

1                                   **WORKERS' COMPENSATION - MOTOR**

2   **CARRIERS**

3   2009 GENERAL SESSION

4   STATE OF UTAH

5   **Chief Sponsor: Don L. Ipson**

6   Senate Sponsor: Stephen H. Urquhart

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8                   **LONG TITLE**

9                   **General Description:**

10                   This bill modifies the Workers' Compensation Act to address the independent contract  
11 status for purposes of workers' compensation of individuals operating under an  
12 agreement with a motor carrier.

13                   **Highlighted Provisions:**

14                   This bill:

- 15                   ▶ exempts from the definition of employee for purposes of workers' compensation  
16 certain individuals who operate a motor vehicle under an agreement with a motor  
17 carrier if certain conditions are met;
- 18                   ▶ permits voluntary treatment as an employee for purposes of workers' compensation;
- 19 and
- 20                   ▶ makes technical changes.

21                   **Monies Appropriated in this Bill:**

22                   None

23                   **Other Special Clauses:**

24                   None

25                   **Utah Code Sections Affected:**

26                   AMENDS:

27                   **34A-2-104**, as last amended by Laws of Utah 2003, Chapter 298

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

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

31 **34A-2-104. "Employee," "worker," and "operative" defined -- Specific**  
32 **circumstances -- Exemptions.**

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

35 (a) (i) [~~each~~] an elective [~~and~~] or appointive officer and any other person:

36 (A) in the service of:

37 (I) the state;

38 (II) a county, city, or town within the state; or

39 (III) a school district within the state;

40 (B) serving the state, or any county, city, town, or school district under:

41 (I) an election;

42 (II) appointment; or

43 (III) any contract of hire, express or implied, written or oral; and

44 (ii) including:

45 (A) an officer or employee of the state institutions of learning; and

46 (B) a member of the National Guard while on state active duty; and

47 (b) [~~each~~] a person in the service of any employer, as defined in Section 34A-2-103,

48 who employs one or more workers or operatives regularly in the same business, or in or about  
49 the same establishment:

50 (i) under any contract of hire:

51 (A) express or implied; and

52 (B) oral or written;

53 (ii) including aliens and minors, whether legally or illegally working for hire; and

54 (iii) not including any person whose employment:

55 (A) is casual; and

56 (B) not in the usual course of the trade, business, or occupation of the employee's

57 employer.

58           (2) (a) Unless a lessee provides coverage as an employer under this chapter and  
59 Chapter 3, any lessee in mines or of mining property and each employee and sublessee of the  
60 lessee shall be:

- 61           (i) covered for compensation by the lessor under this chapter and Chapter 3;
- 62           (ii) subject to this chapter and Chapter 3; and
- 63           (iii) entitled to the benefits of this chapter and Chapter 3, to the same extent as if the  
64 lessee, employee, or sublessee were employees of the lessor drawing the wages paid employees  
65 for substantially similar work.

66           (b) The lessor may deduct from the proceeds of ores mined by the lessees an amount  
67 equal to the insurance premium for that type of work.

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

71           (b) If a partnership or sole proprietorship makes an election under Subsection (3)(a),  
72 the partnership or sole proprietorship shall serve written notice upon its insurance carrier  
73 naming the persons to be covered.

74           (c) A partner of a partnership or owner of a sole proprietorship may not be considered  
75 an employee of the partner's partnership or the owner's sole proprietorship under this chapter  
76 or Chapter 3 until the notice described in Subsection (3)(b) is given.

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

80           (4) (a) A corporation may elect not to include any director or officer of the corporation  
81 as an employee under this chapter and Chapter 3.

82           (b) If a corporation makes an election under Subsection (4)(a), the corporation shall  
83 serve written notice upon its insurance carrier naming the persons to be excluded from  
84 coverage.

85           (c) A director or officer of a corporation is considered an employee under this chapter

86 and Chapter 3 until the notice described in Subsection (4)(b) is given.

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

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

91 (i) substantially all of the real estate sales agent's or associated broker's income for  
92 services is from real estate commissions; and

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

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

96 (B) the real estate sales agent or associated broker is not to be treated as an employee  
97 for federal income tax purposes;

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

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

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

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

106 (A) is an independent contractor;

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

108 (C) can derive income from more than one insurance company; [~~or~~]

109 (d) notwithstanding Subsection 34A-2-103(4), an individual who provides domestic  
110 work for a person if:

111 (i) the person for whom the domestic work is being provided receives or is eligible to  
112 receive the domestic work under a state or federal program designed to pay the costs of  
113 domestic work to prevent the person from being placed in:

- 114 (A) an institution; or
- 115 (B) a more restrictive placement than where that person resides at the time the person
- 116 receives the domestic work;
- 117 (ii) the individual is paid by a person designated by the Secretary of the Treasury in
- 118 accordance with Section 3504, Internal Revenue Code, as a fiduciary, agent, or other person
- 119 that has the control, receipt, custody, or disposal of, or pays the wages of the individual; and
- 120 (iii) the domestic work is performed under a written contract that notifies the
- 121 individual that the individual is not an employee under this chapter or Chapter 3[-]; or
- 122 (e) subject to Subsections (6) and (7), an individual who:
- 123 (i) (A) owns a motor vehicle; or
- 124 (B) leases a motor vehicle to a motor carrier;
- 125 (ii) personally operates the motor vehicle described in Subsection (5)(e)(i);
- 126 (iii) operates the motor vehicle described in Subsection (5)(e)(i) under a written
- 127 agreement with the motor carrier that states that the individual operates the motor vehicle as
- 128 an independent contractor; and
- 129 (iv) provides to the motor carrier at the time the written agreement described in
- 130 Subsection (5)(e)(iii) is executed or as soon after the execution as provided by an insurer:
- 131 (A) a copy of a workers' compensation coverage waiver issued pursuant to Section
- 132 31A-22-1011 by an insurer to the individual; and
- 133 (B) proof that the individual is covered by occupational accident related insurance.
- 134 (6) An individual described in Subsection (5)(d) or (e) may become an employee
- 135 under this chapter and Chapter 3 if the employer of the individual complies with:
- 136 (a) this chapter and Chapter 3; and
- 137 (b) commission rules.
- 138 (7) For purposes of Subsection (5)(e):
- 139 (a) "Motor carrier" means a person engaged in the business of transporting freight,
- 140 merchandise, or other property by a commercial vehicle on a highway within this state.
- 141 (b) "Motor vehicle" means a self-propelled vehicle intended primarily for use and

142 operation on the highways, including a trailer or semitrailer designed for use with another  
143 motorized vehicle.

144 (c) "Occupational accident related insurance" means insurance that provides the  
145 following coverage for an injury sustained in the course of working under a written agreement  
146 described in Subsection (5)(e)(iii):

147 (i) disability benefits;

148 (ii) death benefits;

149 (iii) medical expense benefits, which include:

150 (A) hospital coverage;

151 (B) surgical coverage;

152 (C) prescription drug coverage; and

153 (D) dental coverage.