

1 **WORKERS' COMPENSATION ACT AMENDMENTS**

2 2012 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Stephen H. Urquhart**

5 House Sponsor: Don L. Ipson

7 **LONG TITLE**

8 **General Description:**

9 This bill modifies the Workers' Compensation Act to address the status of motor
10 carriers.

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ addresses coverage and benefit limits for occupational accident related insurance;
14 ▶ requires the commission under certain circumstances to verify occupational accident
15 related insurance coverage before issuing a workers' compensation coverage waiver;

16 and

- 17 ▶ makes technical changes.

18 **Money Appropriated in this Bill:**

19 None

20 **Other Special Clauses:**

21 None

22 **Utah Code Sections Affected:**

23 AMENDS:

24 **34A-2-104**, as last amended by Laws of Utah 2011, Chapter 328

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

27 Section 1. Section **34A-2-104** is amended to read:

28 **34A-2-104. "Employee," "worker," and "operative" defined -- Specific**
29 **circumstances -- Exemptions.**

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

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

33 (A) in the service of:

34 (I) the state;

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

36 (III) a school district within the state;

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

38 (I) an election;

39 (II) appointment; or

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

41 (ii) including:

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

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

44 (b) a person in the service of any employer, as defined in Section 34A-2-103, who
45 employs one or more workers or operatives regularly in the same business, or in or about the
46 same establishment:

47 (i) under any contract of hire:

48 (A) express or implied; and

49 (B) oral or written;

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

51 (iii) not including any person whose employment:

52 (A) is casual; and

53 (B) not in the usual course of the trade, business, or occupation of the employee's
54 employer.

55 (2) (a) Unless a lessee provides coverage as an employer under this chapter and
56 Chapter 3, Utah Occupational Disease Act, any lessee in mines or of mining property and each
57 employee and sublessee of the lessee shall be:

58 (i) covered for compensation by the lessor under this chapter and Chapter 3, Utah
59 Occupational Disease Act;

60 (ii) subject to this chapter and Chapter 3, Utah Occupational Disease Act; and

61 (iii) entitled to the benefits of this chapter and Chapter 3, Utah Occupational Disease
62 Act, to the same extent as if the lessee, employee, or sublessee were employees of the lessor
63 drawing the wages paid employees for substantially similar work.

64 (b) The lessor may deduct from the proceeds of ores mined by the lessees an amount
65 equal to the insurance premium for that type of work.

66 (3) (a) A partnership or sole proprietorship may elect to include any partner of the
67 partnership or owner of the sole proprietorship as an employee of the partnership or sole
68 proprietorship under this chapter and Chapter 3, Utah Occupational Disease Act.

69 (b) If a partnership or sole proprietorship makes an election under Subsection (3)(a),
70 the partnership or sole proprietorship shall serve written notice upon its insurance carrier
71 naming the persons to be covered.

72 (c) A partner of a partnership or owner of a sole proprietorship may not be considered
73 an employee of the partner's partnership or the owner's sole proprietorship under this chapter or
74 Chapter 3, Utah Occupational Disease Act, until the notice described in Subsection (3)(b) is
75 given.

76 (d) For premium rate making, the insurance carrier shall assume the salary or wage of
77 the partner or sole proprietor electing coverage under Subsection (3)(a) to be 100% of the
78 state's average weekly wage.

79 (4) (a) A corporation may elect not to include any director or officer of the corporation
80 as an employee under this chapter and Chapter 3, Utah Occupational Disease Act.

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

84 (c) A director or officer of a corporation is considered an employee under this chapter
85 and Chapter 3, Utah Occupational Disease Act, until the notice described in Subsection (4)(b)

86 is given.

87 (5) As used in this chapter and Chapter 3, Utah Occupational Disease Act, "employee,"
88 "worker," and "operative" do not include:

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

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

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

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

96 (B) the sales agent or associate broker is not to be treated as an employee for federal
97 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;

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, Utah
- 122 Occupational Disease Act; or
- 123 (e) subject to Subsections (6) [~~and~~], (7), and (8), an individual who:
- 124 (i) (A) owns a motor vehicle; or
- 125 (B) leases a motor vehicle to a motor carrier;
- 126 (ii) personally operates the motor vehicle described in Subsection (5)(e)(i);
- 127 (iii) operates the motor vehicle described in Subsection (5)(e)(i) under a written
- 128 agreement with the motor carrier that states that the individual operates the motor vehicle as an
- 129 independent contractor; and
- 130 (iv) provides to the motor carrier at the time the written agreement described in
- 131 Subsection (5)(e)(iii) is executed or as soon after the execution as provided by an insurer:
- 132 (A) a copy of a workers' compensation coverage waiver issued pursuant to Part 10,
- 133 Workers' Compensation Coverage Waivers Act, by an insurer to the individual; and
- 134 (B) proof that the individual is covered by occupational accident related insurance[-]
- 135 with the coverage and benefit limits listed in Subsection (7)(c).
- 136 (6) An individual described in Subsection (5)(d) or (e) may become an employee under
- 137 this chapter and Chapter 3, Utah Occupational Disease Act, if the employer of the individual
- 138 complies with:
- 139 (a) this chapter and Chapter 3, Utah Occupational Disease Act; and
- 140 (b) commission rules.
- 141 (7) For purposes of Subsection (5)(e):

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

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

147 (c) "Occupational accident related insurance" means insurance that provides the
148 following coverage at a minimum aggregate policy limit of \$1,000,000 for all benefits paid,
149 including medical expense benefits, for an injury sustained in the course of working under a
150 written agreement described in Subsection (5)(e)(iii):

- 151 (i) disability benefits;
- 152 (ii) death benefits;
- 153 (iii) medical expense benefits, which include:
 - 154 (A) hospital coverage;
 - 155 (B) surgical coverage;
 - 156 (C) prescription drug coverage; and
 - 157 (D) dental coverage.

158 (8) For an individual described in Subsection (5)(e), the commission shall verify the
159 existence of occupational accident insurance coverage with the coverage and benefit limits
160 listed in Subsection (7)(c) before the commission may issue a workers' compensation coverage
161 waiver to the individual pursuant to Part 10, Workers' Compensation Coverage Waivers Act.