

WORKERS' COMPENSATION COVERAGE AMENDMENTS

2020 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Rex P. Shipp

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends provisions related to workers' compensation coverage.

Highlighted Provisions:

This bill:

- ▶ provides that, under certain circumstances, a partnership or sole proprietorship may elect not to provide workers' compensation coverage for a minor employee who is a child of a partner of the partnership or an owner of the sole proprietorship; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

- 34A-2-102**, as last amended by Laws of Utah 2019, Chapter 121
- 34A-2-104**, as last amended by Laws of Utah 2019, Chapter 299
- 34A-2-704**, as last amended by Laws of Utah 2019, Chapters 136 and 194
- 34A-2-1003**, as last amended by Laws of Utah 2017, Chapter 146
- 34A-2-1004**, as last amended by Laws of Utah 2017, Chapter 146
- 34A-2-1005**, as enacted by Laws of Utah 2011, Chapter 328



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

Section 1. Section **34A-2-102** is amended to read:

34A-2-102. Definition of terms.

(1) As used in this chapter:

(a) "Average weekly wages" means the average weekly wages as determined under Section [34A-2-409](#).

(b) "Award" means a final order of the commission as to the amount of compensation due:

(i) an injured employee; or

(ii) a dependent of a deceased employee.

(c) "Compensation" means the payments and benefits provided for in this chapter or Chapter 3, Utah Occupational Disease Act.

(d) (i) "Decision" means a ruling of:

(A) an administrative law judge; or

(B) in accordance with Section [34A-2-801](#):

(I) the commissioner; or

(II) the Appeals Board.

(ii) "Decision" includes:

(A) an award or denial of a medical, disability, death, or other related benefit under this chapter or Chapter 3, Utah Occupational Disease Act; or

(B) another adjudicative ruling in accordance with this chapter or Chapter 3, Utah Occupational Disease Act.

(e) "Director" means the director of the division, unless the context requires otherwise.

(f) "Disability" means an administrative determination that may result in an entitlement to compensation as a consequence of becoming medically impaired as to function. Disability can be total or partial, temporary or permanent, industrial or nonindustrial.

(g) "Division" means the Division of Industrial Accidents.

(h) "First responder" means:

(i) a law enforcement officer, as defined in Section [53-13-103](#);

(ii) an emergency medical technician, as defined in Section [26-8c-102](#);

59 (iii) an advanced emergency medical technician, as defined in Section 26-8c-102;

60 (iv) a paramedic, as defined in Section 26-8c-102;

61 (v) a firefighter, as defined in Section 34A-3-113;

62 (vi) a dispatcher, as defined in Section 53-6-102; or

63 (vii) a correctional officer, as defined in Section 53-13-104.

64 (i) "Minor" means an individual who is less than 18 years of age.

65 ~~(j)~~ (j) "Impairment" is a purely medical condition reflecting an anatomical or
66 functional abnormality or loss. Impairment may be either temporary or permanent, industrial
67 or nonindustrial.

68 ~~(j)~~ (k) "Order" means an action of the commission that determines the legal rights,
69 duties, privileges, immunities, or other interests of one or more specific persons, but not a class
70 of persons.

71 ~~(k)~~ (l) (i) "Personal injury by accident arising out of and in the course of
72 employment" includes an injury caused by the willful act of a third person directed against an
73 employee because of the employee's employment.

74 (ii) "Personal injury by accident arising out of and in the course of employment" does
75 not include a disease, except as the disease results from the injury.

76 ~~(l)~~ (m) "Safe" and "safety," as applied to employment or a place of employment,
77 means the freedom from danger to the life or health of employees reasonably permitted by the
78 nature of the employment.

79 (2) As used in this chapter and Chapter 3, Utah Occupational Disease Act:

80 (a) "Brother or sister" includes a half brother or sister.

81 (b) "Child" includes:

82 (i) a posthumous child; or

83 (ii) a child legally adopted prior to an injury.

84 Section 2. Section 34A-2-104 is amended to read:

85 **34A-2-104. "Employee," "worker," and "operative" defined -- Specific**
86 **circumstances -- Exemptions.**

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

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

- 90 (A) in the service of:
- 91 (I) the state;
- 92 (II) a county, city, or town within the state; or
- 93 (III) a school district within the state;
- 94 (B) serving the state, or any county, city, town, or school district under:
- 95 (I) an election;
- 96 (II) appointment; or
- 97 (III) any contract of hire, express or implied, written or oral; and
- 98 (ii) including:
- 99 (A) an officer or employee of the state institutions of learning; and
- 100 (B) a member of the Utah National Guard or Utah State Defense Force while on state
- 101 active duty; and
- 102 (b) a person in the service of any employer, as defined in Section [34A-2-103](#), who
- 103 employs one or more workers or operatives regularly in the same business, or in or about the
- 104 same establishment:
- 105 (i) under any contract of hire:
- 106 (A) express or implied; and
- 107 (B) oral or written;
- 108 (ii) including aliens and minors, whether legally or illegally working for hire; and
- 109 (iii) not including any person whose employment:
- 110 (A) is casual; and
- 111 (B) not in the usual course of the trade, business, or occupation of the employee's
- 112 employer.
- 113 (2) (a) Unless a lessee provides coverage as an employer under this chapter and
- 114 Chapter 3, Utah Occupational Disease Act, any lessee in mines or of mining property and each
- 115 employee and sublessee of the lessee shall be:
- 116 (i) covered for compensation by the lessor under this chapter and Chapter 3, Utah
- 117 Occupational Disease Act;
- 118 (ii) subject to this chapter and Chapter 3, Utah Occupational Disease Act; and
- 119 (iii) entitled to the benefits of this chapter and Chapter 3, Utah Occupational Disease
- 120 Act, to the same extent as if the lessee, employee, or sublessee were employees of the lessor

121 drawing the wages paid employees for substantially similar work.

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

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

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

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

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

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

141 (i) the partnership or sole proprietorship:

142 (A) is a motor carrier; and

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

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

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

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

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

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

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

156 (d) An exclusion under this Subsection (4) is subject to Subsection [34A-2-103\(7\)\(d\)](#).

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

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

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

165 (5) (a) A partnership or sole proprietorship may elect not to include a minor employed
166 by the partnership or the sole proprietorship as an employee under this chapter and Chapter 3,
167 Utah Occupational Disease Act, if:

168 (i) (A) in the partnership, there are only two partners and the partners are legally
169 married to each other; or

170 (B) in the sole proprietorship, there is only one owner;

171 (ii) the partnership or sole proprietorship employs no employee other than the minor,
172 except an owner may also employ the owner's legal spouse;

173 (iii) the minor is a child of a partner of the partnership or an owner of the sole
174 proprietorship;

175 (iv) the partnership or sole proprietorship carries for the minor health insurance
176 coverage that:

177 (A) meets the minimum coverage standard that applies to employer-sponsored health
178 plans under the Patient Protection and Affordable Care Act, Public Law 111-148; and

179 (B) covers work-related injuries; and

180 (v) the partnership or sole proprietorship obtains a waiver in accordance with Section
181 [34A-2-1004](#).

182 (b) A minor employed by a partnership or a sole proprietorship as described in

183 Subsection (5)(a) is considered an employee under this chapter and Chapter 3, Utah
 184 Occupational Disease Act, until the insurance coverage described in Subsection (5)(a)(iv) is in
 185 effect.

186 [~~5~~] (6) As used in this chapter and Chapter 3, Utah Occupational Disease Act,
 187 "employee," "worker," and "operative" do not include:

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

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

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

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

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

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

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

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

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

205 (A) is an independent contractor;

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

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

208 (d) subject to Subsections [~~6~~], (7), (8) and [~~8~~] (9), an individual who:

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

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

211 (ii) personally operates the motor vehicle described in Subsection [~~5~~] (6)(d)(i);

212 (iii) operates the motor vehicle described in Subsection [~~5~~] (6)(d)(i) under a written

213 agreement with the motor carrier that states that the individual operates the motor vehicle as an

214 independent contractor; and

215 (iv) (A) provides to the motor carrier at the time the written agreement described in
216 Subsection [~~(5)~~] (6)(d)(iii) is executed or as soon after the execution as provided by the
217 commission, a copy of a workers' compensation coverage waiver issued pursuant to Part 10,
218 Workers' Compensation Coverage Waivers Act, to the individual; and

219 (B) provides to the motor carrier at the time the written agreement described in
220 Subsection [~~(5)~~] (6)(d)(iii) is executed or as soon after the execution as provided by an insurer,
221 proof that the individual is covered by occupational accident related insurance with the
222 coverage and benefit limits listed in Subsection [~~(7)~~] (8)(c).

223 [~~(6)~~] (7) An individual described in Subsection [~~(5)~~] (6)(d) may become an employee
224 under this chapter and Chapter 3, Utah Occupational Disease Act, if the employer of the
225 individual complies with:

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

228 [~~(7)~~] (8) As used in this section:

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

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

234 (c) "Occupational accident related insurance" means insurance that provides the
235 following coverage at a minimum aggregate policy limit of \$1,000,000 for all benefits paid,
236 including medical expense benefits, for an injury sustained in the course of working under a
237 written agreement described in Subsection [~~(5)~~] (6)(d)(iii):

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

245 [~~(8)~~] (9) For an individual described in Subsection [~~(5)~~] (6)(d):

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

248 (i) occupational accident related insurance; and

249 (ii) a waiver in accordance with Part 10, Workers' Compensation Coverage Waivers
250 Act; and

251 (b) the commission shall verify the existence of occupational accident insurance
252 coverage with the coverage and benefit limits listed in Subsection [~~(7)~~] (8)(c) before the
253 commission may issue a workers' compensation coverage waiver to the individual pursuant to
254 Part 10, Workers' Compensation Coverage Waivers Act.

255 Section 3. Section **34A-2-704** is amended to read:

256 **34A-2-704. Uninsured Employers' Fund.**

257 (1) (a) There is created an Uninsured Employers' Fund. The Uninsured Employers'
258 Fund has the purpose of assisting in the payment of workers' compensation benefits to a person
259 entitled to the benefits, if:

260 (i) that person's employer:

261 (A) is individually, jointly, or severally liable to pay the benefits; and

262 (B) (I) becomes or is insolvent;

263 (II) appoints or has appointed a receiver; or

264 (III) otherwise does not have sufficient funds, insurance, sureties, or other security to
265 cover workers' compensation liabilities; and

266 (ii) the employment relationship between that person and the person's employer is
267 localized within the state as provided in Subsection (20).

268 (b) The Uninsured Employers' Fund succeeds to money previously held in the Default
269 Indemnity Fund.

270 (c) If it becomes necessary to pay benefits, the Uninsured Employers' Fund is liable for
271 the obligations of the employer set forth in this chapter and Chapter 3, Utah Occupational
272 Disease Act, with the exception of a penalty on those obligations.

273 (2) (a) Money for the Uninsured Employers' Fund shall be deposited into the Uninsured
274 Employers' Fund in accordance with this chapter and Subsection [59-9-101\(2\)](#).

275 (b) The commissioner shall appoint an administrator of the Uninsured Employers'

276 Fund.

277 (c) (i) The state treasurer is the custodian of the Uninsured Employers' Fund.

278 (ii) The administrator shall make provisions for and direct distribution from the
279 Uninsured Employers' Fund.

280 (3) Reasonable costs of administering the Uninsured Employers' Fund or other fees
281 required to be paid by the Uninsured Employers' Fund may be paid from the Uninsured
282 Employers' Fund.

283 (4) The state treasurer shall:

284 (a) receive workers' compensation premium assessments from the State Tax
285 Commission; and

286 (b) invest the Uninsured Employers' Fund to ensure maximum investment return for
287 both long and short term investments in accordance with Section [34A-2-706](#).

288 (5) (a) The administrator may employ, retain, or appoint counsel to represent the
289 Uninsured Employers' Fund in a proceeding brought to enforce a claim against or on behalf of
290 the Uninsured Employers' Fund.

291 (b) If requested by the commission, the following shall aid in the representation of the
292 Uninsured Employers' Fund:

293 (i) the attorney general; or

294 (ii) the city attorney, or county attorney of the locality in which:

295 (A) an investigation, hearing, or trial under this chapter or Chapter 3, Utah

296 Occupational Disease Act, is pending;

297 (B) the employee resides; or

298 (C) an employer:

299 (I) resides; or

300 (II) is doing business.

301 (c) (i) Notwithstanding Title 63A, Chapter 3, Part 5, Office of State Debt Collection,
302 the administrator shall provide for the collection of money required to be deposited in the
303 Uninsured Employers' Fund under this chapter and Chapter 3, Utah Occupational Disease Act.

304 (ii) To comply with Subsection (5)(c)(i), the administrator may:

305 (A) take appropriate action, including docketing an award in a manner consistent with
306 Section [34A-2-212](#); and

307 (B) employ counsel and other personnel necessary to collect the money described in
308 Subsection (5)(c)(i).

309 (6) To the extent of the compensation and other benefits paid or payable to or on behalf
310 of an employee or the employee's dependents from the Uninsured Employers' Fund, the
311 Uninsured Employers' Fund, by subrogation, has the rights, powers, and benefits of the
312 employee or the employee's dependents against the employer failing to make the compensation
313 payments.

314 (7) (a) The receiver, trustee, liquidator, or statutory successor of an employer meeting a
315 condition listed in Subsection (1)(a)(i)(B) is bound by a settlement of a covered claim by the
316 Uninsured Employers' Fund.

317 (b) A court with jurisdiction shall grant a payment made under this section a priority
318 equal to that to which the claimant would have been entitled in the absence of this section
319 against the assets of the employer meeting a condition listed in Subsection (1)(a)(i)(B).

320 (c) The expenses of the Uninsured Employers' Fund in handling a claim shall be
321 accorded the same priority as the liquidator's expenses.

322 (8) (a) The administrator shall periodically file the information described in Subsection
323 (8)(b) with the receiver, trustee, or liquidator of:

324 (i) an employer that meets a condition listed in Subsection (1)(a)(i)(B);

325 (ii) a public agency insurance mutual, as defined in Section 31A-1-103, that meets a
326 condition listed in Subsection (1)(a)(i)(B); or

327 (iii) an insolvent insurance carrier.

328 (b) The information required to be filed under Subsection (8)(a) is:

329 (i) a statement of the covered claims paid by the Uninsured Employers' Fund; and

330 (ii) an estimate of anticipated claims against the Uninsured Employers' Fund.

331 (c) A filing under this Subsection (8) preserves the rights of the Uninsured Employers'
332 Fund for claims against the assets of the employer that meets a condition listed in Subsection
333 (1)(a)(i)(B).

334 (9) When an injury or death for which compensation is payable from the Uninsured
335 Employers' Fund has been caused by the wrongful act or neglect of another person not in the
336 same employment, the Uninsured Employers' Fund has the same rights as allowed under
337 Section 34A-2-106.

338 (10) The Uninsured Employers' Fund, subject to approval of the administrator, shall
339 discharge its obligations by:

340 (a) adjusting its own claims; or

341 (b) contracting with an adjusting company, risk management company, insurance
342 company, or other company that has expertise and capabilities in adjusting and paying workers'
343 compensation claims.

344 (11) (a) For the purpose of maintaining the Uninsured Employers' Fund, an
345 administrative law judge, upon rendering a decision with respect to a claim for workers'
346 compensation benefits in which an employer that meets a condition listed in Subsection
347 (1)(a)(i)(B) is duly joined as a party, shall:

348 (i) order the employer that meets a condition listed in Subsection (1)(a)(i)(B) to
349 reimburse the Uninsured Employers' Fund for the benefits paid to or on behalf of an injured
350 employee by the Uninsured Employers' Fund along with interest, costs, and attorney fees; and

351 (ii) impose a penalty against the employer that meets a condition listed in Subsection
352 (1)(a)(i)(B):

353 (A) of 15% of the value of the total award in connection with the claim; and

354 (B) that shall be deposited into the Uninsured Employers' Fund.

355 (b) An award under this Subsection (11) shall be collected by the administrator in
356 accordance with Subsection (5)(c).

357 (12) The state, the commission, and the state treasurer, with respect to payment of
358 compensation benefits, expenses, fees, or disbursement properly chargeable against the
359 Uninsured Employers' Fund:

360 (a) are liable only to the assets in the Uninsured Employers' Fund; and

361 (b) are not otherwise in any way liable for the making of a payment.

362 (13) The commission may make reasonable rules for the processing and payment of a
363 claim for compensation from the Uninsured Employers' Fund.

364 (14) (a) (i) If it becomes necessary for the Uninsured Employers' Fund to pay benefits
365 under this section to an employee described in Subsection (14)(a)(ii), the Uninsured Employers'
366 Fund may assess all other self-insured employers amounts necessary to pay:

367 (A) the obligations of the Uninsured Employers' Fund subsequent to a condition listed
368 in Subsection (1)(a)(i)(B) occurring;

369 (B) the expenses of handling covered a claim subsequent to a condition listed in
370 Subsection (1)(a)(i)(B) occurring;

371 (C) the cost of an examination under Subsection (15); and

372 (D) other expenses authorized by this section.

373 (ii) This Subsection (14) applies to benefits paid to an employee of:

374 (A) a self-insured employer, as defined in Section 34A-2-201.5, that meets a condition
375 listed in Subsection (1)(a)(i)(B); or

376 (B) if the self-insured employer that meets a condition described in Subsection
377 (1)(a)(i)(B) is a public agency insurance mutual, a member of the public agency insurance
378 mutual.

379 (b) The assessments of a self-insured employer shall be in the proportion that the
380 manual premium of the self-insured employer for the preceding calendar year bears to the
381 manual premium of all self-insured employers for the preceding calendar year.

382 (c) A self-insured employer shall be notified of the self-insured employer's assessment
383 not later than 30 days before the day on which the assessment is due.

384 (d) (i) A self-insured employer may not be assessed in any year an amount greater than
385 2% of that self-insured employer's manual premium for the preceding calendar year.

386 (ii) If the maximum assessment does not provide in a year an amount sufficient to
387 make all necessary payments from the Uninsured Employers' Fund for one or more self-insured
388 employers that meet a condition listed in Subsection (1)(a)(i)(B), the unpaid portion shall be
389 paid as soon as money becomes available.

390 (e) A self-insured employer is liable under this section for a period not to exceed three
391 years after the day on which the Uninsured Employers' Fund first pays benefits to an employee
392 described in Subsection (14)(a)(ii) for the self-insured employer that meets a condition listed in
393 Subsection (1)(a)(i)(B).

394 (f) This Subsection (14) does not apply to a claim made against a self-insured employer
395 that meets a condition listed in Subsection (1)(a)(i)(B) if the condition listed in Subsection
396 (1)(a)(i)(B) occurred before July 1, 1986.

397 (15) (a) The following shall notify the division of any information indicating that any
398 of the following may be insolvent or in a financial condition hazardous to its employees or the
399 public:

400 (i) a self-insured employer; or
401 (ii) if the self-insured employer is a public agency insurance mutual, a member of the
402 public agency insurance mutual.

403 (b) Upon receipt of the notification described in Subsection (15)(a) and with good
404 cause appearing, the division may order an examination of:

405 (i) that self-insured employer; or
406 (ii) if the self-insured employer is a public agency insurance mutual, a member of the
407 public agency mutual.

408 (c) The cost of the examination ordered under Subsection (15)(b) shall be assessed
409 against all self-insured employers as provided in Subsection (14).

410 (d) The results of the examination ordered under Subsection (15)(b) shall be kept
411 confidential.

412 (16) (a) In a claim against an employer by the Uninsured Employers' Fund, or by or on
413 behalf of the employee to whom or to whose dependents compensation and other benefits are
414 paid or payable from the Uninsured Employers' Fund, the burden of proof is on the employer or
415 other party in interest objecting to the claim.

416 (b) A claim described in Subsection (16)(a) is presumed to be valid up to the full
417 amount of workers' compensation benefits claimed by the employee or the employee's
418 dependents.

419 (c) This Subsection (16) applies whether the claim is filed in court or in an adjudicative
420 proceeding under the authority of the commission.

421 (17) A partner in a partnership or an owner of a sole proprietorship may not recover
422 compensation or other benefits from the Uninsured Employers' Fund if:

423 (a) the person is not included as an employee under Subsection 34A-2-104(3) or (5); or

424 (b) the person is included as an employee under Subsection 34A-2-104(3), but:

425 (i) the person's employer fails to insure or otherwise provide adequate payment of
426 direct compensation; and

427 (ii) the failure described in Subsection (17)(b)(i) is attributable to an act or omission
428 over which the person had or shared control or responsibility.

429 (18) A director or officer of a corporation may not recover compensation or other
430 benefits from the Uninsured Employers' Fund if the director or officer is excluded from

431 coverage under Subsection 34A-2-104(4).

432 (19) The Uninsured Employers' Fund:

433 (a) shall be:

434 (i) used in accordance with this section only for:

435 (A) the purpose of assisting in the payment of workers' compensation benefits in
436 accordance with Subsection (1); and

437 (B) in accordance with Subsection (3), payment of:

438 (I) reasonable costs of administering the Uninsured Employers' Fund; or

439 (II) fees required to be paid by the Uninsured Employers' Fund; and

440 (ii) expended according to processes that can be verified by audit; and

441 (b) may not be used for:

442 (i) administrative costs unrelated to the Uninsured Employers' Fund; or

443 (ii) an activity of the commission other than an activity described in Subsection (19)(a).

444 (20) (a) For purposes of Subsection (1), an employment relationship is localized in the
445 state if:

446 (i) (A) the employer who is liable for the benefits has a business premise in the state;

447 and

448 (B) (I) the contract for hire is entered into in the state; or

449 (II) the employee regularly performs work duties in the state for the employer who is
450 liable for the benefits; or

451 (ii) the employee is:

452 (A) a resident of the state; and

453 (B) regularly performs work duties in the state for the employer who is liable for the
454 benefits.

455 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
456 commission shall by rule define what constitutes regularly performing work duties in the state.

457 Section 4. Section 34A-2-1003 is amended to read:

458 **34A-2-1003. Issuance of a waiver.**

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

461 (a) elects not to include an owner, partner, or corporate officer or director as an

462 employee under a workers' compensation policy in accordance with Section 34A-2-103 and
463 Subsection 34A-2-104(3) or (4);

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

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

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

469 (2) The commission shall issue a workers' compensation coverage waiver to a
470 partnership or sole proprietorship for the employment of a minor, if the partnership or sole
471 proprietorship:

472 (a) elects not to include the minor child of a partner of the partnership or an owner of
473 the sole proprietorship as an employee under a workers' compensation policy in accordance
474 with Section 34A-2-103 and Subsection 34A-2-104(5);

475 (b) on the day on which the commission issues the waiver to the partnership or sole
476 proprietorship, employs no employee other than:

477 (i) the minor; or

478 (ii) if a sole proprietorship, the owner's legal spouse;

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

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

482 [~~2~~] (3) (a) A waiver issued under this section expires one year from the day on which
483 it is issued unless renewed by the holder of the waiver.

484 (b) To renew a waiver issued under [~~this part~~] Subsection (1), the holder of the waiver
485 shall:

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

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

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

490 (c) To renew a waiver issued under Subsection (2), the holder of the waiver shall:

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

492 (ii) pay a fee established by the commission in accordance with Section 63J-1-504,

493 except that the fee may not exceed \$50.

494 ~~[(3)]~~ (4) (a) As of the day on which a business entity described in Subsection (1)
495 employs an employee other than an owner, partner, or corporate officer or director described in
496 Subsection (1)(a):

497 ~~[(a)]~~ (i) the business entity's waiver is invalid; and

498 ~~[(b)]~~ (ii) the business entity is required to provide workers' compensation coverage for
499 that employee in accordance with Section [34A-2-201](#).

500 (b) As of the day on which the partnership or sole proprietorship described in
501 Subsection (2) employs any individual other than the minor or, if a sole proprietorship, the
502 owner's legal spouse or fails to provide health insurance coverage as described in Subsection
503 [34A-2-103\(5\)](#):

504 (i) the partnership or sole proprietorship's waiver is invalid; and

505 (ii) the partnership or sole proprietorship is required to provide workers' compensation
506 coverage for the employed minor in accordance with Section [34A-2-201](#).

507 ~~[(4)]~~ (5) The commission shall deposit a fee collected under this section in the
508 Industrial Accident Restricted Account created in Section [34A-2-705](#).

509 ~~[(5)]~~ (6) Unless invalidated under Section [34A-2-1005](#), notwithstanding the other
510 provisions of this section, a waiver issued by an insurer that is valid on June 30, 2011, remains
511 valid until its expiration date.

512 Section 5. Section [34A-2-1004](#) is amended to read:

513 **[34A-2-1004. Information required to obtain a waiver.](#)**

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

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

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

519 (b) a valid business license;

520 (c) a license to engage in an occupation or profession, including a license under Title
521 58, Occupations and Professions; or

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

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

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

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

528 (i) a telephone number; and

529 (ii) a physical location; or

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

532 (i) in a newspaper of general circulation;

533 (ii) in a telephone directory;

534 (iii) on a website or social media; or

535 (iv) in a trade magazine.

536 (3) In addition to the requirements described in Subsections (1) and (2), to obtain or
537 renew a waiver under Subsection 34A-2-1003(2), a partnership or sole proprietorship shall
538 submit to the commission:

539 (a) proof that the partnership or sole proprietorship employs no employee other than:

540 (i) the minor; or

541 (ii) if a sole proprietorship, the owner's legal spouse;

542 (b) proof that the minor employee for which the partnership or sole proprietorship
543 seeks to obtain or renew a waiver is a child of a partner of the partnership or owner of the sole
544 proprietorship;

545 (c) proof that the partnership or sole proprietorship carries health insurance coverage
546 for the minor employee for which the partnership or sole proprietorship seeks to obtain or
547 renew a waiver to the extent required under Subsection 34A-2-104(5); and

548 (d) written confirmation from the partnership or sole proprietorship's insurer that the
549 insurer will cover the minor employee for any work-related injury.

550 Section 6. Section 34A-2-1005 is amended to read:

551 **34A-2-1005. Enforcement.**

552 (1) The commission may investigate a business entity to determine whether:

553 (a) the business entity validly elects to not cover an owner, partner, or corporate officer
554 or director as an employee under a workers' compensation policy in accordance with Section

555 [34A-2-103](#)[-]; or

556 (b) the partnership or sole proprietorship validly elects not to cover an employed minor
557 child of a partner of the partnership or owner of the sole proprietorship as an employee under a
558 workers' compensation policy in accordance with Section [34A-2-103](#).

559 (2) If the commission determines that a business entity's election as provided in this
560 section is invalid, the commission may:

561 (a) prohibit a business entity from using a waiver obtained under this part; and

562 (b) take any action provided for under this chapter or Chapter 3, Utah Occupational
563 Disease Act, for failure to obtain workers' compensation coverage for an employee.