

Senator Karen Mayne proposes the following substitute bill:

WORKER CLASSIFICATION COORDINATED ENFORCEMENT

2011 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Karen Mayne

House Sponsor: Todd E. Kiser

Cosponsor: John L. Valentine

LONG TITLE

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;
 - modifying the duties of the council; and
 - addressing the sharing of information;
- ▶ addresses closing of meetings; 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:



26 AMENDS:

27 **52-4-205**, as last amended by Laws of Utah 2010, Chapters 35, 60, and 239

28 **63I-1-213**, as last amended by Laws of Utah 2008, Chapter 273 and renumbered and
29 amended by Laws of Utah 2008, Chapter 382

30 **63I-1-234**, as last amended by Laws of Utah 2010, Chapter 319

31 ENACTS:

32 **34-47-101**, Utah Code Annotated 1953

33 **34-47-102**, Utah Code Annotated 1953

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

35 **34-47-202**, Utah Code Annotated 1953

36 REPEALS:

37 **13-46-101**, as enacted by Laws of Utah 2008, Chapter 273

38 **13-46-102**, as enacted by Laws of Utah 2008, Chapter 273

39 **13-46-103**, as enacted by Laws of Utah 2008, Chapter 273

40 **13-46-201**, as enacted by Laws of Utah 2008, Chapter 273

41 **13-46-202**, as enacted by Laws of Utah 2008, Chapter 273

42 **13-46-301**, as enacted by Laws of Utah 2008, Chapter 273

43 **13-46-302**, as enacted by Laws of Utah 2008, Chapter 273

44 **13-46-303**, as enacted by Laws of Utah 2008, Chapter 273



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

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

48 **CHAPTER 47. WORKER CLASSIFICATION COORDINATED ENFORCEMENT**

49 **ACT**

50 **Part 1. General Provisions**

51 **34-47-101. Title.**

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

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

54 **34-47-102. Definitions.**

55 As used in this chapter:

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

- 57 (2) "Commissioner" means the commissioner of the Labor Commission.
- 58 (3) "Council" means the Worker Classification Coordinated Enforcement Council
- 59 created in Section 34-47-201.
- 60 (4) "Member agency" means an agency that is represented on the council.
- 61 (5) "Misclassification" means to classify an individual as something other than an
- 62 employee, if under the relevant law the individual is required to be classified as an employee.

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

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

65 **34-47-201. Creation.**

66 (1) (a) There is created within the commission the Worker Classification Coordinated

- 67 Enforcement Council consisting of the following four members:
- 68 (i) the commissioner, or the commissioner's designee;
- 69 (ii) the executive director of the Department of Commerce, or the executive director's
- 70 designee;

71 (iii) the executive director of the Department of Workforce Services, or the executive

72 director's designee; and

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

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

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

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

77 (b) A vote of the majority of the council members present when a quorum is present is

78 an action of the council.

79 (c) Subject to Section 34-47-202, the council shall meet at the call of the chair, except

80 that the chair shall call a meeting at least quarterly.

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

- 82 (i) voting, when there is a tie of the council members;
- 83 (ii) how meetings are to be called; and
- 84 (iii) the frequency of meetings.

85 (4) The council may close a meeting of the council in accordance with Title 52,

86 Chapter 4, Open and Public Meetings Act.

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

88 **34-47-202. Duties and powers of the council.**

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

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

93 (i) the governor; and

94 (ii) the Business and Labor Interim Committee.

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

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

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

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

99 (iv) recommended legislative changes, if any.

100 (c) As part of the report required by this Subsection (2), the chairs of the Business and
101 Labor Interim Committee shall provide an opportunity to the following to report to the
102 Business and Labor Interim Committee on the effectiveness of the council:

103 (i) the attorney general; and

104 (ii) each member agency.

105 (3) The council may study:

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

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

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

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

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

115 (a) the information is public information; or

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

117 (5) (a) A record provided to the commission or council under this chapter is a protected
118 record under Title 63G, Chapter 2, Government Records Access and Management Act, unless

119 otherwise classified as private or controlled under Title 63G, Chapter 2.

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

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

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

124 (iii) that the record is:

125 (A) obtainable from a source other than the member agency that provides the record to
126 the commission or council; or

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

128 Section 5. Section **52-4-205** is amended to read:

129 **52-4-205. Purposes of closed meetings.**

130 (1) A closed meeting described under Section 52-4-204 may only be held for:

131 (a) discussion of the character, professional competence, or physical or mental health
132 of an individual;

133 (b) strategy sessions to discuss collective bargaining;

134 (c) strategy sessions to discuss pending or reasonably imminent litigation;

135 (d) strategy sessions to discuss the purchase, exchange, or lease of real property,
136 including any form of a water right or water shares, if public discussion of the transaction
137 would:

138 (i) disclose the appraisal or estimated value of the property under consideration; or

139 (ii) prevent the public body from completing the transaction on the best possible terms;

140 (e) strategy sessions to discuss the sale of real property, including any form of a water
141 right or water shares, if:

142 (i) public discussion of the transaction would:

143 (A) disclose the appraisal or estimated value of the property under consideration; or

144 (B) prevent the public body from completing the transaction on the best possible terms;

145 (ii) the public body previously gave public notice that the property would be offered for
146 sale; and

147 (iii) the terms of the sale are publicly disclosed before the public body approves the
148 sale;

149 (f) discussion regarding deployment of security personnel, devices, or systems;

150 (g) investigative proceedings regarding allegations of criminal misconduct;

151 (h) as relates to the Independent Legislative Ethics Commission, conducting business
152 relating to the receipt or review of ethics complaints;

153 (i) as relates to an ethics committee of the Legislature, a purpose permitted under
154 Subsection 52-4-204(1)(a)(iii)(B);

155 (j) as relates to a county legislative body, discussing commercial information as
156 defined in Section 59-1-404; ~~or~~

157 (k) as relates to the Worker Classification Coordinated Enforcement Council, created
158 in Section 34-47-201, discussing a specific civil, criminal, or administrative action or audit if
159 discussing the action or audit in an open meeting could reasonably be expected to:

160 (i) interfere with an investigation undertaken for purposes of enforcement, discipline,
161 licensing, certification, or registration;

162 (ii) interfere with an audit, disciplinary, or enforcement proceeding;

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

164 (iv) disclose the identity of a source who is not generally known outside of government
165 if disclosure would compromise the source; or

166 (v) disclose investigative or audit techniques, procedures, policies, or orders not
167 generally known outside of government if disclosure would interfere with enforcement or audit
168 efforts; or

169 ~~(k)~~ (1) a purpose for which a meeting is required to be closed under Subsection (2).

170 (2) The following meetings shall be closed:

171 (a) a meeting of the Health and Human Services Interim Committee to review a fatality
172 review report described in Subsection 62A-16-301(1)(a), and the responses to the report
173 described in Subsections 62A-16-301(2) and (4); and

174 (b) a meeting of the Child Welfare Legislative Oversight Panel to:

175 (i) review a fatality review report described in Subsection 62A-16-301(1)(a), and the
176 responses to the report described in Subsections 62A-16-301(2) and (4); or

177 (ii) review and discuss an individual case, as described in Subsection 62A-4a-207(5).

178 (3) A public body may not interview a person applying to fill an elected position in a
179 closed meeting.

180 Section 6. Section **63I-1-213** is amended to read:

181 **63I-1-213. Repeal dates, Title 13.**

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

183 [~~2~~] Title 13, Chapter 46, Independent Contractor Database Act, is repealed July 1,
184 2013.]

185 Section 7. Section **63I-1-234** is amended to read:

186 **63I-1-234. Repeal dates, Title 34A.**

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

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

190 [~~2~~] (3) Section 34A-2-705 and Subsection 59-9-101(2)(c)(iv) are repealed July 1,
191 2013.

192 [(+) (4) Title 34A, Chapter 8a, Utah Injured Worker Reemployment Act, is repealed
193 July 1, 2014.

194 Section 8. **Repealer.**

195 This bill repeals:

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

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

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

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

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

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

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

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

204 Section 9. **Effective date.**

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