

HB0232S01 compared with HB0232

~~deleted text~~ shows text that was in HB0232 but was deleted in HB0232S01.

Inserted text shows text that was not in HB0232 but was inserted into HB0232S01.

DISCLAIMER: This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will NOT be completely accurate. Therefore, you need to read the actual bills. This automatically generated document could contain inaccuracies caused by: limitations of the compare program; bad input data; or other causes.

Representative Val L. Peterson proposes the following substitute bill:

STATE ACTIVE DUTY AMENDMENTS

2019 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Val L. Peterson

Senate Sponsor: _____

LONG TITLE

General Description:

This bill provides that members of the Utah National Guard are covered under workers' compensation if injured or disabled while on state active duty.

Highlighted Provisions:

This bill:

- ▶ provides for ~~workers' compensation~~ benefits for members of the Utah National Guard who are injured or disabled while on state active duty;
- ▶ allows a servicemember to continue to receive pay and benefits while recovering from injuries received while on state active duty; and
- ▶ clarifies a servicemember's benefits in the case of permanent disability or the family's benefit in case of death.

Money Appropriated in this Bill:

HB0232S01 compared with HB0232

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

34A-2-104, as last amended by Laws of Utah 2017, Chapter 146

ENACTS:

39-1-65, Utah Code Annotated 1953

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 Utah National Guard or Utah State Defense Force 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 same establishment:

HB0232S01 compared with HB0232

- (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 employee'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) 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.

(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.

(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)(a)(ii) is given.

(iv) For premium rate making, the insurance carrier shall assume the salary or wage of

HB0232S01 compared with HB0232

the partner or sole proprietor electing coverage under Subsection (3)(a)(i) 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) 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," "worker," and "operative" do not include:

HB0232S01 compared with HB0232

(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' Compensation Coverage Waivers Act, to the individual; and

HB0232S01 compared with HB0232

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

HB0232S01 compared with HB0232

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 **39-1-65** is enacted to read:

39-1-65. Pay and care of soldiers and airmen disabled while on state active duty.

(1) (a) Before a servicemember may be considered disabled in accordance with this section, the Adjutant General shall determine whether the servicemember's illness, injury, or disease was contracted or occurred through the fault or negligence of the servicemember. If the servicemember is determined to be at fault for an injury or developed a disability through his or her own negligent actions, the servicemember is not entitled to any care, pension, or benefit in accordance with this section.

(b) Notwithstanding Subsection (1)(a) the servicemember may be eligible for benefits in accordance with Title 34A, Chapter 2, Workers' Compensation Act, and Chapter 3, Utah Occupational Disease Act.

(2) A member of the Utah National Guard or Utah State Defense Force who is disabled through illness, injury, or disease contracted or incurred while on state active duty or while reasonably proceeding to or returning from duty is eligible to receive workers' compensation benefits in accordance with Title 34A, Chapter 2, Workers' Compensation Act.

(3) (a) If the disability temporarily incapacitates the servicemember from pursuing the servicemember's usual business or occupation, the servicemember is eligible to receive workers' compensation benefits in accordance with Title 34A, Chapter 2, Workers' Compensation Act. ~~}. The Adjutant General shall, for,~~ and Chapter 3, Utah Occupational Disease Act.

(b) For the duration of the servicemember's inability to pursue a business or occupation, the Adjutant General shall provide {total} compensation equivalent to the difference between the disability compensation received under Subsection (3)(a) and the total pay and allowances under state active duty as provided in Section 39-1-51.

(4) A servicemember who is permanently disabled, shall receive pensions and benefits from the state that persons under like circumstances in the Armed Forces of the United States

HB0232S01 compared with HB0232

receive from the United States.

(5) If a servicemember dies as a result of an injury, illness, or disease contracted or incurred while on state active duty or while reasonably proceeding to or returning from active duty, the surviving spouse, minor children, or dependent parents of the servicemember shall receive compensation as directed in Section 39-1-59.

(6) Costs incurred by reason of this section shall be paid out of the funds available to the Utah National Guard.

(7) The Adjutant General, with the approval of the governor, shall make and publish regulations to implement this section.

(8) Nothing in this section shall in any way limit or condition any other payment to a servicemember that the law allows.