

HOME BUSINESS WORKERS' COMPENSATION

AMENDMENTS

2011 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Roger E. Barrus

Senate Sponsor: Stephen H. Urquhart

LONG TITLE

General Description:

This bill modifies the Workers' Compensation Act to exempt certain persons employed by a home business from workers' compensation coverage.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ provides that a home business is not considered an employer of a home business principal's immediate family member for purposes of workers' compensation; and
- ▶ makes technical and conforming amendments.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

34A-2-103, as last amended by Laws of Utah 2008, Chapters 250, 263, and 318

34A-2-111, as last amended by Laws of Utah 2009, Chapter 220

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



28 Section 1. Section **34A-2-103** is amended to read:

29 **34A-2-103. Employers enumerated and defined -- Regularly employed --**
30 **Statutory employers.**

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

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

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

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

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

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

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

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

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

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

54 (3) (a) The client under a professional employer organization agreement regulated
55 under Title 31A, Chapter 40, Professional Employer Organization Licensing Act:

56 (i) is considered the employer of a covered employee; and

57 (ii) subject to Section 31A-40-209, shall secure workers' compensation benefits for a
58 covered employee by complying with Subsection 34A-2-201(1) or (2) and commission rules.

59 (b) The division shall promptly inform the Insurance Department if the division has
60 reason to believe that a professional employer organization is not in compliance with
61 Subsection 34A-2-201(1) or (2) and commission rules.

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

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

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

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

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

74 (A) an agricultural employer's:

75 (I) spouse;

76 (II) grandparent;

77 (III) parent;

78 (IV) sibling;

79 (V) child;

80 (VI) grandchild;

81 (VII) nephew; or

82 (VIII) niece;

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

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

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

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

90 family.

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

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

95 (ii) (A) for the previous calendar year the agricultural employer's total annual payroll
96 for all nonimmediate family employees was equal to or greater than \$8,000 but less than
97 \$50,000; and

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

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

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

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

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

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

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

111 (6) (a) As used in this Subsection (6):

112 (i) "Home business" means a business that is primarily conducted at the primary
113 residence of a principal of the business.

114 (ii) "Home business principal" means an individual who:

115 (A) owns an interest in the home business; or

116 (B) is an officer, director, or manager of the home business.

117 (iii) "Home business principal's immediate family member" means a home business
118 principal's:

119 (A) spouse; or

120 (B) child who lives in the home business principal's primary residence.

121 (iv) "Primary residence" means:

122 (A) a dwelling used by an individual as the home at which the individual regularly
 123 resides, regardless of whether the dwelling is owned or rented, or is a single-family dwelling or
 124 part of a multi-family dwelling;

125 (B) so much of the land surrounding the dwelling described in Subsection (6)(a)(iv)(A)
 126 as is reasonably necessary for use of the dwelling; and

127 (C) any improvement on the land described in Subsection (6)(a)(iv)(B).

128 (b) For purposes of this chapter and Chapter 3, Utah Occupational Disease Act, a home
 129 business is not considered an employer of a home business principal's immediate family
 130 member if the home business principal's immediate family member is employed by the home
 131 business to engage in business activities primarily at the primary residence at which the home
 132 business is located.

133 ~~[(6)]~~ (7) An employer of [agricultural laborers or domestic servants] an agricultural
 134 laborer, domestic servant, or home business principal's immediate family member, who is not
 135 considered an employer under this chapter and Chapter 3, Utah Occupational Disease Act, may
 136 come under this chapter and Chapter 3, Utah Occupational Disease Act, by complying with:

137 (a) this chapter and Chapter 3, Utah Occupational Disease Act; and
 138 (b) the rules of the commission.

139 ~~[(7)]~~ (8) (a) (i) As used in this Subsection [(7)] (8)(a), "employer" includes any of the
 140 following persons that procures work to be done by a contractor notwithstanding whether or
 141 not the person directly employs a person:

142 (A) a sole proprietorship;

143 (B) a corporation;

144 (C) a partnership;

145 (D) a limited liability company; or

146 (E) a person similar to one described in Subsections [(7)] (8)(a)(i)(A) through (D).

147 (ii) If an employer procures any work to be done wholly or in part for the employer by
 148 a contractor over whose work the employer retains supervision or control, and this work is a
 149 part or process in the trade or business of the employer, the contractor, all persons employed by
 150 the contractor, all subcontractors under the contractor, and all persons employed by any of
 151 these subcontractors, are considered employees of the original employer for the purposes of

152 this chapter and Chapter 3, Utah Occupational Disease Act.

153 (b) Any person who is engaged in constructing, improving, repairing, or remodelling a
154 residence that the person owns or is in the process of acquiring as the person's personal
155 residence may not be considered an employee or employer solely by operation of Subsection
156 [~~(7)~~] (8)(a).

157 (c) A partner in a partnership or an owner of a sole proprietorship is not considered an
158 employee under Subsection [~~(7)~~] (8)(a) if the employer who procures work to be done by the
159 partnership or sole proprietorship obtains and relies on either:

160 (i) a valid certification of the partnership's or sole proprietorship's compliance with
161 Section 34A-2-201 indicating that the partnership or sole proprietorship secured the payment of
162 workers' compensation benefits pursuant to Section 34A-2-201; or

163 (ii) if a partnership or sole proprietorship with no employees other than a partner of the
164 partnership or owner of the sole proprietorship, a workers' compensation coverage waiver
165 issued by an insurer pursuant to Section 31A-22-1011 stating that:

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

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

171 (d) A director or officer of a corporation is not considered an employee under
172 Subsection [~~(7)~~] (8)(a) if the director or officer is excluded from coverage under Subsection
173 34A-2-104(4).

174 (e) A contractor or subcontractor is not an employee of the employer under Subsection
175 [~~(7)~~] (8)(a), if the employer who procures work to be done by the contractor or subcontractor
176 obtains and relies on either:

177 (i) a valid certification of the contractor's or subcontractor's compliance with Section
178 34A-2-201; or

179 (ii) if a partnership, corporation, or sole proprietorship with no employees other than a
180 partner of the partnership, officer of the corporation, or owner of the sole proprietorship, a
181 workers' compensation coverage waiver issued by an insurer pursuant to Section 31A-22-1011
182 stating that:

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

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

189 (f) (i) For purposes of this Subsection [~~(7)~~] (8)(f), "eligible employer" means a person
190 who:

191 (A) is an employer; and

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

194 (I) all persons employed by the contractor;

195 (II) all subcontractors under the contractor; and

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

197 (ii) Notwithstanding the other provisions in this Subsection [~~(7)~~] (8), if the conditions
198 of Subsection [~~(7)~~] (8)(f)(iii) are met, an eligible employer is considered an employer for
199 purposes of Section 34A-2-105 of the contractor, subcontractor, and all persons employed by
200 the contractor or subcontractor described in Subsection [~~(7)~~] (8)(f)(i)(B).

201 (iii) Subsection [~~(7)~~] (8)(f)(ii) applies if the eligible employer:

202 (A) under Subsection [~~(7)~~] (8)(a) is liable for and pays workers' compensation benefits
203 as an original employer under Subsection [~~(7)~~] (8)(a) because the contractor or subcontractor
204 fails to comply with Section 34A-2-201;

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

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

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

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

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

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

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

217 (Aa) a valid certification described in Subsection [~~(7)~~] (8)(c)(i) or [~~(7)~~] (8)(e)(i);

218 (Bb) a workers' compensation coverage waiver described in Subsection [~~(7)~~] (8)(c)(ii)
219 or [~~(7)~~] (8)(e)(ii); or

220 (Cc) proof that a director or officer is excluded from coverage under Subsection
221 34A-2-104(4);

222 (II) is liable under Subsection [~~(7)~~] (8)(a) for the payment of workers' compensation
223 benefits if the contractor or subcontractor fails to comply with Section 34A-2-201;

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

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

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

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

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

233 Section 2. Section **34A-2-111** is amended to read:

234 **34A-2-111. Managed health care programs -- Other safety programs.**

235 (1) As used in this section:

236 (a) (i) "Health care provider" means a person who furnishes treatment or care to
237 persons who have suffered bodily injury.

238 (ii) "Health care provider" includes:

239 (A) a hospital;

240 (B) a clinic;

241 (C) an emergency care center;

242 (D) a physician;

243 (E) a nurse;

244 (F) a nurse practitioner;

- 245 (G) a physician's assistant;
- 246 (H) a paramedic; or
- 247 (I) an emergency medical technician.
- 248 (b) "Physician" means any health care provider licensed under:
- 249 (i) Title 58, Chapter 5a, Podiatric Physician Licensing Act;
- 250 (ii) Title 58, Chapter 24b, Physical Therapy Practice Act;
- 251 (iii) Title 58, Chapter 67, Utah Medical Practice Act;
- 252 (iv) Title 58, Chapter 68, Utah Osteopathic Medical Practice Act;
- 253 (v) Title 58, Chapter 69, Dentist and Dental Hygienist Practice Act;
- 254 (vi) Title 58, Chapter 70a, Physician Assistant Act;
- 255 (vii) Title 58, Chapter 71, Naturopathic Physician Practice Act;
- 256 (viii) Title 58, Chapter 72, Acupuncture Licensing Act; and
- 257 (ix) Title 58, Chapter 73, Chiropractic Physician Practice Act.
- 258 (c) "Preferred health care facility" means a facility:
- 259 (i) that is a health care facility as defined in Section 26-21-2; and
- 260 (ii) designated under a managed health care program.
- 261 (d) "Preferred provider physician" means a physician designated under a managed
- 262 health care program.
- 263 (e) "Self-insured employer" is as defined in Section 34A-2-201.5.
- 264 (2) (a) A self-insured employer and insurance carrier may adopt a managed health care
- 265 program to provide employees the benefits of this chapter or Chapter 3, Utah Occupational
- 266 Disease Act, beginning January 1, 1993. The plan shall comply with this Subsection (2).
- 267 (b) (i) A preferred provider program may be developed if the preferred provider
- 268 program allows a selection by the employee of more than one physician in the health care
- 269 specialty required for treating the specific problem of an industrial patient.
- 270 (ii) (A) Subject to the requirements of this section, if a preferred provider program is
- 271 developed by an insurance carrier or self-insured employer, an employee is required to use:
- 272 (I) preferred provider physicians; and
- 273 (II) preferred health care facilities.
- 274 (B) If a preferred provider program is not developed, an employee may have free
- 275 choice of health care providers.

276 (iii) The failure to do the following may, if the employee has been notified of the
277 preferred provider program, result in the employee being obligated for any charges in excess of
278 the preferred provider allowances:

- 279 (A) use a preferred health care facility; or
- 280 (B) initially receive treatment from a preferred provider physician.

281 (iv) Notwithstanding the requirements of Subsections (2)(b)(i) through (iii), a
282 self-insured employer or other employer may:

- 283 (A) (I) (Aa) have its own health care facility on or near its worksite or premises; and
- 284 (Bb) continue to contract with other health care providers; or
- 285 (II) operate a health care facility; and
- 286 (B) require employees to first seek treatment at the provided health care or contracted
287 facility.

288 (v) An employee subject to a preferred provider program or employed by an employer
289 having its own health care facility may procure the services of any qualified health care
290 provider:

- 291 (A) for emergency treatment, if a physician employed in the preferred provider
292 program or at the health care facility is not available for any reason;
- 293 (B) for conditions the employee in good faith believes are nonindustrial; or
- 294 (C) when an employee living in a rural area would be unduly burdened by traveling to:
295 (I) a preferred provider physician; or
296 (II) preferred health care facility.

297 (c) (i) (A) An employer, insurance carrier, or self-insured employer may enter into
298 contracts with the following for the purposes listed in Subsection (2)(c)(i)(B):

- 299 (I) health care providers;
- 300 (II) medical review organizations; or
- 301 (III) vendors of medical goods, services, and supplies including medicines.

302 (B) A contract described in Subsection [~~(1)~~] (2)(c)(i)(A) may be made for the following
303 purposes:

- 304 (I) insurance carriers or self-insured employers may form groups in contracting for
305 managed health care services with health care providers;
- 306 (II) peer review;

307 (III) methods of utilization review;
308 (IV) use of case management;
309 (V) bill audit;
310 (VI) discounted purchasing; and
311 (VII) the establishment of a reasonable health care treatment protocol program
312 including the implementation of medical treatment and quality care guidelines that are:
313 (Aa) scientifically based;
314 (Bb) peer reviewed; and
315 (Cc) consistent with standards for health care treatment protocol programs that the
316 commission shall establish by rules made in accordance with Title 63G, Chapter 3, Utah
317 Administrative Rulemaking Act, including the authority of the commission to approve a health
318 care treatment protocol program before it is used or disapprove a health care treatment protocol
319 program that does not comply with this Subsection (2)(c)(i)(B)(VII).

320 (ii) An insurance carrier may make any or all of the factors in Subsection (2)(c)(i) a
321 condition of insuring an entity in its insurance contract.

322 (3) (a) In addition to a managed health care program, an insurance carrier may require
323 an employer to establish a work place safety program if the employer:
324 (i) has an experience modification factor of 1.00 or higher, as determined by the
325 National Council on Compensation Insurance; or
326 (ii) is determined by the insurance carrier to have a three-year loss ratio of 100% or
327 higher.

328 (b) A workplace safety program may include:
329 (i) a written workplace accident and injury reduction program that:
330 (A) promotes safe and healthful working conditions; and
331 (B) is based on clearly stated goals and objectives for meeting those goals; and
332 (ii) a documented review of the workplace accident and injury reduction program each
333 calendar year delineating how procedures set forth in the program are met.

334 (c) A written workplace accident and injury reduction program permitted under
335 Subsection (3)(b)(i) should describe:
336 (i) how managers, supervisors, and employees are responsible for implementing the
337 program;

338 (ii) how continued participation of management will be established, measured, and
339 maintained;

340 (iii) the methods used to identify, analyze, and control new or existing hazards,
341 conditions, and operations;

342 (iv) how the program will be communicated to all employees so that the employees are
343 informed of work-related hazards and controls;

344 (v) how workplace accidents will be investigated and corrective action implemented;
345 and

346 (vi) how safe work practices and rules will be enforced.

347 (d) For the purposes of a workplace accident and injury reduction program of an
348 eligible employer described in Subsection 34A-2-103~~(7)~~(8)(f), the workplace accident and
349 injury reduction program shall:

350 (i) include the provisions described in Subsections (3)(b) and (c), except that the
351 employer shall conduct a documented review of the workplace accident and injury reduction
352 program at least semiannually delineating how procedures set forth in the workplace accident
353 and injury reduction program are met; and

354 (ii) require a written agreement between the employer and all contractors and
355 subcontractors on a project that states that:

356 (A) the employer has the right to control the manner or method by which the work is
357 executed;

358 (B) if a contractor, subcontractor, or any employee of a contractor or subcontractor
359 violates the workplace accident and injury reduction program, the employer maintains the right
360 to:

361 (I) terminate the contract with the contractor or subcontractor;

362 (II) remove the contractor or subcontractor from the work site; or

363 (III) require that the contractor or subcontractor not permit an employee that violates
364 the workplace accident and injury reduction program to work on the project for which the
365 employer is procuring work; and

366 (C) the contractor or subcontractor shall provide safe and appropriate equipment
367 subject to the right of the employer to:

368 (I) inspect on a regular basis the equipment of a contractor or subcontractor; and

369 (II) require that the contractor or subcontractor repair, replace, or remove equipment
370 the employer determines not to be safe or appropriate.

371 (4) The premiums charged to any employer who fails or refuses to establish a
372 workplace safety program pursuant to Subsection (3)(b)(i) or (ii) may be increased by 5% over
373 any existing current rates and premium modifications charged that employer.

Legislative Review Note
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