

WORKERS' COMPENSATION COVERAGE WAIVERS

2011 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Karen Mayne

House Sponsor: Todd E. Kiser

LONG TITLE

General Description:

This bill modifies the Workers' Compensation Act to address the issuance of workers' compensation coverage waivers.

Highlighted Provisions:

This bill:

- ▶ repeals the authorization for insurers to issue workers' compensation waivers;
- ▶ enacts the Workers' Compensation Coverage Waivers Act, including:
 - defining terms;
 - providing for the issuance of waivers;
 - requiring information to be submitted to obtain a waiver; and
 - providing for enforcement; and
- ▶ makes technical and conforming amendments.

Money Appropriated in this Bill:

This bill appropriates:

▶ to Labor Commission as a combination of one-time or ongoing money from two different fiscal years:

- from General Fund Restricted - Industrial Accident Restricted Account, \$100,000.

Other Special Clauses:

This bill provides an effective date.



28 **Utah Code Sections Affected:**

29 AMENDS:

30 **34A-2-103**, as last amended by Laws of Utah 2008, Chapters 250, 263, and 318

31 **34A-2-104**, as last amended by Laws of Utah 2010, Chapter 379

32 **34A-2-110**, as last amended by Laws of Utah 2008, Chapter 263

33 **34A-2-705**, as enacted by Laws of Utah 2009, Chapter 85

34 ENACTS:

35 **34A-2-1001**, Utah Code Annotated 1953

36 **34A-2-1002**, Utah Code Annotated 1953

37 **34A-2-1003**, Utah Code Annotated 1953

38 **34A-2-1004**, Utah Code Annotated 1953

39 **34A-2-1005**, Utah Code Annotated 1953

40 REPEALS:

41 **31A-22-1011**, as enacted by Laws of Utah 2008, Chapter 263



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

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

45 **34A-2-103. Employers enumerated and defined -- Regularly employed --**

46 **Statutory employers.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

90 (A) an agricultural employer's:

91 (I) spouse;

92 (II) grandparent;

93 (III) parent;

94 (IV) sibling;

95 (V) child;

96 (VI) grandchild;

97 (VII) nephew; or

98 (VIII) niece;

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

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

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

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

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

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

111 (ii) (A) for the previous calendar year the agricultural employer's total annual payroll
112 for all nonimmediate family employees was equal to or greater than \$8,000 but less than
113 \$50,000; and

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

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

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

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

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

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

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

127 (6) An employer of agricultural laborers or domestic servants who is not considered an
128 employer under this chapter and Chapter 3, Utah Occupational Disease Act, may come under
129 this chapter and Chapter 3, Utah Occupational Disease Act, by complying with:

130 (a) this chapter and Chapter 3, Utah Occupational Disease Act; and

131 (b) the rules of the commission.

132 (7) (a) (i) As used in this Subsection (7)(a), "employer" includes any of the following
133 persons that procures work to be done by a contractor notwithstanding whether or not the
134 person directly employs a person:

135 (A) a sole proprietorship;

136 (B) a corporation;

137 (C) a partnership;

138 (D) a limited liability company; or

139 (E) a person similar to one described in Subsections (7)(a)(i)(A) through (D).

140 (ii) If an employer procures any work to be done wholly or in part for the employer by
141 a contractor over whose work the employer retains supervision or control, and this work is a
142 part or process in the trade or business of the employer, the contractor, all persons employed by
143 the contractor, all subcontractors under the contractor, and all persons employed by any of
144 these subcontractors, are considered employees of the original employer for the purposes of
145 this chapter and Chapter 3, Utah Occupational Disease Act.

146 (b) Any person who is engaged in constructing, improving, repairing, or remodeling a
147 residence that the person owns or is in the process of acquiring as the person's personal
148 residence may not be considered an employee or employer solely by operation of Subsection
149 (7)(a).

150 (c) A partner in a partnership or an owner of a sole proprietorship is not considered an
151 employee under Subsection (7)(a) if the employer who procures work to be done by the

152 partnership or sole proprietorship obtains and relies on either:

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

156 (ii) if a partnership or sole proprietorship with no employees other than a partner of the
157 partnership or owner of the sole proprietorship, a workers' compensation coverage waiver
158 issued by an insurer pursuant to [~~Section 31A-22-1011~~] Part 10, Workers' Compensation
159 Coverage Waivers Act, stating that:

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

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

165 (d) A director or officer of a corporation is not considered an employee under
166 Subsection (7)(a) if the director or officer is excluded from coverage under Subsection
167 34A-2-104(4).

168 (e) A contractor or subcontractor is not an employee of the employer under Subsection
169 (7)(a), if the employer who procures work to be done by the contractor or subcontractor obtains
170 and relies on either:

171 (i) a valid certification of the contractor's or subcontractor's compliance with Section
172 34A-2-201; or

173 (ii) if a partnership, corporation, or sole proprietorship with no employees other than a
174 partner of the partnership, officer of the corporation, or owner of the sole proprietorship, a
175 workers' compensation coverage waiver issued by an insurer pursuant to [~~Section~~
176 ~~31A-22-1011~~] Part 10, Workers' Compensation Coverage Waivers Act, stating that:

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

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

183 (f) (i) For purposes of this Subsection (7)(f), "eligible employer" means a person who:

184 (A) is an employer; and

185 (B) procures work to be done wholly or in part for the employer by a contractor,

186 including:

187 (I) all persons employed by the contractor;

188 (II) all subcontractors under the contractor; and

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

190 (ii) Notwithstanding the other provisions in this Subsection (7), if the conditions of

191 Subsection (7)(f)(iii) are met, an eligible employer is considered an employer for purposes of

192 Section 34A-2-105 of the contractor, subcontractor, and all persons employed by the contractor

193 or subcontractor described in Subsection (7)(f)(i)(B).

194 (iii) Subsection (7)(f)(ii) applies if the eligible employer:

195 (A) under Subsection (7)(a) is liable for and pays workers' compensation benefits as an

196 original employer under Subsection (7)(a) because the contractor or subcontractor fails to

197 comply with Section 34A-2-201;

198 (B) (I) secures the payment of workers' compensation benefits for the contractor or

199 subcontractor pursuant to Section 34A-2-201;

200 (II) procures work to be done that is part or process of the trade or business of the

201 eligible employer; and

202 (III) does the following with regard to a written workplace accident and injury

203 reduction program that meets the requirements of Subsection 34A-2-111(3)(d):

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

205 (Bb) posts the workplace accident and injury reduction program at the work site at

206 which the eligible employer procures work; and

207 (Cc) enforces the workplace accident and injury reduction program according to the

208 terms of the workplace accident and injury reduction program; or

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

210 (Aa) a valid certification described in Subsection (7)(c)(i) or (7)(e)(i);

211 (Bb) a workers' compensation coverage waiver described in Subsection (7)(c)(ii) or

212 (7)(e)(ii); or

213 (Cc) proof that a director or officer is excluded from coverage under Subsection

214 34A-2-104(4);

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

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

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

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

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

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

226 Section 2. Section **34A-2-104** is amended to read:

227 **34A-2-104. "Employee," "worker," and "operative" defined -- Specific**
228 **circumstances -- Exemptions.**

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

231 (a) (i) an elective or appointive officer and any other person:

232 (A) in the service of:

233 (I) the state;

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

235 (III) a school district within the state;

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

237 (I) an election;

238 (II) appointment; or

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

240 (ii) including:

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

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

243 (b) a person in the service of any employer, as defined in Section 34A-2-103, who

244 employs one or more workers or operatives regularly in the same business, or in or about the

245 same establishment:

246 (i) under any contract of hire:

247 (A) express or implied; and

248 (B) oral or written;

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

250 (iii) not including any person whose employment:

251 (A) is casual; and

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

253 employer.

254 (2) (a) Unless a lessee provides coverage as an employer under this chapter and

255 Chapter 3, any lessee in mines or of mining property and each employee and sublessee of the

256 lessee shall be:

257 (i) covered for compensation by the lessor under this chapter and Chapter 3;

258 (ii) subject to this chapter and Chapter 3; and

259 (iii) entitled to the benefits of this chapter and Chapter 3, to the same extent as if the

260 lessee, employee, or sublessee were employees of the lessor drawing the wages paid employees

261 for substantially similar work.

262 (b) The lessor may deduct from the proceeds of ores mined by the lessees an amount

263 equal to the insurance premium for that type of work.

264 (3) (a) A partnership or sole proprietorship may elect to include any partner of the

265 partnership or owner of the sole proprietorship as an employee of the partnership or sole

266 proprietorship under this chapter and Chapter 3.

267 (b) If a partnership or sole proprietorship makes an election under Subsection (3)(a),

268 the partnership or sole proprietorship shall serve written notice upon its insurance carrier

269 naming the persons to be covered.

270 (c) A partner of a partnership or owner of a sole proprietorship may not be considered

271 an employee of the partner's partnership or the owner's sole proprietorship under this chapter or

272 Chapter 3 until the notice described in Subsection (3)(b) is given.

273 (d) For premium rate making, the insurance carrier shall assume the salary or wage of

274 the partner or sole proprietor electing coverage under Subsection (3)(a) to be 100% of the

275 state's average weekly wage.

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

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

281 (c) A director or officer of a corporation is considered an employee under this chapter
282 and Chapter 3 until the notice described in Subsection (4)(b) is given.

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

285 (a) a sales agent or associate broker, as defined in Section 61-2f-102, who performs
286 services in that capacity for a principal broker if:

287 (i) substantially all of the sales agent's or associate broker's income for services is from
288 real estate commissions; and

289 (ii) the sales agent's or associate broker's services are performed under a written
290 contract that provides that:

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

292 (B) the sales agent or associate broker is not to be treated as an employee for federal
293 income tax purposes;

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

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

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

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

302 (A) is an independent contractor;

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

304 (C) can derive income from more than one insurance company;

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

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

310 (A) an institution; or

311 (B) a more restrictive placement than where that person resides at the time the person
312 receives the domestic work;

313 (ii) the individual is paid by a person designated by the Secretary of the Treasury in
314 accordance with Section 3504, Internal Revenue Code, as a fiduciary, agent, or other person
315 that has the control, receipt, custody, or disposal of, or pays the wages of the individual; and

316 (iii) the domestic work is performed under a written contract that notifies the
317 individual that the individual is not an employee under this chapter or Chapter 3; or

318 (e) subject to Subsections (6) and (7), an individual who:

319 (i) (A) owns a motor vehicle; or

320 (B) leases a motor vehicle to a motor carrier;

321 (ii) personally operates the motor vehicle described in Subsection (5)(e)(i);

322 (iii) operates the motor vehicle described in Subsection (5)(e)(i) under a written
323 agreement with the motor carrier that states that the individual operates the motor vehicle as an
324 independent contractor; and

325 (iv) provides to the motor carrier at the time the written agreement described in
326 Subsection (5)(e)(iii) is executed or as soon after the execution as provided by an insurer:

327 (A) a copy of a workers' compensation coverage waiver issued pursuant to [~~Section~~
328 ~~31A-22-1011~~] Part 10, Workers' Compensation Coverage Waivers Act, by an insurer to the
329 individual; and

330 (B) proof that the individual is covered by occupational accident related insurance.

331 (6) An individual described in Subsection (5)(d) or (e) may become an employee under
332 this chapter and Chapter 3 if the employer of the individual complies with:

333 (a) this chapter and Chapter 3; and

334 (b) commission rules.

335 (7) For purposes of Subsection (5)(e):

336 (a) "Motor carrier" means a person engaged in the business of transporting freight,
337 merchandise, or other property by a commercial vehicle on a highway within this state.

338 (b) "Motor vehicle" means a self-propelled vehicle intended primarily for use and
339 operation on the highways, including a trailer or semitrailer designed for use with another
340 motorized vehicle.

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

- 344 (i) disability benefits;
- 345 (ii) death benefits;
- 346 (iii) medical expense benefits, which include:
 - 347 (A) hospital coverage;
 - 348 (B) surgical coverage;
 - 349 (C) prescription drug coverage; and
 - 350 (D) dental coverage.

351 Section 3. Section **34A-2-110** is amended to read:

352 **34A-2-110. Workers' compensation insurance fraud -- Elements -- Penalties --**
353 **Notice.**

354 (1) As used in this section:

- 355 (a) "Corporation" has the same meaning as in Section 76-2-201.
- 356 (b) "Intentionally" has the same meaning as in Section 76-2-103.
- 357 (c) "Knowingly" has the same meaning as in Section 76-2-103.
- 358 (d) "Person" has the same meaning as in Section 76-1-601.
- 359 (e) "Recklessly" has the same meaning as in Section 76-2-103.
- 360 (f) "Thing of value" means one or more of the following obtained under this chapter or

361 Chapter 3, Utah Occupational Disease Act:

- 362 (i) workers' compensation insurance coverage;
- 363 (ii) disability compensation;
- 364 (iii) a medical benefit;
- 365 (iv) a good;
- 366 (v) a professional service;
- 367 (vi) a fee for a professional service; or
- 368 (vii) anything of value.

- 369 (2) (a) A person is guilty of workers' compensation insurance fraud if that person
370 intentionally, knowingly, or recklessly:
- 371 (i) devises a scheme or artifice to do the following by means of a false or fraudulent
372 pretense, representation, promise, or material omission:
- 373 (A) obtain a thing of value under this chapter or Chapter 3;
- 374 (B) avoid paying the premium that an insurer charges, for an employee on the basis of
375 the underwriting criteria applicable to that employee, to obtain a thing of value under this
376 chapter or Chapter 3; or
- 377 (C) deprive an employee of a thing of value under this chapter or Chapter 3; and
- 378 (ii) communicates or causes a communication with another in furtherance of the
379 scheme or artifice.
- 380 (b) A violation of this Subsection (2) includes a scheme or artifice to:
- 381 (i) make or cause to be made a false written or oral statement with the intent to obtain
382 insurance coverage as mandated by this chapter or Chapter 3 at a rate that does not reflect the
383 risk, industry, employer, or class code actually covered by the insurance coverage;
- 384 (ii) form a business, reorganize a business, or change ownership in a business with the
385 intent to obtain insurance coverage as mandated by this chapter or Chapter 3 at a rate that does
386 not reflect the risk, industry, employer, or class code actually covered by the insurance
387 coverage;
- 388 (iii) misclassify an employee as one of the following so as to avoid the obligation to
389 obtain insurance coverage as mandated by this chapter or Chapter 3:
- 390 (A) an independent contractor;
- 391 (B) a sole proprietor;
- 392 (C) an owner;
- 393 (D) a partner;
- 394 (E) an officer; or
- 395 (F) a member in a limited liability company;
- 396 (iv) use a workers' compensation coverage waiver issued under [~~Section 31A-22-1011~~]
397 Part 10, Workers' Compensation Coverage Waivers Act, to deprive an employee of workers'
398 compensation coverage under this chapter or Chapter 3; or
- 399 (v) collect or make a claim for temporary disability compensation as provided in

400 Section 34A-2-410 while working for gain.

401 (3) (a) Workers' compensation insurance fraud under Subsection (2) is punishable in
402 the manner prescribed in Subsection (3)(c).

403 (b) A corporation or association is guilty of the offense of workers' compensation
404 insurance fraud under the same conditions as those set forth in Section 76-2-204.

405 (c) (i) In accordance with Subsection (3)(c)(ii), the determination of the degree of an
406 offense under Subsection (2) shall be measured by the following on the basis of which creates
407 the greatest penalty:

408 (A) the total value of all property, money, or other things obtained or sought to be
409 obtained by the scheme or artifice described in Subsection (2); or

410 (B) the number of individuals not covered under this chapter or Chapter 3 because of
411 the scheme or artifice described in Subsection (2).

412 (ii) A person is guilty of:

413 (A) a class A misdemeanor:

414 (I) if the value of the property, money, or other thing of value described in Subsection
415 (3)(c)(i)(A) is less than \$1,000; or

416 (II) for each individual described in Subsection (3)(c)(i)(B), if the number of
417 individuals described in Subsection (3)(c)(i)(B) is less than five;

418 (B) a third degree felony:

419 (I) if the value of the property, money, or other thing of value described in Subsection
420 (3)(c)(i)(A) is equal to or greater than \$1,000, but is less than \$5,000; or

421 (II) for each individual described in Subsection (3)(c)(i)(B), if the number of
422 individuals described in Subsection (3)(c)(i)(B) is equal to or greater than five, but is less than
423 50; and

424 (C) a second degree felony:

425 (I) if the value of the property, money, or other thing of value described in Subsection
426 (3)(c)(i)(A) is equal to or greater than \$5,000; or

427 (II) for each individual described in Subsection (3)(c)(i)(B), if the number of
428 individuals described in Subsection (3)(c)(i)(B) is equal to or greater than 50.

429 (4) The following are not a necessary element of an offense described in Subsection
430 (2):

431 (a) reliance on the part of a person;

432 (b) the intent on the part of the perpetrator of an offense described in Subsection (2) to
433 permanently deprive a person of property, money, or anything of value; or

434 (c) an insurer or self-insured employer giving written notice in accordance with
435 Subsection (5) that workers' compensation insurance fraud is a crime.

436 (5) (a) An insurer or self-insured employer who, in connection with this chapter or
437 Chapter 3, Utah Occupational Disease Act, prints, reproduces, or furnishes a form described in
438 Subsection (5)(b) shall cause to be printed or displayed in comparative prominence with other
439 content on the form the statement: "Any person who knowingly presents false or fraudulent
440 underwriting information, files or causes to be filed a false or fraudulent claim for disability
441 compensation or medical benefits, or submits a false or fraudulent report or billing for health
442 care fees or other professional services is guilty of a crime and may be subject to fines and
443 confinement in state prison."

444 (b) Subsection (5)(a) applies to a form upon which a person:

445 (i) applies for insurance coverage;

446 (ii) applies for a workers' compensation coverage waiver issued under [~~Section~~
447 ~~31A-22-1011~~] Part 10, Workers' Compensation Coverage Waivers Act;

448 (iii) reports payroll;

449 (iv) makes a claim by reason of accident, injury, death, disease, or other claimed loss;

450 or

451 (v) makes a report or gives notice to an insurer or self-insured employer.

452 (c) An insurer or self-insured employer who issues a check, warrant, or other financial
453 instrument in payment of compensation issued under this chapter or Chapter 3[;] shall cause to
454 be printed or displayed in comparative prominence above the area for endorsement a statement
455 substantially similar to the following: "Workers' compensation insurance fraud is a crime
456 punishable by Utah law."

457 (d) This Subsection (5) applies only to the legal obligations of an insurer or a
458 self-insured employer.

459 (e) A person who violates Subsection (2) is guilty of workers' compensation insurance
460 fraud, and the failure of an insurer or a self-insured employer to fully comply with this
461 Subsection (5) is not:

462 (i) a defense to violating Subsection (2); or
463 (ii) grounds for suppressing evidence.

464 (6) In the absence of malice, a person, employer, insurer, or governmental entity that
465 reports a suspected fraudulent act relating to a workers' compensation insurance policy or claim
466 is not subject to civil liability for libel, slander, or another relevant cause of action.

467 (7) In an action involving workers' compensation, this section supersedes Title 31A,
468 Chapter 31, Insurance Fraud Act.

469 Section 4. Section **34A-2-705** is amended to read:

470 **34A-2-705. Industrial Accident Restricted Account.**

471 (1) As used in this section:

472 (a) "Account" means the Industrial Accident Restricted Account created by this
473 section.

474 (b) "Advisory council" means the state workers' compensation advisory council created
475 under Section 34A-2-107.

476 (2) There is created in the General Fund a restricted account known as the "Industrial
477 Accident Restricted Account."

478 (3) (a) The account is funded from:

479 (i) .5% of the premium income remitted to the state treasurer and credited to the
480 account pursuant to Subsection 59-9-101(2)(c)(iv)[-]; and

481 (ii) amounts deposited under Section 34A-2-1003.

482 (b) If the balance in the account exceeds \$500,000 at the close of a fiscal year, the
483 excess shall be transferred to the Uninsured Employers' Fund created under Section 34A-2-704.

484 (4) (a) From money appropriated by the Legislature from the account to the
485 commission and subject to the requirements of this section, the commission may fund:

486 (i) the activities of the Division of Industrial Accidents described in Section
487 34A-1-202; [~~and~~]

488 (ii) the activities of the Division of Adjudication described in Section 34A-1-202[-];
489 and

490 (iii) the activities of the commission described in Section 34A-2-1005.

491 (b) The money deposited in the account may not be used for a purpose other than a
492 purpose described in this Subsection (4), including an administrative cost or another activity of

493 the commission unrelated to the account.

494 (5) (a) Each year before the public hearing required by Subsection 59-9-101(2)(d)(i),
495 the commission shall report to the advisory council regarding:

496 (i) the commission's budget request to the governor for the next fiscal year related to:

497 (A) the Division of Industrial Accidents; and

498 (B) the Division of Adjudication;

499 (ii) the expenditures of the commission for the fiscal year in which the commission is
500 reporting related to:

501 (A) the Division of Industrial Accidents; and

502 (B) the Division of Adjudication; [~~and~~]

503 (iii) revenues generated from the premium assessment under Section 59-9-101 on an
504 admitted insurer writing workers' compensation insurance in this state and on a self-insured
505 employer under Section 34A-2-202[~~;~~]; and

506 (iv) money deposited under Section 34A-2-1003.

507 (b) The commission shall annually report to the governor and the Legislature
508 regarding:

509 (i) the use of the money appropriated to the commission under this section; [~~and~~]

510 (ii) revenues generated from the premium assessment under Section 59-9-101 on an
511 admitted insurer writing workers' compensation insurance in this state and on a self-insured
512 employer under Section 34A-2-202[~~;~~]; and

513 (iii) money deposited under Section 34A-2-1003.

514 Section 5. Section **34A-2-1001** is enacted to read:

515 **Part 10. Workers' Compensation Coverage Waivers Act**

516 **34A-2-1001. Title.**

517 This part is known as the "Workers' Compensation Coverage Waivers Act."

518 Section 6. Section **34A-2-1002** is enacted to read:

519 **34A-2-1002. Definitions.**

520 As used in this part:

521 (1) "Business entity" means:

522 (a) a sole proprietorship;

523 (b) a corporation;

524 (c) a partnership;
525 (d) a limited liability company; or
526 (e) an entity similar to one described in Subsections (1)(a) through (d).
527 (2) "Waiver" means a workers' compensation coverage waiver issued under this part.
528 Section 7. Section **34A-2-1003** is enacted to read:
529 **34A-2-1003. Issuance of a waiver.**
530 (1) The commission shall issue a workers' compensation coverage waiver to a business
531 entity that:
532 (a) elects not to include an owner, partner, or corporate officer or director as an
533 employee under a workers' compensation policy in accordance with Section 34A-2-103 and
534 Subsection 34A-2-104(4);
535 (b) employs no other employee on the day on which the commission issues the waiver
536 to the business entity;
537 (c) provides to the commission the information required by Section 34A-2-1004; and
538 (d) pays a fee established by the commission in accordance with Section 63J-1-504,
539 except that the fee may not exceed \$50.
540 (2) (a) A waiver issued under this section expires one year from the day on which it is
541 issued unless renewed by the holder of the waiver.
542 (b) To renew a waiver issued under this part, the holder of the waiver shall:
543 (i) employ no other employee on the day on which the commission renews the waiver;
544 (ii) provide to the commission the information required by Section 34A-2-1004; and
545 (iii) pay a fee established by the commission in accordance with Section 63J-1-504,
546 except that the fee may not exceed \$50.
547 (3) As of the day on which a business entity described in Subsection (1) employs an
548 employee other than an owner, partner, or corporate officer or director described in Subsection
549 (1)(a):
550 (a) the business entity's waiver is invalid; and
551 (b) the business entity is required to provide workers' compensation coverage for that
552 employee in accordance with Section 34A-2-201.
553 (4) The commission shall deposit a fee collected under this section in the Industrial
554 Accident Restricted Account created in Section 34A-2-705.

555 (5) Unless invalidated under Section 34A-2-1005, notwithstanding the other provisions
556 of this section, a waiver issued by an insurer that is valid on June 30, 2011, remains valid until
557 its expiration date.

558 Section 8. Section **34A-2-1004** is enacted to read:

559 **34A-2-1004. Information required to obtain a waiver.**

560 To obtain or renew a waiver, a business entity shall submit to the commission:

561 (1) a copy of two or more of the following:

562 (a) the business entity's federal or state income tax return that shows business income
563 for the complete taxable year that immediately precedes the day on which the business entity
564 submits the information;

565 (b) a valid business license;

566 (c) a license to engage in an occupation or profession, including a license under Title
567 58, Occupations and Professions; or

568 (d) documentation of an active liability insurance policy that covers the business
569 entity's activities; or

570 (2) a copy of one item listed in Subsection (1) and a copy of two or more of the
571 following:

572 (a) proof of a bank account for the business entity;

573 (b) proof that for the business entity there is:

574 (i) a telephone number; and

575 (ii) a physical location; or

576 (c) an advertisement of services in a newspaper of general circulation or telephone
577 directory showing the business entity's:

578 (i) name; and

579 (ii) contact information.

580 Section 9. Section **34A-2-1005** is enacted to read:

581 **34A-2-1005. Enforcement.**

582 (1) The commission may investigate a business entity to determine whether the
583 business entity validly elects to not cover an owner, partner, or corporate officer or director as
584 an employee under a workers' compensation policy in accordance with Section 34A-2-103.

585 (2) If the commission determines that a business entity's election as provided in this

586 section is invalid, the commission may:

587 (a) prohibit a business entity from using a waiver obtained under this part; and

588 (b) take any action provided for under this chapter or Chapter 3, Utah Occupational
589 Disease Act, for failure to obtain workers' compensation coverage for an employee.

590 Section 10. **Repealer.**

591 This bill repeals:

592 Section **31A-22-1011, Workers' compensation coverage waivers.**

593 Section 11. **Appropriation.**

594 Under the terms and conditions of Title 63J, Chapter 1, Budgetary Procedures Act, the
595 following sums of money are appropriated from resources not otherwise appropriated out of the
596 funds or accounts indicated for the fiscal year beginning July 1, 2010, and ending June 30,
597 2011. These are additions to amounts previously appropriated for fiscal year 2011.

598 To Labor Commission

599 From General Fund Restricted - Industrial Accident Restricted \$10,000
Account

600 Schedule of Programs:

601 Workers' Compensation Coverage Waivers \$10,000
Act

602 Section 12. **Appropriation.**

603 Under the terms and conditions of Title 63J, Chapter 1, Budgetary Procedures Act, the
604 following sums of money are appropriated from resources not otherwise appropriated out of the
605 funds or accounts indicated for the fiscal year beginning July 1, 2011, and ending June 30,
606 2012. These are additions to amounts previously appropriated for fiscal year 2012.

607 To Labor Commission

608 From General Fund Restricted - Industrial Accident Restricted \$75,000
Account

609 From General Fund Restricted - Industrial Accident Restricted \$15,000
Account, One-time

610 Schedule of Programs:

Workers' Compensation Coverage Waivers \$90,000

611 Act

612 Section 13. **Effective date.**

613 The appropriation in Section 11 for fiscal year 2011 takes effect on May 10, 2011, and

614 the remainder of the bill takes effect on July 1, 2011.

Legislative Review Note

as of 2-9-11 10:02 AM

Office of Legislative Research and General Counsel