

Representative Don L. Ipson proposes the following substitute bill:

WORKERS' COMPENSATION - MOTOR

CARRIERS

2009 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Don L. Ipson

Senate Sponsor: Stephen H. Urquhart

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

▶ exempts from the definition of employee for purposes of workers' compensation certain individuals who operate a motor vehicle under an agreement with a motor carrier if certain conditions are met;

▶ permits voluntary treatment as employee for purposes of workers' compensation; and

▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:



26 AMENDS:

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

28

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, "employee,"
34 "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 or
76 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 a
94 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 an
128 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 under
135 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) (i) "Occupational accident related insurance" means insurance to provide protection
145 against economic losses resulting from:

146 (A) a medical condition including:

147 (I) a medical care expense; or

148 (II) the risk of disability;

149 (B) accident; or

- 150 (C) occupational disease.
- 151 (ii) "Occupational accident related insurance":
- 152 (A) includes a contract with disability contingencies including:
- 153 (I) an income replacement contract;
- 154 (II) a health care contract;
- 155 (III) an expense reimbursement contract;
- 156 (IV) a credit accident and health contract;
- 157 (V) a continuing care contract; and
- 158 (VI) a long-term care contract; and
- 159 (B) may provide:
- 160 (I) hospital coverage;
- 161 (II) surgical coverage;
- 162 (III) medical coverage;
- 163 (IV) loss of income coverage;
- 164 (V) prescription drug coverage;
- 165 (VI) dental coverage; or
- 166 (VII) vision coverage.

H.B. 308 1st Sub. (Buff) - Workers' Compensation - Motor Carriers

Fiscal Note

2009 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 local governments. Individuals and business may be impacted by this change in the proposed statute.
