

Senator Daniel Hemmert proposes the following substitute bill:

LABOR CODE AMENDMENTS

2018 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Daniel Hemmert

House Sponsor: Jefferson Moss

LONG TITLE

General Description:

This bill modifies provisions of the Utah Labor Code.

Highlighted Provisions:

This bill:

- ▶ defines "certified mail";
- ▶ modifies the mailing requirements under Title 34A, Utah Labor Code;
- ▶ provides the circumstances under which the Division of Industrial Accidents may waive or reduce a penalty against an employer for conducting business without securing workers' compensation benefits for the employer's employees; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

34A-1-102, as enacted by Laws of Utah 1997, Chapter 375

34A-2-206, as renumbered and amended by Laws of Utah 1997, Chapter 375



26 34A-2-209, as last amended by Laws of Utah 2009, Chapter 288

27 34A-2-211, as last amended by Laws of Utah 2017, Chapter 363

28 34A-6-303, as renumbered and amended by Laws of Utah 1997, Chapter 375

29

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

31 Section 1. Section 34A-1-102 is amended to read:

32 **34A-1-102. Definitions.**

33 Unless otherwise specified, as used in this title:

34 (1) "Certified mail" means a method of mailing by any carrier that is accompanied by
35 proof of delivery.

36 [~~(1)~~] (2) "Commission" means the Labor Commission created in Section 34A-1-103.

37 [~~(2)~~] (3) "Commissioner" means the commissioner of the commission appointed under
38 Section 34A-1-201.

39 Section 2. Section 34A-2-206 is amended to read:

40 **34A-2-206. Furnishing information to division -- Employers' annual report --**

41 **Rights of division -- Examination of employers under oath -- Penalties.**

42 (1) (a) Every employer shall furnish the division, upon request, all information required
43 by it to carry out the purposes of this chapter and Chapter 3, Utah Occupational Disease Act.

44 (b) In the month of July of each year every employer shall prepare and mail to the
45 division a statement containing the following information:

46 (i) the number of persons employed during the preceding year from July 1, to June 30,
47 inclusive;

48 (ii) the number of the persons employed at each kind of employment;

49 (iii) the scale of wages paid in each class of employment, showing the minimum and
50 maximum wages paid; and

51 (iv) the aggregate amount of wages paid to all employees.

52 (2) (a) The information required under Subsection (1) shall be furnished in the form
53 prescribed by the division.

54 (b) Every employer shall:

55 (i) answer fully and correctly all questions and give all the information sought by the
56 division under Subsection (1); or

57 (ii) if unable to comply with Subsection (2)(b)(i), give to the division, in writing, good
58 and sufficient reasons for the failure.

59 (3) (a) The division may require the information required to be furnished by this
60 chapter or Chapter 3, Utah Occupational Disease Act, to be made under oath and returned to
61 the division within the period fixed by it or by law.

62 (b) The division, or any person employed by the division for that purpose, shall have
63 the right to examine, under oath, any employer, or the employer's agents or employees, for the
64 purpose of ascertaining any information that the employer is required by this chapter or Chapter
65 3, Utah Occupational Disease Act, to furnish to the division.

66 (4) (a) The division may seek a penalty of not to exceed \$500 for each offense to be
67 recovered in a civil action brought by the commission or the division on behalf of the
68 commission against an employer who:

69 (i) within a reasonable time to be fixed by the division and after the receipt of written
70 notice signed by the director or the director's designee specifying the information demanded
71 and served by certified mail or personal service, refuses to furnish to the division:

72 (A) the annual statement required by this section; or

73 (B) other information as may be required by the division under this section; or

74 (ii) willfully furnishes a false or untrue statement.

75 (b) All penalties collected under Subsection (4)(a) shall be paid into the Employers'
76 Reinsurance Fund created in Section [34A-2-702](#).

77 Section 3. Section [34A-2-209](#) is amended to read:

78 **34A-2-209. Employer's penalty for violation -- Notice of noncompliance -- Proof**
79 **required -- Admissible evidence -- Criminal prosecution.**

80 (1) (a) (i) An employer who fails to comply, and every officer of a corporation or
81 association that fails to comply, with Section [34A-2-201](#) is guilty of a class B misdemeanor.

82 (ii) Each day's failure to comply with Subsection (1)(a)(i) is a separate offense.

83 (b) If the division sends written notice of noncompliance by certified mail or personal
84 service to the last-known address of an employer, a corporation, or an officer of a corporation
85 or association, and the employer, corporation, or officer does not within 10 days of the day on
86 which the notice is delivered provide to the division proof of compliance, the notice and failure
87 to provide proof constitutes prima facie evidence that the employer, corporation, or officer is in

88 violation of this section.

89 (2) (a) If the division has reason to believe that an employer is conducting business
90 without securing the payment of compensation in a manner provided in Section 34A-2-201, the
91 division may give notice of noncompliance by certified mail or personal service to the
92 following at the last-known address of the following:

93 (i) the employer; or

94 (ii) if the employer is a corporation or association:

95 (A) the corporation or association; or

96 (B) the officers of the corporation or association.

97 (b) If an employer, corporation, or officer described in Subsection (2)(a) does not,
98 within 10 days of the day on which the notice is delivered, provide to the division proof of
99 compliance, the employer and every officer of an employer corporation or association is guilty
100 of a class B misdemeanor.

101 (c) Each day's failure to comply with Subsection (2)(a) is a separate offense.

102 (3) A fine, penalty, or money collected or assessed under this section shall be:

103 (a) deposited in the Uninsured Employers' Fund created by Section 34A-2-704;

104 (b) used for the purposes of the Uninsured Employers' Fund specified in Section
105 34A-2-704; and

106 (c) collected by the Uninsured Employers' Fund administrator in accordance with
107 Section 34A-2-704.

108 (4) A form or record kept by the division or its designee pursuant to Section 34A-2-205
109 is admissible as evidence to establish noncompliance under this section.

110 (5) The commission or division on behalf of the commission may prosecute or request
111 the attorney general or district attorney to prosecute a criminal action in the name of the state to
112 enforce this chapter or Chapter 3, Utah Occupational Disease Act.

113 Section 4. Section 34A-2-211 is amended to read:

114 **34A-2-211. Notice of noncompliance to employer -- Enforcement power of**
115 **division -- Penalty.**

116 (1) (a) In addition to the remedies [~~specified~~] described in Section 34A-2-210, if the
117 division has reason to believe that an employer is conducting business without securing the
118 payment of benefits in [~~a manner provided in~~] accordance with Section 34A-2-201, the division

119 ~~[may give that employer]~~ shall deliver written notice of the noncompliance to the employer by
120 certified mail or personal service to the employer's last-known address ~~[of the employer]~~.

121 (b) If the employer does not ~~[remedy the default]~~ demonstrate compliance with Section
122 34A-2-201 to the division within 15 days after the day on which the notice is delivered, the
123 division ~~[may]~~ shall issue an order requiring the employer to appear before the division and
124 show cause why the employer should not be ordered to comply with Section 34A-2-201.

125 (c) If the division finds that an employer has failed to ~~[provide for the payment of~~
126 ~~benefits in a manner provided in]~~ comply with Section 34A-2-201, the division ~~[may]~~ shall
127 require the employer to comply with Section 34A-2-201.

128 (2) (a) ~~[Notwithstanding Subsection (1)]~~ Except as provided in Subsection (2)(d), after
129 the division makes a finding of noncompliance described in Subsection (1)(c), the division
130 ~~[may]~~ shall, in accordance with Title 63G, Chapter 4, Administrative Procedures Act, and this
131 Subsection (2), impose a penalty against the employer [under this Subsection (2)].

132 ~~[(i) subject to Title 63G, Chapter 4, Administrative Procedures Act; and]~~

133 ~~[(ii) if the division believes that an employer of one or more employees is conducting~~
134 ~~business without securing the payment of benefits in a manner provided in Section 34A-2-201.]~~

135 (b) ~~[The]~~ Except as provided in Subsection (2)(e), a penalty imposed under Subsection
136 (2)(a) shall be the greater of:

137 (i) \$1,000; or

138 (ii) three times the amount of the premium the employer would have paid for workers'
139 compensation insurance based on the rate filing of the workers' compensation insurance carrier
140 that provides workers' compensation insurance under Section 31A-22-1001, during the period
141 of noncompliance.

142 (c) For purposes of Subsection (2)(b)(ii):

143 (i) the premium is calculated by applying rates and rate multipliers to the payroll basis
144 under Subsection (2)(c)(ii), using the highest rated employee class code applicable to the
145 employer's operations; and

146 (ii) the payroll basis is 150% of the state's average weekly wage multiplied by the
147 highest number of workers employed by the employer during the period of the employer's
148 noncompliance multiplied by the number of weeks of the employer's noncompliance up to a
149 maximum of 156 weeks.

150 (d) The division may waive the penalty described in this Subsection (2) if:

151 (i) (A) the finding of noncompliance is the first finding of noncompliance against the
152 employer under this section;

153 (B) the period of noncompliance was less than 180 days;

154 (C) the employer is currently in compliance with Section [34A-2-201](#); and

155 (D) no ~~§~~ → ~~[employee of the employer reported an injury to the division]~~ **injury was**
155a **reported to the division in accordance with Section [34A-2-407](#) ←~~§~~** during the period of
156 noncompliance; or

157 (ii) (A) the employer is a corporation;

158 (B) each employee of the corporation is an officer of the corporation; and

159 (C) the employer is currently in compliance with Section [34A-2-201](#).

160 (e) (i) The division may reduce the penalty described in this Subsection (2) if:

161 (A) the finding of noncompliance is the first finding of noncompliance against the
162 employer under this section;

163 (B) the employer is currently in compliance with Section [34A-2-201](#);

164 (C) no ~~§~~ → ~~[employee of the employer reported an injury to the division]~~ **injury was**
164a **reported to the division in accordance with Section [34A-2-407](#) ←~~§~~** during the period of
165 noncompliance; and

166 (D) upon request from the division, the employer submits to the division the
167 employer's payroll records related to the period of noncompliance.

168 (ii) (A) The reduced penalty shall be an amount equal to the premium the employer
169 would have paid for workers' compensation insurance based on the rate filing of the workers'
170 compensation insurance carrier that provides workers' compensation insurance under Section
171 [31A-22-1001](#), during the period of noncompliance.

172 (B) The division shall calculate the amount described in Subsection (2)(e)(ii)(A) using
173 the payroll records described in Subsection (2)(e)(i)(D).

174 (f) The division may reinstate the full penalty amount against an employer if the
175 Uninsured Employers' Fund is ordered to pay benefits for an injury that occurred but was not
176 reported during the period of noncompliance for which the division waived or assessed a
177 reduced penalty under this subsection.

178 (3) A penalty imposed under Subsection (2) shall be:

179 (a) deposited in the Uninsured Employers' Fund created by Section [34A-2-704](#);

180 (b) used for the purposes of the Uninsured Employers' Fund specified in Section

181 34A-2-704; and

182 (c) collected by the Uninsured Employers' Fund administrator in accordance with
183 Section 34A-2-704.

184 (4) (a) An employer who disputes a determination, imposition, or amount of a penalty
185 imposed under Subsection (2) shall request a hearing before an administrative law judge within
186 30 days of the date of issuance of the administrative action imposing the penalty or the
187 administrative action becomes a final order of the commission.

188 (b) An employer's request for a hearing under Subsection (4)(a) shall specify the facts
189 and grounds that are the basis of the employer's objection to the determination, imposition, or
190 amount of the penalty.

191 (c) An administrative law judge's decision under this Subsection (4) may be reviewed
192 pursuant to Part 8, Adjudication.

193 (5) An administrative action issued by the division under this section shall:

194 (a) be in writing;

195 (b) be sent by certified mail or personal service to the last-known address of the
196 employer;

197 (c) state the findings and administrative action of the division; and

198 (d) specify its effective date, which may be:

199 (i) immediate; or

200 (ii) at a later date.

201 (6) A final order of the commission under this section, upon application by the
202 commission made on or after the effective date of the order to a court of general jurisdiction in
203 any county in this state, may be enforced by an order to comply:

204 (a) entered ex parte; and

205 (b) without notice by the court.

206 Section 5. Section 34A-6-303 is amended to read:

207 **34A-6-303. Enforcement procedures -- Notification to employer of proposed**
208 **assessment -- Notification to employer of failure to correct violation -- Contest by**
209 **employer of citation or proposed assessment -- Procedure.**

210 (1) (a) If the division issues a citation under Subsection 34A-6-302(1), it shall within a
211 reasonable time after inspection or investigation, notify the employer by certified mail or

212 personal service of the assessment, if any, proposed to be assessed under Section 34A-6-307
213 and that the employer has 30 days to notify the Division of Adjudication that the employer
214 intends to contest the citation, abatement, or proposed assessment.

215 (b) If, within 30 days from the receipt of the notice issued by the division, the employer
216 fails to notify the Division of Adjudication that the employer intends to contest the citation,
217 abatement, or proposed assessment, and no notice is filed by any employee or representative of
218 employees under Subsection (3) within 30 days, the citation, abatement, and assessment, as
219 proposed, is final and not subject to review by any court or agency.

220 (2) (a) If the division has reason to believe that an employer has failed to correct a
221 violation for which a citation has been issued within the time period permitted, the division
222 shall notify the employer by certified mail or personal service:

223 (i) of the failure;

224 (ii) of the assessment proposed to be assessed under Section 34A-6-307; and

225 (iii) that the employer has 30 days to notify the Division of Adjudication that the
226 employer intends to contest the division's notification or the proposed assessment.

227 (b) The period for corrective action does not begin to run until entry of a final order by
228 the commission.

229 (c) If the employer fails to notify the Division of Adjudication, in writing, within 30
230 days from the receipt of notification issued by the division, that the employer intends to contest
231 the notification or proposed assessment, the notification and assessment, as proposed, is final
232 and not subject to review by any court or agency.

233 (3) (a) If an employer notifies the Division of Adjudication that the employer intends to
234 contest a citation issued under Subsection 34A-6-302(1), or notification issued under
235 Subsection (1) or (2), or if, within 30 days of the issuance of a citation under Subsection
236 34A-6-302(1), any employee or representative of employees files a notice with the division
237 alleging that the period of time fixed in the citation for the abatement of the violation is
238 unreasonable, the division shall advise the commissioner of the notification, and the
239 commissioner shall provide an opportunity for a hearing.

240 (b) Upon a showing by an employer of a good faith effort to comply with the
241 abatement requirements of a citation, and that the abatement has not been completed because of
242 factors beyond the employer's reasonable control, the division, after an opportunity for

243 discussion and consideration, shall issue an order affirming or modifying the abatement
244 requirements in any citation.