

SB0075S01 compared with SB0075

~~{deleted text}~~ shows text that was in SB0075 but was deleted in SB0075S01.

Inserted text shows text that was not in SB0075 but was inserted into SB0075S01.

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~~{WORKERS' COMPENSATION PENALTY}~~ General Description 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 ~~{amends}~~ modifies provisions ~~{related to penalties for noncompliance under}~~ of the ~~{Workers' Compensation Act}~~ 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:

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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](#)

[34A-2-209, as last amended by Laws of Utah 2009, Chapter 288](#)

[34A-2-211, as last amended by Laws of Utah 2017, Chapter 363](#)

[34A-6-303, as renumbered and amended by Laws of Utah 1997, Chapter 375](#)

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

[Section 1. Section 34A-1-102 is amended to read:](#)

34A-1-102. Definitions.

Unless otherwise specified, as used in this title:

[\(1\) "Certified mail" means a method of mailing by any carrier that is accompanied by proof of delivery.](#)

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

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

[Section 2. Section 34A-2-206 is amended to read:](#)

34A-2-206. Furnishing information to division -- Employers' annual report -- Rights of division -- Examination of employers under oath -- Penalties.

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

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

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

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

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

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maximum wages paid; and

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

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

(b) Every employer shall:

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

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

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

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

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

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

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

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

(ii) willfully furnishes a false or untrue statement.

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

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

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

(1) (a) (i) An employer who fails to comply, and every officer of a corporation or

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association that fails to comply, with Section 34A-2-201 is guilty of a class B misdemeanor.

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

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

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

(i) the employer; or

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

(A) the corporation or association; or

(B) the officers of the corporation or association.

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

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

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

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

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

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

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

(5) The commission or division on behalf of the commission may prosecute or request the attorney general or district attorney to prosecute a criminal action in the name of the state to

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enforce this chapter or Chapter 3, Utah Occupational Disease Act.

Section ~~(1)~~4. Section 34A-2-211 is amended to read:

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

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

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

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

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

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

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

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

(i) \$1,000; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) be in writing;

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

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

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

(i) immediate; or

(ii) at a later date.

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

(a) entered ex parte; and

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(b) without notice by the court.

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Legislative Review Note

~~Office of Legislative Research and General Counsel~~ Section 5. Section 34A-6-303 is amended to read:

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

(1) (a) If the division issues a citation under Subsection 34A-6-302(1), it shall within a reasonable time after inspection or investigation, notify the employer by certified mail or personal service of the assessment, if any, proposed to be assessed under Section 34A-6-307 and that the employer has 30 days to notify the Division of Adjudication that the employer intends to contest the citation, abatement, or proposed assessment.

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

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

(i) of the failure;

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

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

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

(c) If the employer fails to notify the Division of Adjudication, in writing, within 30

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days from the receipt of notification issued by the division, that the employer intends to contest the notification or proposed assessment, the notification and assessment, as proposed, is final and not subject to review by any court or agency.

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

(b) Upon a showing by an employer of a good faith effort to comply with the abatement requirements of a citation, and that the abatement has not been completed because of factors beyond the employer's reasonable control, the division, after an opportunity for discussion and consideration, shall issue an order affirming or modifying the abatement requirements in any citation.