

SB0062S01 compared with SB0062

~~{deleted text}~~ shows text that was in SB0062 but was deleted in SB0062S01.

Inserted text shows text that was not in SB0062 but was inserted into SB0062S01.

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Senator Karen Mayne proposes the following substitute bill:

WORKERS' COMPENSATION ~~{WAIVERS}~~COVERAGE

AMENDMENTS

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Karen Mayne

House Sponsor: _____

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

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- ▶ 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

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

[Section 1. Section 34A-2-104 is amended to read:](#)

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

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

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

(A) in the service of:

(I) the state;

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

(III) a school district within the state;

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

(I) an election;

(II) appointment; or

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

(ii) including:

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

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

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

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same establishment:

- (i) under any contract of hire:
 - (A) express or implied; and
 - (B) oral or written;
- (ii) including aliens and minors, whether legally or illegally working for hire; and
- (iii) not including any person whose employment:
 - (A) is casual; and
 - (B) not in the usual course of the trade, business, or occupation of the employer's

employer.

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

- (i) covered for compensation by the lessor under this chapter and Chapter 3, Utah Occupational Disease Act;
- (ii) subject to this chapter and Chapter 3, Utah Occupational Disease Act; and
- (iii) entitled to the benefits of this chapter and Chapter 3, Utah Occupational Disease Act, to the same extent as if the lessee, employee, or sublessee were employees of the lessor drawing the wages paid employees for substantially similar work.

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

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

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

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

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

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

(i) the partnership or sole proprietorship:

(A) is a motor carrier; and

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

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

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

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

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

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

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

(d) An exclusion under this Subsection (4) is subject to Subsection 34A-2-103(7)(d).

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

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

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

(5) As used in this chapter and Chapter 3, Utah Occupational Disease Act, "employee,"

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"worker," and "operative" do not include:

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

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

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

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

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

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

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

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

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

(A) is an independent contractor;

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

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

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

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

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

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

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

(iv) (A) provides to the motor carrier at the time the written agreement described in Subsection (5)(d)(iii) is executed or as soon after the execution as provided by the commission, a copy of a workers' compensation coverage waiver issued pursuant to Part 10, Workers'

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Compensation Coverage Waivers Act, to the individual; and

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

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

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

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

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

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

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

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

(8) For an individual described in Subsection (5)(d) ~~;~~:

(a) if the individual is not covered by a workers' compensation policy, the individual shall obtain:

(i) occupational accident related insurance; and

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(ii) a waiver in accordance with Part 10, Workers' Compensation Coverage Waivers

Act; and

(b) the commission shall verify the existence of occupational accident insurance coverage with the coverage and benefit limits listed in Subsection (7)(c) before the commission may issue a workers' compensation coverage waiver to the individual pursuant to Part 10, Workers' Compensation Coverage Waivers Act.

Section 2. Section 34A-2-1003 is amended to read:

34A-2-1003. Issuance of a waiver.

(1) The commission shall issue a workers' compensation coverage waiver to a business entity that:

(a) elects not to include an owner, partner, or corporate officer or director as an employee under a workers' compensation policy in accordance with Section 34A-2-103 and Subsection 34A-2-104(3) or (4);

(b) employs no other employee on the day on which the commission issues the waiver to the business entity;

(c) provides to the commission the information required by Section 34A-2-1004; and

(d) pays a fee established by the commission in accordance with Section 63J-1-504, except that the fee may not exceed \$50.

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

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

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

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

(iii) pay a fee established by the commission in accordance with Section 63J-1-504, except that the fee may not exceed \$50.

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

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

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

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

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

Section ~~††~~3. Section **34A-2-1004** is amended to read:

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

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

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

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

(b) a valid business license;

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

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

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

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

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

(i) a telephone number; and

(ii) a physical location; or

(c) an advertisement of services showing the business entity's name and contact information:

(i) in a newspaper of general circulation [or];

(ii) in a telephone directory [~~showing the business entity's: (i) name; and (ii) contact information~~];

(iii) on a website or social media; or

(iv) in a trade magazine.

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Legislative Review Note

Office of Legislative Research and General Counsel