

**Representative Brian M. Greene** proposes the following substitute bill:

**DETERMINATION OF EMPLOYER STATUS AMENDMENTS**

2016 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Brian M. Greene**

Senate Sponsor: Jerry W. Stevenson

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**LONG TITLE**

**General Description:**

This bill modifies provisions related to insurance, labor, and employment security to address the determination of who is an employer.

**Highlighted Provisions:**

This bill:

- ▶ amends definition provisions;
- ▶ addresses when a franchisor is considered an employer;
- ▶ addresses federal executive branch rulings in determining whether two or more persons are joint employers; and
- ▶ makes technical changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**31A-40-102**, as enacted by Laws of Utah 2008, Chapter 318

**34-20-2**, as last amended by Laws of Utah 1997, Chapter 375



- 26 [34-28-2](#), as last amended by Laws of Utah 2011, Chapter 413
- 27 [34-40-102](#), as last amended by Laws of Utah 2003, Chapter 151
- 28 [34A-2-103](#), as last amended by Laws of Utah 2014, Chapter 303
- 29 [34A-5-102](#), as last amended by Laws of Utah 2015, Chapters 13 and 23
- 30 [34A-6-103](#), as last amended by Laws of Utah 2013, Chapter 413
- 31 [35A-4-203](#), as last amended by Laws of Utah 2003, Chapter 17

32 ENACTS:

- 33 [31A-40-212](#), Utah Code Annotated 1953
- 34 [34-20-14](#), Utah Code Annotated 1953



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

37 Section 1. Section [31A-40-102](#) is amended to read:

38 **[31A-40-102. Definitions.](#)**

39 As used in this chapter:

- 40 (1) (a) Except as provided in Subsection (1)(b), "administrative fee" means a fee
- 41 charged to a client by a professional employer organization for a professional employer service.
- 42 (b) "Administrative fee" does not include an amount or a fee received by a professional
- 43 employer organization that is:
  - 44 (i) compensation of a covered employee;
  - 45 (ii) a benefit for a covered employee;
  - 46 (iii) a payroll-related tax;
  - 47 (iv) an unemployment insurance contribution;
  - 48 (v) withholding of compensation for a covered employee;
  - 49 (vi) a workers' compensation premium; or
  - 50 (vii) another assessment paid by a professional employer organization to or on behalf
  - 51 of a covered employee under a professional employer agreement.
- 52 (2) "Assurance organization" means a person designated as an assurance organization
- 53 in accordance with Section [31A-40-303](#).
- 54 (3) "Client" means a person who enters into a professional employer agreement with a
- 55 professional employer organization.
- 56 (4) "Coemployer" means:

- 57 (a) a client; or
- 58 (b) a professional employer organization.
- 59 (5) "Coemployment relationship" means a relationship:
- 60 (a) that is intended to be ongoing rather than a temporary or project specific
- 61 relationship; and
- 62 (b) wherein the rights and obligations of an employer that arise out of an employment
- 63 relationship are allocated between coemployers pursuant to:
- 64 (i) a professional employer agreement; or
- 65 (ii) this chapter.
- 66 (6) Notwithstanding Section 31A-1-301, "controlling person" means a person who,
- 67 individually or acting in concert with one or more persons, owns, directly or indirectly, 10% or
- 68 more of the equity interest in a professional employer organization.
- 69 (7) "Covered employee" means an individual who has a coemployment relationship
- 70 with a client and a professional employer organization if the conditions of Section 31A-40-203
- 71 are met.
- 72 (8) (a) "Employment related economic incentive" means:
- 73 (i) (A) a credit against or exemption from taxes due the state or a political subdivision
- 74 of the state; or
- 75 (B) an economic inducement, including a loan or a grant; and
- 76 (ii) if the credit, exemption, or economic inducement described in Subsection (8)(a)(i):
- 77 (A) is offered by the state or a political subdivision of the state; and
- 78 (B) has an eligibility requirement that relates in whole or in part to employment
- 79 including:
- 80 (I) the number of employees; or
- 81 (II) the nature of the employment.
- 82 (9) "Federal executive agency" means an executive agency, as defined in 5 U.S.C.
- 83 Sec.105, of the federal government.
- 84 (10) "Franchise" means the same as that term is defined in 16 C.F.R. Sec. 436.1.
- 85 (11) "Franchisee" means the same as that term is defined in 16 C.F.R. Sec. 436.1.
- 86 (12) "Franchisor" means the same as that term is defined in 16 C.F.R. Sec. 436.1.
- 87 [~~9~~] (13) "Guarantee" means to assume an obligation of another person if that person

88 fails to meet the obligation.

89 ~~[(10)]~~ (14) "Licensee" means a person licensed under this chapter.

90 ~~[(11)]~~ (15) "Professional employer agreement" means a written contract by and  
91 between a client and a professional employer organization that provides for:

92 (a) the coemployment of a covered employee;

93 (b) with respect to a covered employee, the allocation of a right or obligation of an  
94 employer between:

95 (i) the client; and

96 (ii) the professional employer organization; and

97 (c) the assumption of the obligations imposed by this chapter by:

98 (i) the client; or

99 (ii) the professional employer organization.

100 ~~[(12)]~~ (16) (a) Subject to Subsection ~~[(12)]~~ (16)(b), "professional employer  
101 organization" means a person engaged in the business of providing a professional employer  
102 service.

103 (b) "Professional employer organization" does not include:

104 (i) a person that:

105 (A) does not:

106 (I) have as a principal business activity the entering into of a professional employer  
107 arrangement; or

108 (II) hold the person out as a professional employer organization; and

109 (B) shares an employee with a commonly owned company within the meaning of  
110 Sections 414(b) and (c), Internal Revenue Code;

111 (ii) an independent contractor arrangement by which a person:

112 (A) assumes responsibility for the product produced or service performed by the person  
113 or the person's agent; and

114 (B) retains and exercises primary direction and control over the work performed by an  
115 individual whose service is supplied under the independent contractor arrangement; or

116 (iii) a person providing temporary help service.

117 ~~[(13)]~~ (17) "Professional employer organization group" means two or more  
118 professional employer organizations that are majority owned or commonly controlled or

119 directed by the same one or more persons.

120 ~~[(14)]~~ (18) "Professional employer service" means the service of entering into a  
121 coemployment relationship under this chapter under which all or a majority of the employees  
122 who provide a service to a client, or a division or work unit of a client, are covered employees.

123 ~~[(15)]~~ (19) "Qualified actuary" means an individual who:

124 (a) is a member in good standing of a professional actuarial accreditation organization  
125 designated by the department by rule;

126 (b) is qualified to sign a statement of actuarial opinion or annual statement for a  
127 professional employer organization in accordance with the qualification standards for an  
128 actuary signing an opinion or annual statement as provided by the professional actuarial  
129 accreditation organization designated under Subsection ~~[(15)]~~ (19)(a);

130 (c) is familiar with the valuation requirements applicable to a professional employer  
131 organization;

132 (d) has not been found by the commissioner, or if so found has subsequently been  
133 reinstated as a qualified actuary, following appropriate notice and hearing to have:

134 (i) violated a provision of, or an obligation imposed by, statute or other law in the  
135 course of the actuary's dealings as a qualified actuary;

136 (ii) been found guilty of a fraudulent or dishonest practice;

137 (iii) demonstrated the actuary's incompetency, lack of cooperation, or  
138 untrustworthiness to act as a qualified actuary;

139 (iv) submitted to the commissioner during the past five years, pursuant to this rule, an  
140 actuarial opinion or memorandum that the commissioner rejected because it did not meet the  
141 provisions of rule; or

142 (v) resigned or been removed as an actuary within the past five years as a result of an  
143 act or omission indicated in an adverse report on examination or as a result of failure to adhere  
144 to a generally acceptable actuarial standard; and

145 (e) has not failed to notify the commissioner of an action taken by any commissioner of  
146 another state similar to that under Subsection ~~[(15)]~~ (19)(d).

147 ~~[(16)]~~ (20) "Temporary help service" means a service consisting of a person:

148 (a) recruiting and hiring the person's own employee;

149 (b) finding another person that wants the services of that employee;

- 150 (c) assigning the employee to:  
151 (i) perform services at or for the other person to support or supplement the other  
152 person's employees;  
153 (ii) provide assistance in a special work situation such as:  
154 (A) an employee absence;  
155 (B) a skill shortage; or  
156 (C) a seasonal workload; or  
157 (iii) perform a special assignment or project; and  
158 (d) customarily reassigning the employee to another organization when the employee  
159 finishes an assignment.

160 [(17)] (21) "Working capital" means the current assets minus the current liabilities of a  
161 professional employer organization determined in accordance with generally accepted  
162 accounting principles.

163 Section 2. Section 31A-40-212 is enacted to read:

164 **31A-40-212. Determination of joint employers -- Franchisors excluded.**

165 (1) For purposes of determining whether two or more persons are considered joint  
166 employers under this chapter, an administrative ruling of a federal executive agency may not be  
167 considered a generally applicable law unless that administrative ruling is determined to be  
168 generally applicable by a court of law, or adopted by statute or rule.

169 (2) (a) For purposes of this chapter, a franchisor is not considered to be an employer of:

170 (i) a franchisee; or

171 (ii) a franchisee's employee.

172 (b) With respect to a specific claim for relief under this chapter made by a franchisee or  
173 a franchisee's employee, this Subsection (2) does not apply to a franchisor under a franchise  
174 that exercises a type or degree of control over the franchisee or the franchisee's employee not  
175 customarily exercised by a franchisor for the purpose of protecting the franchisor's trademarks  
176 and brand.

177 Section 3. Section 34-20-2 is amended to read:

178 **34-20-2. Definitions.**

179 As used in this chapter:

180 (1) "Affecting commerce" means in commerce, or burdening or obstructing commerce

181 or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or  
 182 obstructing commerce or the free flow of commerce within the state.

183 (2) "Commerce" means trade, traffic, commerce, transportation, or communication  
 184 within the state.

185 (3) "Election" means a proceeding in which the employees in a collective bargaining  
 186 unit cast a secret ballot for collective bargaining representatives or for any other purpose  
 187 specified in this chapter and includes elections conducted by the board or by any tribunal  
 188 having competent jurisdiction or whose jurisdiction was accepted by the parties.

189 (4) (a) "Employee" includes any employee unless this chapter explicitly states  
 190 otherwise, and includes an individual whose work has ceased as a consequence of, or in  
 191 connection with, any current labor dispute or because of any unfair labor practice, and who has  
 192 not obtained any other regular and substantially equivalent employment.

193 (b) "Employee" does not include an individual employed as an agricultural laborer, or  
 194 in the domestic service of a family or person at his home, or an individual employed by his  
 195 parent or spouse.

196 (5) "Employer" includes a person acting in the interest of an employer, directly or  
 197 indirectly, but does not include:

198 (a) the United States;

199 (b) a state or political subdivision of a state;

200 (c) a person subject to the federal Railway Labor Act;

201 (d) a labor organization, other than when acting as an employer;

202 (e) a corporation or association operating a hospital if no part of the net earnings inures  
 203 to the benefit of any private shareholder or individual; or

204 (f) anyone acting in the capacity of officer or agent of a labor organization.

205 (6) "Federal executive agency" means an executive agency, as defined in 5 U.S.C.  
 206 Sec.105, of the federal government.

207 (7) "Franchise" means the same as that term is defined in 16 C.F.R. Sec. 436.1.

208 (8) "Franchisee" means the same as that term is defined in 16 C.F.R. Sec. 436.1.

209 (9) "Franchisor" means the same as that term is defined in 16 C.F.R. Sec. 436.1.

210 [~~(6)~~] (10) "Labor dispute" means any controversy between an employer and the  
 211 majority of [~~his~~] the employer's employees in a collective bargaining unit concerning the right

212 or process or details of collective bargaining or the designation of representatives.

213 ~~[(7)]~~ (11) "Labor organization" means an organization of any kind or any agency or  
214 employee representation committee or plan in which employees participate that exists for the  
215 purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes,  
216 wages, rates of pay, hours of employment, or conditions of work.

217 ~~[(8)]~~ (12) "Labor relations board" or "board" means the board created in Section  
218 [34-20-3](#).

219 ~~[(9)]~~ (13) "Person" includes an individual, partnership, association, corporation, legal  
220 representative, trustee, trustee in bankruptcy, or receiver.

221 ~~[(10)]~~ (14) "Representative" includes an individual or labor organization.

222 ~~[(11)]~~ (15) "Secondary boycott" includes combining or conspiring to cause or threaten  
223 to cause injury to one with whom no labor dispute exists, whether by:

224 (a) withholding patronage, labor, or other beneficial business intercourse;

225 (b) picketing;

226 (c) refusing to handle, install, use, or work on particular materials, equipment, or  
227 supplies; or

228 (d) by any other unlawful means, in order to bring him against his will into a concerted  
229 plan to coerce or inflict damage upon another.

230 ~~[(12)]~~ (16) "Unfair labor practice" means any unfair labor practice listed in Section  
231 [34-20-8](#).

232 Section 4. Section **34-20-14** is enacted to read:

233 **34-20-14. Determining joint employment status -- Franchisors excluded.**

234 (1) For purposes of determining whether two or more persons are considered joint  
235 employers under this chapter, an administrative ruling of a federal executive agency may not be  
236 considered a generally applicable law unless that administrative ruling is determined to be  
237 generally applicable by a court of law, or adopted by statute or rule.

238 (2) (a) For purposes of this chapter, a franchisor is not considered to be an employer of:

239 (i) a franchisee; or

240 (ii) a franchisee's employee.

241 (b) With respect to a specific claim for relief under this chapter made by a franchisee or  
242 a franchisee's employee, this Subsection (2) does not apply to a franchisor under a franchise

243 that exercises a type or degree of control over the franchisee or the franchisee's employee not  
 244 customarily exercised by a franchisor for the purpose of protecting the franchisor's trademarks  
 245 and brand.

246 Section 5. Section **34-28-2** is amended to read:

247 **34-28-2. Definitions -- Unincorporated entities -- Joint employers -- Franchisors.**

248 (1) As used in this chapter:

249 (a) "Commission" means the Labor Commission.

250 (b) "Division" means the Division of Antidiscrimination and Labor.

251 (c) "Employer" includes every person, firm, partnership, association, corporation,  
 252 receiver or other officer of a court of this state, and any agent or officer of any of the  
 253 above-mentioned classes, employing any person in this state.

254 (d) "Federal executive agency" means an executive agency, as defined in 5 U.S.C. Sec.  
 255 105, of the federal government.

256 (e) "Franchise" means the same as that term is defined in 16 C.F.R. Sec. 436.1.

257 (f) "Franchisee" means the same as that term is defined in 16 C.F.R. Sec. 436.1.

258 (g) "Franchisor" means the same as that term is defined in 16 C.F.R. Sec. 436.1.

259 ~~(h)~~ (h) "Unincorporated entity" means an entity organized or doing business in the  
 260 state that is not:

261 (i) an individual;

262 (ii) a corporation; or

263 (iii) publicly traded.

264 ~~(i)~~ (i) "Wages" means the amounts due the employee for labor or services, whether  
 265 the amount is fixed or ascertained on a time, task, piece, commission basis or other method of  
 266 calculating such amount.

267 (2) (a) For purposes of this chapter, an unincorporated entity that is required to be  
 268 licensed under Title 58, Chapter 55, Utah Construction Trades Licensing Act, is presumed to  
 269 be the employer of each individual who, directly or indirectly, holds an ownership interest in  
 270 the unincorporated entity.

271 (b) Pursuant to rules made by the commission in accordance with Title 63G, Chapter 3,  
 272 Utah Administrative Rulemaking Act, an unincorporated entity may rebut the presumption  
 273 under Subsection (2)(a) for an individual by establishing by clear and convincing evidence that

274 the individual:

275 (i) is an active manager of the unincorporated entity;

276 (ii) directly or indirectly holds at least an 8% ownership interest in the unincorporated  
277 entity; or

278 (iii) is not subject to supervision or control in the performance of work by:

279 (A) the unincorporated entity; or

280 (B) a person with whom the unincorporated entity contracts.

281 (c) As part of the rules made under Subsection (2)(b), the commission may define:

282 (i) "active manager";

283 (ii) "directly or indirectly holds at least an 8% ownership interest"; and

284 (iii) "subject to supervision or control in the performance of work."

285 (d) The commission by rule made in accordance with Title 63G, Chapter 3, Utah

286 Administrative Rulemaking Act, may establish a procedure, consistent with Section 34-28-7,

287 under which an unincorporated entity may seek approval of a mutual agreement to pay wages

288 on non-regular paydays.

289 (3) For purposes of determining whether two or more persons are considered joint

290 employers under this chapter, an administrative ruling of a federal executive agency may not be

291 considered a generally applicable law unless that administrative ruling is determined to be

292 generally applicable by a court of law, or adopted by statute or rule.

293 (4) (a) For purposes of this chapter, a franchisor is not considered to be an employer of:

294 (i) a franchisee; or

295 (ii) a franchisee's employee.

296 (b) With respect to a specific claim for relief under this chapter made by a franchisee or

297 a franchisee's employee, this Subsection (4) does not apply to a franchisor under a franchise

298 that exercises a type or degree of control over the franchisee or the franchisee's employee not

299 customarily exercised by a franchisor for the purpose of protecting the franchisor's trademarks

300 and brand.

301 Section 6. Section 34-40-102 is amended to read:

302 **34-40-102. Definitions -- Joint employees -- Franchisors.**

303 (1) [~~This~~] Subject to Subsection (3), this chapter and the terms used in it, including the

304 computation of wages, shall be interpreted consistently with [29 U.S.C. Sec. 201 et seq.,] the

305 Fair Labor Standards Act of 1938, 29 U.S.C. Sec. 201 et seq., as amended, to the extent that act  
 306 relates to the payment of a minimum wage.

307 (2) As used in this chapter:

308 (a) "Cash wage obligation" means an hourly wage that an employer pays a tipped  
 309 employee regardless of the tips or gratuities a tipped employee receives.

310 (b) "Commission" means the Labor Commission.

311 (c) "Division" means the Division of Antidiscrimination and Labor in the commission.

312 (d) "Federal executive agency" means an executive agency, as defined in 5 U.S.C. Sec.  
 313 105, of the federal government.

314 (e) "Franchise" means the same as that term is defined in 16 C.F.R. Sec. 436.1.

315 (f) "Franchisee" means the same as that term is defined in 16 C.F.R. Sec. 436.1.

316 (g) "Franchisor" means the same as that term is defined in 16 C.F.R. Sec. 436.1.

317 [~~(d)~~] (h) "Minimum wage" means the state minimum hourly wage for adult employees  
 318 as established under this chapter, unless the context clearly indicates otherwise.

319 [~~(e)~~] (i) "Tipped employee" means an employee who customarily and regularly receives  
 320 tips or gratuities.

321 (3) Notwithstanding Subsection (1), for purposes of determining whether two or more  
 322 persons are considered joint employers under this chapter, an administrative ruling of a federal  
 323 executive agency may not be considered a generally applicable law unless that administrative  
 324 ruling is determined to be generally applicable by a court of law, or adopted by statute or rule.

325 (4) (a) For purposes of this chapter, a franchisor is not considered to be an employer of:

326 (i) a franchisee; or

327 (ii) a franchisee's employee.

328 (b) With respect to a specific claim for relief under this chapter made by a franchisee or  
 329 a franchisee's employee, this Subsection (4) does not apply to a franchisor under a franchise  
 330 that exercises a type or degree of control over the franchisee or the franchisee's employee not  
 331 customarily exercised by a franchisor for the purpose of protecting the franchisor's trademarks  
 332 and brand.

333 Section 7. Section **34A-2-103** is amended to read:

334 **34A-2-103. Employers enumerated and defined -- Regularly employed --**

335 **Statutory employers -- Exceptions.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

379 (A) an agricultural employer's:

380 (I) spouse;

381 (II) grandparent;

382 (III) parent;

383 (IV) sibling;

384 (V) child;

385 (VI) grandchild;

386 (VII) nephew; or

387 (VIII) niece;

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

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

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

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

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

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

400 (ii) (A) for the previous calendar year the agricultural employer's total annual payroll  
401 for all nonimmediate family employees was equal to or greater than \$8,000 but less than  
402 \$50,000; and

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

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

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

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

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

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

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

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

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

420 (b) the rules of the commission.

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

424 (A) a sole proprietorship;

425 (B) a corporation;

426 (C) a partnership;

427 (D) a limited liability company; or

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

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

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

439 (c) A partner in a partnership or an owner of a sole proprietorship is not considered an  
440 employee under Subsection (7)(a) if the employer who procures work to be done by the  
441 partnership or sole proprietorship obtains and relies on either:

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

445 (ii) if a partnership or sole proprietorship with no employees other than a partner of the  
446 partnership or owner of the sole proprietorship, a workers' compensation coverage waiver  
447 issued pursuant to Part 10, Workers' Compensation Coverage Waivers Act, stating that:

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

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

453 (d) A director or officer of a corporation is not considered an employee under  
454 Subsection (7)(a) if the director or officer is excluded from coverage under Subsection  
455 34A-2-104(4).

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

459 (i) a valid certification of the contractor's or subcontractor's compliance with Section

460 34A-2-201; or

461 (ii) if a partnership, corporation, or sole proprietorship with no employees other than a  
462 partner of the partnership, officer of the corporation, or owner of the sole proprietorship, a  
463 workers' compensation coverage waiver issued pursuant to Part 10, Workers' Compensation  
464 Coverage Waivers Act, stating that:

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

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

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

472 (A) is an employer; and

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

475 (I) all persons employed by the contractor;

476 (II) all subcontractors under the contractor; and

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

478 (ii) Notwithstanding the other provisions in this Subsection (7), if the conditions of  
479 Subsection (7)(f)(iii) are met, an eligible employer is considered an employer for purposes of  
480 Section 34A-2-105 of the contractor, subcontractor, and all persons employed by the contractor  
481 or subcontractor described in Subsection (7)(f)(i)(B).

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

483 (A) under Subsection (7)(a) is liable for and pays workers' compensation benefits as an  
484 original employer under Subsection (7)(a) because the contractor or subcontractor fails to  
485 comply with Section 34A-2-201;

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

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

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

491 reduction program that meets the requirements of Subsection 34A-2-111(3)(d):  
492 (Aa) adopts the workplace accident and injury reduction program;  
493 (Bb) posts the workplace accident and injury reduction program at the work site at  
494 which the eligible employer procures work; and  
495 (Cc) enforces the workplace accident and injury reduction program according to the  
496 terms of the workplace accident and injury reduction program; or  
497 (C) (I) obtains and relies on:  
498 (Aa) a valid certification described in Subsection (7)(c)(i) or (7)(e)(i);  
499 (Bb) a workers' compensation coverage waiver described in Subsection (7)(c)(ii) or  
500 (7)(e)(ii); or  
501 (Cc) proof that a director or officer is excluded from coverage under Subsection  
502 34A-2-104(4);  
503 (II) is liable under Subsection (7)(a) for the payment of workers' compensation benefits  
504 if the contractor or subcontractor fails to comply with Section 34A-2-201;  
505 (III) procures work to be done that is part or process in the trade or business of the  
506 eligible employer; and  
507 (IV) does the following with regard to a written workplace accident and injury  
508 reduction program that meets the requirements of Subsection 34A-2-111(3)(d):  
509 (Aa) adopts the workplace accident and injury reduction program;  
510 (Bb) posts the workplace accident and injury reduction program at the work site at  
511 which the eligible employer procures work; and  
512 (Cc) enforces the workplace accident and injury reduction program according to the  
513 terms of the workplace accident and injury reduction program.  
514 (8) (a) For purposes of this Subsection (8), "unincorporated entity" means an entity  
515 organized or doing business in the state that is not:  
516 (i) an individual;  
517 (ii) a corporation; or  
518 (iii) publicly traded.  
519 (b) For purposes of this chapter and Chapter 3, Utah Occupational Disease Act, an  
520 unincorporated entity that is required to be licensed under Title 58, Chapter 55, Utah  
521 Construction Trades Licensing Act, is presumed to be the employer of each individual who

522 holds, directly or indirectly, an ownership interest in the unincorporated entity.  
523 Notwithstanding Subsection (7)(c) and Subsection 34A-2-104(3), the unincorporated entity  
524 shall provide the individual who holds the ownership interest workers' compensation coverage  
525 under this chapter and Chapter 3, Utah Occupational Disease Act, unless the presumption is  
526 rebutted under Subsection (8)(c).

527 (c) Pursuant to rules made by the commission in accordance with Title 63G, Chapter 3,  
528 Utah Administrative Rulemaking Act, an unincorporated entity may rebut the presumption  
529 under Subsection (8)(b) for an individual by establishing by clear and convincing evidence that  
530 the individual:

- 531 (i) is an active manager of the unincorporated entity;
- 532 (ii) directly or indirectly holds at least an 8% ownership interest in the unincorporated  
533 entity; or
- 534 (iii) is not subject to supervision or control in the performance of work by:  
535 (A) the unincorporated entity; or  
536 (B) a person with whom the unincorporated entity contracts.

537 (d) As part of the rules made under Subsection (8)(c), the commission may define:

- 538 (i) "active manager";
- 539 (ii) "directly or indirectly holds at least an 8% ownership interest"; and
- 540 (iii) "subject to supervision or control in the performance of work."

541 (9) (a) As used in this Subsection (9), "home and community based services" means  
542 one or more of the following services provided to an individual with a disability or to the  
543 individual's family that helps prevent the individual with a disability from being placed in a  
544 more restrictive setting:

- 545 (i) respite care;
- 546 (ii) skilled nursing;
- 547 (iii) nursing assistant services;
- 548 (iv) home health aide services;
- 549 (v) personal care and attendant services;
- 550 (vi) other in-home care, such as support for the daily activities of the individual with a  
551 disability;
- 552 (vii) specialized in-home training for the individual with a disability or a family

553 member of the individual with a disability;

554 (viii) specialized in-home support, coordination, and other supported living services;

555 and

556 (ix) other home and community based services unique to the individual with a  
557 disability or the family of the individual with a disability that help prevent the individual with a  
558 disability from being placed in a more restrictive setting.

559 (b) Notwithstanding Subsection (4) and subject to Subsection (9)(c), an individual with  
560 a disability or designated representative of the individual with a disability is considered an  
561 employer under this chapter and Chapter 3, Utah Occupational Disease Act, of an individual  
562 who provides home and community based services if the individual with a disability or  
563 designated representative of the individual with a disability:

564 (i) employs the individual to provide home and community based services for seven  
565 hours per week or more; and

566 (ii) pays the individual providing the home and community based services from state or  
567 federal money received by the individual with a disability or designated representative of the  
568 individual with a disability to fund home and community based services, including through a  
569 person designated by the Secretary of the Treasury in accordance with Section 3504, Internal  
570 Revenue Code, as a fiduciary, agent, or other person who has the control, receipt, custody, or  
571 disposal of, or pays the wages of, the individual providing the home and community based  
572 services.

573 (c) The state and federal money received by an individual with a disability or  
574 designated representative of an individual with a disability shall include the cost of the workers'  
575 compensation coverage required by this Subsection (9) in addition to the money necessary to  
576 fund the home and community based services that the individual with a disability or family of  
577 the individual with a disability is eligible to receive so that the home and community based  
578 services are not reduced in order to pay for the workers' compensation coverage required by  
579 this Subsection (9).

580 (10) (a) For purposes of this Subsection (10), "federal executive agency" means an  
581 executive agency, as defined in 5 U.S.C. Sec. 105, of the federal government.

582 (b) For purposes of determining whether two or more persons are considered joint  
583 employers under this chapter or Chapter 3, Utah Occupational Disease Act, an administrative

584 ruling of a federal executive agency may not be considered a generally applicable law unless  
585 that administrative ruling is determined to be generally applicable by a court of law, or adopted  
586 by statute or rule.

587 (11) (a) As used in this Subsection (11):

588 (i) "Franchise" means the same as that term is defined in 16 C.F.R. Sec. 436.1.

589 (ii) "Franchisee" means the same as that term is defined in 16 C.F.R. Sec. 436.1.

590 (iii) "Franchisor" means the same as that term is defined in 16 C.F.R. Sec. 436.1.

591 (b) For purposes of this chapter, a franchisor is not considered to be an employer of:

592 (i) a franchisee; or

593 (ii) a franchisee's employee.

594 (c) With respect to a specific claim for relief under this chapter made by a franchisee or  
595 a franchisee's employee, this Subsection (11) does not apply to a franchisor under a franchise  
596 that exercises a type or degree of control over the franchisee or the franchisee's employee not  
597 customarily exercised by a franchisor for the purpose of protecting the franchisor's trademarks  
598 and brand.

599 Section 8. Section **34A-5-102** is amended to read:

600 **34A-5-102. Definitions -- Unincorporated entities -- Joint employers --**

601 **Franchisors.**

602 (1) As used in this chapter:

603 (a) "Affiliate" means the same as that term is defined in Section **16-6a-102**.

604 (b) "Apprenticeship" means a program for the training of apprentices including a  
605 program providing the training of those persons defined as apprentices by Section **35A-6-102**.

606 (c) "Bona fide occupational qualification" means a characteristic applying to an  
607 employee that:

608 (i) is necessary to the operation; or

609 (ii) is the essence of the employee's employer's business.

610 (d) "Court" means:

611 (i) the district court in the judicial district of the state in which the asserted unfair  
612 employment practice occurs; or

613 (ii) if the district court is not in session at that time, a judge of the court described in  
614 Subsection (1)(d)(i).

- 615 (e) "Director" means the director of the division.
- 616 (f) "Disability" means a physical or mental disability as defined and covered by the  
617 Americans with Disabilities Act of 1990, 42 U.S.C. Sec. 12102.
- 618 (g) "Division" means the Division of Antidiscrimination and Labor.
- 619 (h) "Employee" means a person applying with or employed by an employer.
- 620 (i) (i) "Employer" means:
- 621 (A) the state;
- 622 (B) a political subdivision;
- 623 (C) a board, commission, department, institution, school district, trust, or agent of the  
624 state or a political subdivision of the state; or
- 625 (D) a person employing 15 or more employees within the state for each working day in  
626 each of 20 calendar weeks or more in the current or preceding calendar year.
- 627 (ii) "Employer" does not include:
- 628 (A) a religious organization, a religious corporation sole, a religious association, a  
629 religious society, a religious educational institution, or a religious leader, when that individual  
630 is acting in the capacity of a religious leader;
- 631 (B) any corporation or association constituting an affiliate, a wholly owned subsidiary,  
632 or an agency of any religious organization, religious corporation sole, religious association, or  
633 religious society; or
- 634 (C) the Boy Scouts of America or its councils, chapters, or subsidiaries.
- 635 (j) "Employment agency" means a person:
- 636 (i) undertaking to procure employees or opportunities to work for any other person; or  
637 (ii) holding the person out to be equipped to take an action described in Subsection  
638 (1)(j)(i).
- 639 (k) "Federal executive agency" means an executive agency, as defined in 5 U.S.C. Sec.  
640 105, of the federal government.
- 641 (l) "Franchise" means the same as that term is defined in 16 C.F.R. Sec. 436.1.
- 642 (m) "Franchisee" means the same as that term is defined in 16 C.F.R. Sec. 436.1.
- 643 (n) "Franchisor" means the same as that term is defined in 16 C.F.R. Sec. 436.1.
- 644 [~~(k)~~] (o) "Gender identity" has the meaning provided in the Diagnostic and Statistical  
645 Manual (DSM-5). A person's gender identity can be shown by providing evidence, including,

646 but not limited to, medical history, care or treatment of the gender identity, consistent and  
647 uniform assertion of the gender identity, or other evidence that the gender identity is sincerely  
648 held, part of a person's core identity, and not being asserted for an improper purpose.

649 ~~[(t)]~~ (p) "Joint apprenticeship committee" means an association of representatives of a  
650 labor organization and an employer providing, coordinating, or controlling an apprentice  
651 training program.

652 ~~[(m)]~~ (q) "Labor organization" means an organization that exists for the purpose in  
653 whole or in part of:

- 654 (i) collective bargaining;
- 655 (ii) dealing with employers concerning grievances, terms or conditions of employment;
- 656 or
- 657 (iii) other mutual aid or protection in connection with employment.

658 ~~[(n)]~~ (r) "National origin" means the place of birth, domicile, or residence of an  
659 individual or of an individual's ancestors.

660 ~~[(o)]~~ (s) "On-the-job-training" means a program designed to instruct a person who,  
661 while learning the particular job for which the person is receiving instruction:

- 662 (i) is also employed at that job; or
- 663 (ii) may be employed by the employer conducting the program during the course of the  
664 program, or when the program is completed.

665 ~~[(p)]~~ (t) "Person" means:

- 666 (i) one or more individuals, partnerships, associations, corporations, legal  
667 representatives, trusts or trustees, or receivers;
- 668 (ii) the state; and
- 669 (iii) a political subdivision of the state.

670 ~~[(q)]~~ (u) "Pregnancy, childbirth, or pregnancy-related conditions" includes  
671 breastfeeding or medical conditions related to breastfeeding.

672 ~~[(r)]~~ (v) "Presiding officer" means the same as that term is defined in Section  
673 [63G-4-103](#).

674 ~~[(s)]~~ (w) "Prohibited employment practice" means a practice specified as  
675 discriminatory, and therefore unlawful, in Section [34A-5-106](#).

676 ~~[(t)]~~ (x) "Religious leader" means an individual who is associated with, and is an

677 authorized representative of, a religious organization or association or a religious corporation  
678 sole, including a member of clergy, a minister, a pastor, a priest, a rabbi, an imam, or a spiritual  
679 advisor.

680 ~~(t)~~ (y) "Retaliate" means the taking of adverse action by an employer, employment  
681 agency, labor organization, apprenticeship program, on-the-job training program, or vocational  
682 school against one of its employees, applicants, or members because the employee, applicant,  
683 or member:

684 (i) opposes an employment practice prohibited under this chapter; or

685 (ii) files charges, testifies, assists, or participates in any way in a proceeding,  
686 investigation, or hearing under this chapter.

687 ~~(v)~~ (z) "Sexual orientation" means an individual's actual or perceived orientation as  
688 heterosexual, homosexual, or bisexual.

689 ~~(w)~~ (aa) "Unincorporated entity" means an entity organized or doing business in the  
690 state that is not:

691 (i) an individual;

692 (ii) a corporation; or

693 (iii) publicly traded.

694 ~~(x)~~ (bb) "Vocational school" means a school or institution conducting a course of  
695 instruction, training, or retraining to prepare individuals to follow an occupation or trade, or to  
696 pursue a manual, technical, industrial, business, commercial, office, personal services, or other  
697 nonprofessional occupations.

698 (2) (a) For purposes of this chapter, an unincorporated entity that is required to be  
699 licensed under Title 58, Chapter 55, Utah Construction Trades Licensing Act, is presumed to  
700 be the employer of each individual who, directly or indirectly, holds an ownership interest in  
701 the unincorporated entity.

702 (b) Pursuant to rules made by the commission in accordance with Title 63G, Chapter 3,  
703 Utah Administrative Rulemaking Act, an unincorporated entity may rebut the presumption  
704 under Subsection (2)(a) for an individual by establishing by clear and convincing evidence that  
705 the individual:

706 (i) is an active manager of the unincorporated entity;

707 (ii) directly or indirectly holds at least an 8% ownership interest in the unincorporated

708 entity; or

709 (iii) is not subject to supervision or control in the performance of work by:

710 (A) the unincorporated entity; or

711 (B) a person with whom the unincorporated entity contracts.

712 (c) As part of the rules made under Subsection (2)(b), the commission may define:

713 (i) "active manager";

714 (ii) "directly or indirectly holds at least an 8% ownership interest"; and

715 (iii) "subject to supervision or control in the performance of work."

716 (3) For purposes of determining whether two or more persons are considered joint

717 employers under this chapter, an administrative ruling of a federal executive agency may not be

718 considered a generally applicable law unless that administrative ruling is determined to be

719 generally applicable by a court of law, or adopted by statute or rule.

720 (4) (a) For purposes of this chapter, a franchisor is not considered to be an employer of:

721 (i) a franchisee; or

722 (ii) a franchisee's employee.

723 (b) With respect to a specific claim for relief under this chapter made by a franchisee or

724 a franchisee's employee, this Subsection (4) does not apply to a franchisor under a franchise

725 that exercises a type or degree of control over the franchisee or the franchisee's employee not

726 customarily exercised by a franchisor for the purpose of protecting the franchisor's trademarks

727 and brand.

728 Section 9. Section 34A-6-103 is amended to read:

729 **34A-6-103. Definitions -- Unincorporated entities -- Joint employers --**

730 **Franchisors.**

731 (1) As used in this chapter:

732 (a) "Administrator" means the director of the Division of Occupational Safety and  
733 Health.

734 (b) "Amendment" means such modification or change in a code, standard, rule, or  
735 order intended for universal or general application.

736 (c) "Commission" means the Labor Commission.

737 (d) "Division" means the Division of Occupational Safety and Health.

738 (e) "Employee" includes any person suffered or permitted to work by an employer.

739 (f) "Employer" means:

740 (i) the state;

741 (ii) a county, city, town, and school district in the state; and

742 (iii) a person, including a public utility, having one or more workers or operatives

743 regularly employed in the same business, or in or about the same establishment, under any

744 contract of hire.

745 (g) "Federal executive agency" means an executive agency, as defined in 5 U.S.C. Sec.

746 105, of the federal government.

747 (h) "Franchise" means the same as that term is defined in 16 C.F.R. Sec. 436.1.

748 (i) "Franchisee" means the same as that term is defined in 16 C.F.R. Sec. 436.1.

749 (j) "Franchisor" means the same as that term is defined in 16 C.F.R. Sec. 436.1.

750 [~~(g)~~] (k) "Hearing" means a proceeding conducted by the commission.

751 [~~(h)~~] (l) "Imminent danger" means a danger exists which reasonably could be expected

752 to cause an occupational disease, death, or serious physical harm immediately, or before the

753 danger could be eliminated through enforcement procedures under this chapter.

754 [~~(i)~~] (m) "National consensus standard" means any occupational safety and health

755 standard or modification:

756 (i) adopted by a nationally recognized standards-producing organization under

757 procedures where it can be determined by the administrator and division that persons interested

758 and affected by the standard have reached substantial agreement on its adoption;

759 (ii) formulated in a manner which affords an opportunity for diverse views to be

760 considered; and

761 (iii) designated as such a standard by the secretary of the United States Department of

762 Labor.

763 [~~(j)~~] (n) "Person" means the general public, one or more individuals, partnerships,

764 associations, corporations, legal representatives, trustees, receivers, and the state and its

765 political subdivisions.

766 [~~(k)~~] (o) "Publish" means publication in accordance with Title 63G, Chapter 3, Utah

767 Administrative Rulemaking Act.

768 [~~(l)~~] (p) "Secretary" means the secretary of the United States Department of Labor.

769 [~~(m)~~] (q) "Standard" means an occupational health and safety standard or group of

770 standards which requires conditions, or the adoption or use of one or more practices, means,  
771 methods, operations, or processes, reasonably necessary to provide safety and healthful  
772 employment and places of employment.

773 ~~[(n)]~~ (r) "Unincorporated entity" means an entity organized or doing business in the  
774 state that is not:

- 775 (i) an individual;
- 776 (ii) a corporation; or
- 777 (iii) publicly traded.

778 ~~[(o)]~~ (s) "Variance" means a special, limited modification or change in the code or  
779 standard applicable to the particular establishment of the employer or person petitioning for the  
780 modification or change.

781 ~~[(p)]~~ (t) "Workplace" means any place of employment.

782 (2) (a) For purposes of this chapter, an unincorporated entity that is required to be  
783 licensed under Title 58, Chapter 55, Utah Construction Trades Licensing Act, is presumed to  
784 be the employer of each individual who, directly or indirectly, holds an ownership interest in  
785 the unincorporated entity.

786 (b) Pursuant to rules made by the commission in accordance with Title 63G, Chapter 3,  
787 Utah Administrative Rulemaking Act, an unincorporated entity may rebut the presumption  
788 under Subsection (2)(a) for an individual by establishing by clear and convincing evidence that  
789 the individual:

- 790 (i) is an active manager of the unincorporated entity;
- 791 (ii) directly or indirectly holds at least an 8% ownership interest in the unincorporated  
792 entity; or

793 (iii) is not subject to supervision or control in the performance of work by:

- 794 (A) the unincorporated entity; or
- 795 (B) a person with whom the unincorporated entity contracts.

796 (c) As part of the rules made under Subsection (2)(b), the commission may define:

- 797 (i) "active manager";
- 798 (ii) "directly or indirectly holds at least an 8% ownership interest"; and
- 799 (iii) "subject to supervision or control in the performance of work."

800 (3) For purposes of determining whether two or more persons are considered joint

801 employers under this chapter, an administrative ruling of a federal executive agency may not be  
802 considered a generally applicable law unless that administrative ruling is determined to be  
803 generally applicable by a court of law, or adopted by statute or rule.

804 (4) (a) For purposes of this chapter, a franchisor is not considered to be an employer of:

805 (i) a franchisee; or

806 (ii) a franchisee's employee.

807 (b) With respect to a specific claim for relief under this chapter made by a franchisee or

808 a franchisee's employee, this Subsection (4) does not apply to a franchisor under a franchise

809 that exercises a type or degree of control over the franchisee or the franchisee's employee not

810 customarily exercised by a franchisor for the purpose of protecting the franchisor's trademarks

811 and brand.

812 Section 10. Section **35A-4-203** is amended to read:

813 **35A-4-203. Definition of employer -- Joint employers -- Franchisors.**

814 (1) As used in this chapter "employer" means:

815 [(+)] (a) an individual or employing unit which employs one or more individuals for  
816 some portion of a day during a calendar year, or that, as a condition for approval of this chapter  
817 for full tax credit against the tax imposed by the Federal Unemployment Tax Act, is required,  
818 under the act, to be an employer;

819 [(2)] (b) an employing unit that, having become an employer under Subsection (1)(a),  
820 has not, under Sections 35A-4-303 and 35A-4-310, ceased to be an employer subject to this  
821 chapter; or

822 [(3)] (c) for the effective period of its election under Subsection 35A-4-310(3), an  
823 employing unit that has elected to become fully subject to this chapter.

824 (2) (a) For purposes of this Subsection (2), "federal executive agency" means an  
825 executive agency, as defined in 5 U.S.C. Sec. 105, of the federal government.

826 (b) For purposes of determining whether two or more persons are considered joint  
827 employers under this chapter, an administrative ruling of a federal executive agency may not be  
828 considered a generally applicable law unless that administrative ruling is determined to be  
829 generally applicable by a court of law, or adopted by statute or rule.

830 (3) (a) As used in this Subsection (3):

831 (i) "Franchise" means the same as that term is defined in 16 C.F.R. Sec. 436.1.

- 832 (ii) "Franchisee" means the same as that term is defined in 16 C.F.R. Sec. 436.1.
- 833 (iii) "Franchisor" means the same as that term is defined in 16 C.F.R. Sec. 436.1.
- 834 (b) For purposes of this chapter, a franchisor is not considered to be an employer of:
- 835 (i) a franchisee; or
- 836 (ii) a franchisee's employee.
- 837 (c) With respect to a specific claim for relief under this chapter made by a franchisee or
- 838 a franchisee's employee, this Subsection (3) does not apply to a franchisor under a franchise
- 839 that exercises a type or degree of control over the franchisee or the franchisee's employee not
- 840 customarily exercised by a franchisor for the purpose of protecting the franchisor's trademarks
- 841 and brand.