter or Chapter 3 at a rate that does not reflect the
 501 risk, industry, employer, or class code actually covered by the insurance coverage;

502 (ii) form a business, reorganize a business, or change ownership in a business with the
 503 intent to obtain insurance coverage as mandated by this chapter or Chapter 3 at a rate that does
 504 not reflect the risk, industry, employer, or class code actually covered by the insurance
 505 coverage;

506 (iii) misclassify an employee as one of the following so as to avoid the obligation to
 507 obtain insurance coverage as mandated by this chapter or Chapter 3:

508 (A) an independent contractor;

509 (B) a sole proprietor;

510 (C) an owner;

511 (D) a partner;

512 (E) an officer; or

513 (F) a member in a limited liability company;

514 (iv) use a workers' compensation coverage waiver issued under Section 31A-22-1011
 515 to deprive an employee of workers' compensation coverage under this chapter or Chapter 3; or

516 (v) collect or make a claim for temporary disability compensation as provided in
 517 Section 34A-2-410 while working for gain.

518 ~~[(b)]~~ (3) (a) Workers' compensation insurance fraud under Subsection (2)[(a)] is
 519 punishable in the manner prescribed [by Section 76-10-1801 for communication fraud] in
 520 Subsection (3)(c).

521 ~~[(3)]~~ (b) A corporation or association is guilty of the offense of workers' compensation
 522 insurance fraud under the same conditions as those set forth in Section 76-2-204.

523 ~~[(4) The]~~ (c) (i) In accordance with Subsection (3)(c)(ii), the determination of the

524 degree of ~~[any]~~ an offense under Subsection (2) shall be measured by the following on the basis
525 of which creates the greatest penalty:

526 (A) the total value of all property, money, or other things obtained or sought to be
527 obtained by the scheme or artifice described in Subsection (2)~~[, except as provided in~~
528 ~~Subsection 76-10-1801(1)(c).];~~ or

529 (B) the number of individuals not covered under this chapter or Chapter 3 because of
530 the scheme or artifice described in Subsection (2).

531 (ii) A person is guilty of:

532 (A) a class A misdemeanor:

533 (I) if the value of the property, money, or other thing of value described in Subsection
534 (3)(c)(i)(A) is less than \$1,000; or

535 (II) for each individual described in Subsection (3)(c)(i)(B), if the number of
536 individuals described in Subsection (3)(c)(i)(B) is less than five;

537 (B) a third degree felony:

538 (I) if the value of the property, money, or other thing of value described in Subsection
539 (3)(c)(i)(A) is equal to or greater than \$1,000, but is less than \$5,000; or

540 (II) for each individual described in Subsection (3)(c)(i)(B), if the number of
541 individuals described in Subsection (3)(c)(i)(B) is equal to or greater than five, but is less than
542 50; and

543 (C) a second degree felony:

544 (I) if the value of the property, money, or other thing of value described in Subsection
545 (3)(c)(i)(A) is equal to or greater than \$5,000; or

546 (II) for each individual described in Subsection (3)(c)(i)(B), if the number of
547 individuals described in Subsection (3)(c)(i)(B) is equal to or greater than 50.

548 (4) The following are not a necessary element of an offense described in Subsection
549 (2):

550 ~~[(5) Reliance]~~ (a) reliance on the part of ~~[any]~~ a person ~~[is not a necessary element of~~
551 ~~the offense described in Subsection (2).];~~

552 ~~[(6) An]~~ (b) the intent on the part of the perpetrator of ~~[any]~~ an offense described in
553 Subsection (2) to permanently deprive ~~[any]~~ a person of property, money, or anything of value
554 ~~[is not a necessary element of this offense.];~~ or

555 ~~[(7) An]~~ (c) an insurer or self-insured employer giving written notice in accordance
 556 with Subsection ~~[(10)]~~ (5) that workers' compensation insurance fraud is a crime ~~[is not a~~
 557 ~~necessary element of the offense described in Subsection (2)].~~

558 ~~[(8) A scheme or artifice to obtain workers' compensation insurance coverage includes~~
 559 ~~any scheme or artifice to make or cause to be made any false written or oral statement or~~
 560 ~~business reorganization, incorporation, or change in ownership intended to obtain insurance~~
 561 ~~coverage as mandated by this chapter or Chapter 3, Utah Occupational Disease Act, at rates~~
 562 ~~that do not reflect the risk, industry, employer, or class codes actually covered by the policy.]~~

563 ~~[(9) A scheme or artifice to obtain disability compensation includes a scheme or~~
 564 ~~artifice to collect or make a claim for temporary disability compensation as provided in Section~~
 565 ~~34A-2-410 while working for gain.]~~

566 ~~[(10)(a) Each]~~ (5) (a) An insurer or self-insured employer who, in connection with
 567 this chapter or Chapter 3, Utah Occupational Disease Act, prints, reproduces, or furnishes a
 568 form ~~[to any person upon which that person applies for insurance coverage, reports payroll,~~
 569 ~~makes a claim by reason of accident, injury, death, disease, or other claimed loss, or otherwise~~
 570 ~~reports or gives notice to the insurer or self-insured employer;]~~ described in Subsection (5)(b)
 571 shall cause to be printed or displayed in comparative prominence with other content on the
 572 form the statement: "Any person who knowingly presents false or fraudulent underwriting
 573 information, files or causes to be filed a false or fraudulent claim for disability compensation or
 574 medical benefits, or submits a false or fraudulent report or billing for health care fees or other
 575 professional services is guilty of a crime and may be subject to fines and confinement in state
 576 prison."

577 (b) Subsection (5)(a) applies to a form upon which a person:

578 (i) applies for insurance coverage;

579 (ii) applies for a workers' compensation coverage waiver issued under Section
 580 31A-22-1011;

581 (iii) reports payroll;

582 (iv) makes a claim by reason of accident, injury, death, disease, or other claimed loss;

583 or

584 (v) makes a report or gives notice to an insurer or self-insured employer.

585 ~~[(b) Each]~~ (c) An insurer or self-insured employer who issues a check, warrant, or

586 other financial instrument in payment of compensation issued under this chapter or Chapter 3,
587 [~~Utah Occupational Disease Act,~~] shall cause to be printed or displayed in comparative
588 prominence above the area for endorsement a statement substantially similar to the following:

589 "Workers' compensation insurance fraud is a crime punishable by Utah law."

590 [~~(c)(i) Subsections (10)(a) and (b) apply~~]

591 (d) This Subsection (5) applies only to the legal obligations of an insurer or a
592 self-insured employer.

593 [~~(i)~~] (e) A person who violates Subsection (2) is guilty of workers' compensation
594 insurance fraud, and the failure of an insurer or a self-insured employer to fully comply with
595 [~~Subsections (10)(a) and (b) may not be~~] this Subsection (5) is not:

596 [~~(A)~~] (i) a defense to violating Subsection (2); or

597 [~~(B)~~] (ii) grounds for suppressing evidence.

598 [~~(H)~~] (6) In the absence of malice, a person, employer, insurer, or governmental entity
599 that reports a suspected fraudulent act relating to a workers' compensation insurance policy or
600 claim is not subject to [~~any~~] civil liability for libel, slander, or [~~any other~~] another relevant
601 cause of action.

602 [~~(12)~~] (7) In [~~any~~] an action involving workers' compensation, this section supersedes
603 Title 31A, Chapter 31, Insurance Fraud Act.

Legislative Review Note
as of 1-23-08 11:48 AM

Office of Legislative Research and General Counsel

S.B. 159 - Workers' Compensation Amendments

Fiscal Note

2008 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

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.
