

WORKER CLASSIFICATION COORDINATED ENFORCEMENT

2011 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Karen Mayne

House Sponsor: _____

Cosponsor: John L. Valentine

LONG TITLE

Committee Note:

The Business and Labor Interim Committee recommended this bill.

General Description:

This bill modifies labor provisions to address worker classification and related issues of enforcement.

Highlighted Provisions:

This bill:

▶ changes the Independent Contractor Database Enforcement Council to the Worker Classification Coordinated Enforcement Council, including:

- addressing membership;
 - addressing closing of meetings;
 - modifying the duties of the council; and
 - addressing the sharing of information; and
- ▶ makes technical and conforming amendments.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides an immediate effective date.

Utah Code Sections Affected:



28 AMENDS:

29 **63I-1-213**, as last amended by Laws of Utah 2008, Chapter 273 and renumbered and
30 amended by Laws of Utah 2008, Chapter 382

31 **63I-1-234**, as last amended by Laws of Utah 2010, Chapter 319

32 ENACTS:

33 **34-47-101**, Utah Code Annotated 1953

34 **34-47-102**, Utah Code Annotated 1953

35 **34-47-201**, Utah Code Annotated 1953

36 **34-47-202**, Utah Code Annotated 1953

37 REPEALS:

38 **13-46-101**, as enacted by Laws of Utah 2008, Chapter 273

39 **13-46-102**, as enacted by Laws of Utah 2008, Chapter 273

40 **13-46-103**, as enacted by Laws of Utah 2008, Chapter 273

41 **13-46-201**, as enacted by Laws of Utah 2008, Chapter 273

42 **13-46-202**, as enacted by Laws of Utah 2008, Chapter 273

43 **13-46-301**, as enacted by Laws of Utah 2008, Chapter 273

44 **13-46-302**, as enacted by Laws of Utah 2008, Chapter 273

45 **13-46-303**, as enacted by Laws of Utah 2008, Chapter 273



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

48 Section 1. Section **34-47-101** is enacted to read:

49 **CHAPTER 47. WORKER CLASSIFICATION COORDINATED ENFORCEMENT**
50 **ACT**

51 **Part 1. General Provisions**

52 **34-47-101. Title.**

53 This chapter is known as the "Worker Classification Coordinated Enforcement Act."

54 Section 2. Section **34-47-102** is enacted to read:

55 **34-47-102. Definitions.**

56 As used in this chapter:

57 (1) "Commission" means the Labor Commission.

58 (2) "Commissioner" means the commissioner of the Labor Commission.

59 (3) "Council" means the Worker Classification Coordinated Enforcement Council
60 created in Section 34-47-201.

61 (4) "Member agency" means an agency that is represented on the council.

62 (5) "Misclassification" means to classify an individual as something other than an
63 employee, if under the relevant law the individual is required to be classified as an employee.

64 Section 3. Section **34-47-201** is enacted to read:

65 **Part 2. Worker Classification Coordinated Enforcement Council**

66 **34-47-201. Creation.**

67 (1) (a) There is created within the commission the Worker Classification Coordinated
68 Enforcement Council consisting of the following four members:

69 (i) the commissioner, or the commissioner's designee;

70 (ii) the executive director of the Department of Commerce, or the executive director's
71 designee;

72 (iii) the executive director of the Department of Workforce Services, or the executive
73 director's designee; and

74 (iv) the chair of the State Tax Commission, or the chair's designee.

75 (b) The Office of the Attorney General shall work cooperatively with the council.

76 (2) The commissioner, or the commissioner's designee, is chair of the council.

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

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

80 (c) Subject to Section 34-47-202, the council shall meet at the call of the chair, except
81 that the chair shall call a meeting at least quarterly.

82 (d) The council may adopt additional procedures or requirements for:

83 (i) voting, when there is a tie of the council members;

84 (ii) how meetings are to be called; and

85 (iii) the frequency of meetings.

86 (4) Notwithstanding Title 52, Chapter 4, Open and Public Meetings Act, the council
87 may close a meeting of the council if a majority of the council members present vote to close
88 the meeting for one of the following purposes:

89 (a) (i) the meeting is closed for the purpose of discussing a specific civil, criminal, or

90 administrative action or audit; and

91 (ii) discussing the action or audit described in Subsection (4)(a)(i) in an open meeting
92 could reasonably be expected to:

93 (A) interfere with an investigation undertaken for purposes of enforcement, discipline,
94 licensing, certification, or registration;

95 (B) interfere with an audit, disciplinary, or enforcement proceeding;

96 (C) create a danger of depriving a person of a right to a fair trial or impartial hearing;

97 (D) disclose the identity of a source who is not generally known outside of government
98 if disclosure would compromise the source; or

99 (E) disclose investigative or audit techniques, procedures, policies, or orders not
100 generally known outside of government if disclosure would interfere with enforcement or audit
101 efforts; or

102 (b) the meeting is closed for the purpose of discussing a record that is a private,
103 protected, or controlled record under Title 63G, Chapter 2, Government Records Access and
104 Management Act.

105 (5) The commission shall staff the council.

106 Section 4. Section **34-47-202** is enacted to read:

107 **34-47-202. Duties and powers of the council.**

108 (1) The council shall meet at least quarterly with the attorney general or a designee of
109 the attorney general to coordinate regulatory and law enforcement efforts related to
110 misclassification.

111 (2) (a) The council shall report by no later than November 30 of each year to:

112 (i) the governor; and

113 (ii) the Business and Labor Interim Committee.

114 (b) The report required by this Subsection (2) shall include:

115 (i) the nature and extent of misclassification in this state;

116 (ii) the results of regulatory and law enforcement efforts related to the council;

117 (iii) the status of sharing information by member agencies; and

118 (iv) recommended legislative changes, if any.

119 (c) As part of the report required by this Subsection (2), the chairs of the Business and
120 Labor Interim Committee shall provide an opportunity to the following to report to the

121 Business and Labor Interim Committee on the effectiveness of the council:

122 (i) the attorney general; and

123 (ii) each member agency.

124 (3) The council may study:

125 (a) how to reduce costs to the state resulting from misclassification;

126 (b) how to extend outreach and education efforts regarding the nature and requirements
127 of classifying an individual;

128 (c) how to promote efficient and effective information sharing amongst the member
129 agencies; and

130 (d) the need, if any, to create by statute a database or other method to facilitate sharing
131 of information related to misclassification.

132 (4) A member agency shall cooperate with the commission and council to provide
133 information related to misclassification to the extent that:

134 (a) the information is public information; or

135 (b) providing the information is otherwise permitted by law other than this chapter.

136 (5) (a) A record provided to the commission or council under this chapter is a protected
137 record under Title 63G, Chapter 2, Government Records Access and Management Act, unless
138 otherwise classified as private or controlled under Title 63G, Chapter 2.

139 (b) Notwithstanding Subsection (5)(a), the commission or council may disclose the
140 record to the extent:

141 (i) necessary to take an administrative action by a member agency;

142 (ii) necessary to prosecute a criminal act; or

143 (iii) that the record is:

144 (A) obtainable from a source other the member agency that provides the record to the
145 commission or council; and

146 (B) public information or permitted to be disclosed by a law other than this chapter.

147 Section 5. Section **63I-1-213** is amended to read:

148 **63I-1-213. Repeal dates, Title 13.**

149 ~~[(+)]~~ Title 13, Chapter 16, Motor Fuel Marketing Act, is repealed July 1, 2012.

150 ~~[(2)]~~ Title 13, Chapter 46, Independent Contractor Database Act, is repealed July 1,
151 2013.]

152 Section 6. Section **63I-1-234** is amended to read:

153 **63I-1-234. Repeal dates, Title 34A.**

154 (1) Title 34, Chapter 47, Worker Classification Coordinated Enforcement Act, is
155 repealed July 1, 2013.

156 [~~(+)~~] (2) Section 34A-2-202.5 is repealed December 31, 2020.

157 [~~(2)~~] (3) Section 34A-2-705 and Subsection 59-9-101(2)(c)(iv) are repealed July 1,
158 2013.

159 [~~(3)~~] (4) Title 34A, Chapter 8a, Utah Injured Worker Reemployment Act, is repealed
160 July 1, 2014.

161 Section 7. **Repealer.**

162 This bill repeals:

163 Section **13-46-101, Title.**

164 Section **13-46-102, Definitions.**

165 Section **13-46-103, Scope.**

166 Section **13-46-201, Creation.**

167 Section **13-46-202, Duties of the council.**

168 Section **13-46-301, Creation.**

169 Section **13-46-302, Confidentiality of information in the database.**

170 Section **13-46-303, Liability.**

171 Section 8. **Effective date.**

172 If approved by two-thirds of all the members elected to each house, this bill takes effect
173 upon approval by the governor, or the day following the constitutional time limit of Utah
174 Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto,
175 the date of veto override.

Legislative Review Note
as of 10-21-10 10:46 AM

Office of Legislative Research and General Counsel

FISCAL NOTE

S.B. 11, 2011 General Session

SHORT TITLE: **Worker Classification Coordinated Enforcement**

SPONSOR: **Mayne, K.**

STATE OF UTAH

STATE GOVERNMENT (UCA 36-12-13(2)(b))

Enactment of this bill likely will not materially impact the state budget.

LOCAL GOVERNMENTS (UCA 36-12-13(2)(c))

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for local governments.

DIRECT EXPENDITURES BY UTAH RESIDENTS AND BUSINESSES (UCA 36-12-13(2)(d))

Enactment of this bill likely will not result in direct, measurable expenditures by Utah residents or businesses.