

1 **WORKERS' COMPENSATION PENALTY AMENDMENTS**

2 2018 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Daniel Hemmert**

5 House Sponsor: Jefferson Moss

7 **LONG TITLE**

8 **General Description:**

9 This bill amends provisions related to penalties for noncompliance under the Workers'
10 Compensation Act.

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ provides the circumstances under which the Division of Industrial Accidents may
14 waive or reduce a penalty against an employer for conducting business without
15 securing workers' compensation benefits for the employer's employees; and
16 ▶ makes technical and conforming changes.

17 **Money Appropriated in this Bill:**

18 None

19 **Other Special Clauses:**

20 None

21 **Utah Code Sections Affected:**

22 AMENDS:

23 **34A-2-211**, as last amended by Laws of Utah 2017, Chapter 363

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

26 Section 1. Section **34A-2-211** is amended to read:

27 **34A-2-211. Notice of noncompliance to employer -- Enforcement power of**



28 **division -- Penalty.**

29 (1) (a) In addition to the remedies [~~specified~~] described in Section 34A-2-210, if the
30 division has reason to believe that an employer is conducting business without securing the
31 payment of benefits in [~~a manner provided in~~] accordance with Section 34A-2-201, the division
32 [~~may give that employer~~] shall deliver written notice of the noncompliance to the employer by
33 certified mail to the employer's last-known address [~~of the employer~~].

34 (b) If the employer does not [~~remedy the default~~] demonstrate compliance with Section
35 34A-2-201 to the division within 15 days after the day on which the notice is delivered, the
36 division [~~may~~] shall issue an order requiring the employer to appear before the division and
37 show cause why the employer should not be ordered to comply with Section 34A-2-201.

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

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

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

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

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

50 (i) \$1,000; or

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

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

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

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

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

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

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

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

68 (D) no employee of the employer reported an injury to the division during the period of
69 noncompliance; or

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

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

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

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

74 (A) the finding of noncompliance is the first finding of noncompliance against the
75 employer under this section;

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

77 (C) no employee of the employer reported an injury to the division during the period of
78 noncompliance; and

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

81 (ii) (A) The reduced penalty shall be an amount equal to the premium the employer
82 would have paid for workers' compensation insurance based on the rate filing of the workers'
83 compensation insurance carrier that provides workers' compensation insurance under Section
84 [31A-22-1001](#), during the period of noncompliance.

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

87 (f) The division may reinstate the full penalty amount against an employer if the
88 Uninsured Employers' Fund is ordered to pay benefits for an injury that occurred but was not
89 reported during the period of noncompliance for which the division waived or assessed a

90 reduced penalty under this subsection.

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

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

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

94 34A-2-704; and

95 (c) collected by the Uninsured Employers' Fund administrator in accordance with

96 Section 34A-2-704.

97 (4) (a) An employer who disputes a determination, imposition, or amount of a penalty

98 imposed under Subsection (2) shall request a hearing before an administrative law judge within

99 30 days of the date of issuance of the administrative action imposing the penalty or the

100 administrative action becomes a final order of the commission.

101 (b) An employer's request for a hearing under Subsection (4)(a) shall specify the facts

102 and grounds that are the basis of the employer's objection to the determination, imposition, or

103 amount of the penalty.

104 (c) An administrative law judge's decision under this Subsection (4) may be reviewed

105 pursuant to Part 8, Adjudication.

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

107 (a) be in writing;

108 (b) be sent by certified mail to the last-known address of the employer;

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

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

111 (i) immediate; or

112 (ii) at a later date.

113 (6) A final order of the commission under this section, upon application by the

114 commission made on or after the effective date of the order to a court of general jurisdiction in

115 any county in this state, may be enforced by an order to comply:

116 (a) entered ex parte; and

117 (b) without notice by the court.