

WORKERS' COMPENSATION COVERAGE AMENDMENTS

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Karen Mayne

House Sponsor: James A. Dunnigan

LONG TITLE

General Description:

This bill modifies the provisions related to workers' compensation coverage and waivers.

Highlighted Provisions:

This bill:

- ▶ modifies the information required to be filed to obtain a workers' compensation waiver;
- ▶ modifies the circumstances under which a motor carrier may elect not to include an officer or director as an employee for purposes of the Workers' Compensation Act and the Utah Occupational Disease Act; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

34A-2-104, as last amended by Laws of Utah 2014, Chapter 303

34A-2-1003, as enacted by Laws of Utah 2011, Chapter 328

34A-2-1004, as enacted by Laws of Utah 2011, Chapter 328

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

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

31 **34A-2-104. "Employee," "worker," and "operative" defined -- Specific**
32 **circumstances -- Exemptions.**

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

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

36 (A) in the service of:

37 (I) the state;

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

39 (III) a school district within the state;

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

41 (I) an election;

42 (II) appointment; or

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

44 (ii) including:

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

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

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

48 employs one or more workers or operatives regularly in the same business, or in or about the
49 same establishment:

50 (i) under any contract of hire:

51 (A) express or implied; and

52 (B) oral or written;

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

54 (iii) not including any person whose employment:

55 (A) is casual; and

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

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

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

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

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

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

69 (3) (a) ~~(i)~~ ~~[A]~~ Except as provided in Subsection (3)(b), a partnership or sole
70 proprietorship may elect to include any partner of the partnership or owner of the sole
71 proprietorship as an employee of the partnership or sole proprietorship under this chapter and
72 Chapter 3, Utah Occupational Disease Act.

73 ~~[(b)]~~ (ii) If a partnership or sole proprietorship makes an election under Subsection
74 (3)(a), the partnership or sole proprietorship shall serve written notice upon its insurance carrier
75 naming the persons to be covered.

76 ~~[(c)]~~ (iii) A partner of a partnership or owner of a sole proprietorship may not be
77 considered an employee of the partner's partnership or the owner's sole proprietorship under
78 this chapter or Chapter 3, Utah Occupational Disease Act, until the notice described in
79 Subsection (3)~~[(b)]~~(a)(ii) is given.

80 ~~[(d)]~~ (iv) For premium rate making, the insurance carrier shall assume the salary or
81 wage of the partner or sole proprietor electing coverage under Subsection (3)(a)(i) to be 100%
82 of the state's average weekly wage.

83 (b) A partner of a partnership or an owner of a sole proprietorship is an employee of
84 the partnership or sole proprietorship under this chapter and Chapter 3, Utah Occupational
85 Disease Act, if:

86 (i) the partnership or sole proprietorship:

87 (A) is a motor carrier; and

88 (B) employs at least one individual who is not a partner or an owner; and

89 (ii) the partner or owner personally operates a motor vehicle for the motor carrier.

90 (4) (a) [~~A~~] Except as provided in Subsection (4)(g), a corporation may elect not to
91 include any director or officer of the corporation as an employee under this chapter and Chapter
92 3, Utah Occupational Disease Act.

93 (b) If a corporation makes an election under Subsection (4)(a), the corporation shall
94 serve written notice naming the individuals who are directors or officers to be excluded from
95 coverage:

96 (i) upon its insurance carrier, if any; or

97 (ii) upon the commission if the corporation is self-insured or has no employee other
98 than the one or more directors or officers being excluded.

99 (c) A corporation may exclude no more than five individuals who are directors or
100 officers under Subsection (4)(b)(ii).

101 (d) An exclusion under this Subsection (4) is subject to Subsection [34A-2-103\(7\)\(d\)](#).

102 (e) A director or officer of a corporation is considered an employee under this chapter
103 and Chapter 3, Utah Occupational Disease Act, until the notice described in Subsection (4)(b)
104 is given.

105 (f) The commission may make rules, in accordance with Title 63G, Chapter 3, Utah
106 Administrative Rulemaking Act, regarding the form of the notice described in Subsection
107 (4)(b)(ii), including a requirement to provide documentation, if any.

108 (g) Subsection (4)(a) does not apply to a director or an officer of a motor carrier if the
109 director or officer personally operates a motor vehicle for the motor carrier.

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

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

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

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

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

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

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

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

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

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

129 (A) is an independent contractor;

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

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

132 (d) subject to Subsections (6), (7), and (8), an individual who:

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

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

135 (ii) personally operates the motor vehicle described in Subsection (5)(d)(i);

136 (iii) operates the motor vehicle described in Subsection (5)(d)(i) under a written

137 agreement with the motor carrier that states that the individual operates the motor vehicle as an
138 independent contractor; and

139 (iv) (A) provides to the motor carrier at the time the written agreement described in
140 Subsection (5)(d)(iii) is executed or as soon after the execution as provided by the commission,
141 a copy of a workers' compensation coverage waiver issued pursuant to Part 10, Workers'
142 Compensation Coverage Waivers Act, to the individual; and

143 (B) provides to the motor carrier at the time the written agreement described in
144 Subsection (5)(d)(iii) is executed or as soon after the execution as provided by an insurer, proof
145 that the individual is covered by occupational accident related insurance with the coverage and
146 benefit limits listed in Subsection (7)(c).

147 (6) An individual described in Subsection (5)(d) may become an employee under this
148 chapter and Chapter 3, Utah Occupational Disease Act, if the employer of the individual
149 complies with:

- 150 (a) this chapter and Chapter 3, Utah Occupational Disease Act; and
- 151 (b) commission rules.

152 (7) ~~[For purposes of Subsection (5)(d)]~~ As used in this section:

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

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

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

- 162 (i) disability benefits;
- 163 (ii) death benefits; and

164 (iii) medical expense benefits, which include:
165 (A) hospital coverage;
166 (B) surgical coverage;
167 (C) prescription drug coverage; and
168 (D) dental coverage.
169 (8) For an individual described in Subsection (5)(d)[~~7~~]:
170 (a) if the individual is not covered by a workers' compensation policy, the individual
171 shall obtain:
172 (i) occupational accident related insurance; and
173 (ii) a waiver in accordance with Part 10, Workers' Compensation Coverage Waivers
174 Act; and
175 (b) the commission shall verify the existence of occupational accident insurance
176 coverage with the coverage and benefit limits listed in Subsection (7)(c) before the commission
177 may issue a workers' compensation coverage waiver to the individual pursuant to Part 10,
178 Workers' Compensation Coverage Waivers Act.
179 Section 2. Section **34A-2-1003** is amended to read:
180 **34A-2-1003. Issuance of a waiver.**
181 (1) The commission shall issue a workers' compensation coverage waiver to a business
182 entity that:
183 (a) elects not to include an owner, partner, or corporate officer or director as an
184 employee under a workers' compensation policy in accordance with Section **34A-2-103** and
185 Subsection **34A-2-104(3) or (4)**;
186 (b) employs no other employee on the day on which the commission issues the waiver
187 to the business entity;
188 (c) provides to the commission the information required by Section **34A-2-1004**; and
189 (d) pays a fee established by the commission in accordance with Section **63J-1-504**,
190 except that the fee may not exceed \$50.

191 (2) (a) A waiver issued under this section expires one year from the day on which it is
192 issued unless renewed by the holder of the waiver.

193 (b) To renew a waiver issued under this part, the holder of the waiver shall:

194 (i) employ no other employee on the day on which the commission renews the waiver;

195 (ii) provide to the commission the information required by Section 34A-2-1004; and

196 (iii) pay a fee established by the commission in accordance with Section 63J-1-504,

197 except that the fee may not exceed \$50.

198 (3) As of the day on which a business entity described in Subsection (1) employs an
199 employee other than an owner, partner, or corporate officer or director described in Subsection
200 (1)(a):

201 (a) the business entity's waiver is invalid; and

202 (b) the business entity is required to provide workers' compensation coverage for that
203 employee in accordance with Section 34A-2-201.

204 (4) The commission shall deposit a fee collected under this section in the Industrial
205 Accident Restricted Account created in Section 34A-2-705.

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

209 Section 3. Section 34A-2-1004 is amended to read:

210 **34A-2-1004. Information required to obtain a waiver.**

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

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

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

216 (b) a valid business license;

217 (c) a license to engage in an occupation or profession, including a license under Title

- 218 58, Occupations and Professions; or
- 219 (d) documentation of an active liability insurance policy that covers the business
- 220 entity's activities; or
- 221 (2) a copy of one item listed in Subsection (1) and a copy of two or more of the
- 222 following:
- 223 (a) proof of a bank account for the business entity;
- 224 (b) proof that for the business entity there is:
- 225 (i) a telephone number; and
- 226 (ii) a physical location; or
- 227 (c) an advertisement of services showing the business entity's name and contact
- 228 information:
- 229 (i) in a newspaper of general circulation [~~or~~];
- 230 (ii) in a telephone directory [~~showing the business entity's: (i) name; and (ii) contact~~
- 231 ~~information.];~~
- 232 (iii) on a website or social media; or
- 233 (iv) in a trade magazine.