

Representative Rex P. Shipp proposes the following substitute bill:

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, sole proprietorship, or a certain limited liability company may elect not to provide workers' compensation coverage for as many as three minor employees under certain circumstances; 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



26 [34A-2-1004](#), as last amended by Laws of Utah 2017, Chapter 146

27 [34A-2-1005](#), as enacted by Laws of Utah 2011, Chapter 328

28

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

30 Section 1. Section [34A-2-102](#) is amended to read:

31 **[34A-2-102. Definition of terms.](#)**

32 (1) As used in this chapter:

33 (a) "Average weekly wages" means the average weekly wages as determined under

34 Section [34A-2-409](#).

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

37 (i) an injured employee; or

38 (ii) a dependent of a deceased employee.

39 (c) "Compensation" means the payments and benefits provided for in this chapter or

40 Chapter 3, Utah Occupational Disease Act.

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

42 (A) an administrative law judge; or

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

44 (I) the commissioner; or

45 (II) the Appeals Board.

46 (ii) "Decision" includes:

47 (A) an award or denial of a medical, disability, death, or other related benefit under this

48 chapter or Chapter 3, Utah Occupational Disease Act; or

49 (B) another adjudicative ruling in accordance with this chapter or Chapter 3, Utah

50 Occupational Disease Act.

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

52 (f) "Disability" means an administrative determination that may result in an entitlement

53 to compensation as a consequence of becoming medically impaired as to function. Disability

54 can be total or partial, temporary or permanent, industrial or nonindustrial.

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

56 (h) "First responder" means:

- 57 (i) a law enforcement officer, as defined in Section 53-13-103;
 58 (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) Subject to Subsection (5)(b), the following entities may elect not to include as
166 an employee under this chapter and Chapter 3, Utah Occupational Disease Act, as many as
167 three minors the entity employs:

168 (i) a partnership;

169 (ii) a sole proprietorship; or

170 (iii) a limited liability company that pays federal income tax as either a partnership or
171 sole proprietorship.

172 (b) An entity may only make the election described in Subsection (5)(a) if:

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

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

176 (C) in the limited liability company:

177 (I) there are only two members and the members are legally married to each other; or

178 (II) there is only one member;

179 (ii) the entity employs no employee other than:

180 (A) a minor for whom the entity makes the election described in Subsection (5)(a);

- 181 (B) if a sole proprietorship, the owner's legal spouse; or
182 (C) if a limited liability company with a single member, the member's legal spouse;
183 (iii) each employed minor is a child of:
184 (A) a partner of the partnership;
185 (B) the owner of the sole proprietorship; or
186 (C) a member of the limited liability company;
187 (iv) the entity carries for each minor health insurance coverage that:
188 (A) meets the minimum coverage standard that applies to employer-sponsored health
189 plans under the Patient Protection and Affordable Care Act, Public Law 111-148; and
190 (B) covers work-related injuries; and
191 (v) the entity obtains a waiver in accordance with Section [34A-2-1004](#).
192 (c) A minor a partnership, sole proprietorship, or limited liability company employs as
193 described in this Subsection (5) is considered an employee under this chapter and Chapter 3,
194 Utah Occupational Disease Act, until the insurance coverage described in Subsection (5)(b)(iv)
195 is in effect.
- 196 ~~[(5)]~~ (6) As used in this chapter and Chapter 3, Utah Occupational Disease Act,
197 "employee," "worker," and "operative" do not include:
198 (a) a sales agent or associate broker, as defined in Section [61-2f-102](#), who performs
199 services in that capacity for a principal broker if:
200 (i) substantially all of the sales agent's or associate broker's income for services is from
201 real estate commissions; and
202 (ii) the sales agent's or associate broker's services are performed under a written
203 contract that provides that:
204 (A) the real estate agent is an independent contractor; and
205 (B) the sales agent or associate broker is not to be treated as an employee for federal
206 income tax purposes;
207 (b) an offender performing labor under Section [64-13-16](#) or [64-13-19](#), except as
208 required by federal statute or regulation;
209 (c) an individual who for an insurance producer, as defined in Section [31A-1-301](#),
210 solicits, negotiates, places, or procures insurance if:
211 (i) substantially all of the individual's income from those services is from insurance

212 commissions; and

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

215 (A) is an independent contractor;

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

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

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

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

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

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

222 (iii) operates the motor vehicle described in Subsection [~~(5)~~] (6)(d)(i) under a written
223 agreement with the motor carrier that states that the individual operates the motor vehicle as an
224 independent contractor; and

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

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

233 [~~(6)~~] (7) An individual described in Subsection [~~(5)~~] (6)(d) may become an employee
234 under this chapter and Chapter 3, Utah Occupational Disease Act, if the employer of the
235 individual complies with:

236 (a) this chapter and Chapter 3, Utah Occupational Disease Act; and

237 (b) commission rules.

238 [~~(7)~~] (8) As used in this section:

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

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

243 motorized vehicle.

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

- 248 (i) disability benefits;
- 249 (ii) death benefits; and
- 250 (iii) medical expense benefits, which include:
 - 251 (A) hospital coverage;
 - 252 (B) surgical coverage;
 - 253 (C) prescription drug coverage; and
 - 254 (D) dental coverage.

255 [~~(8)~~] (9) For an individual described in Subsection [~~(5)~~] (6)(d):

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

- 258 (i) occupational accident related insurance; and
- 259 (ii) a waiver in accordance with Part 10, Workers' Compensation Coverage Waivers
260 Act; and

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

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

266 **34A-2-704. Uninsured Employers' Fund.**

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

- 270 (i) that person's employer:
 - 271 (A) is individually, jointly, or severally liable to pay the benefits; and
 - 272 (B) (I) becomes or is insolvent;
 - 273 (II) appoints or has appointed a receiver; or

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

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

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

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

283 (2) (a) Money for the Uninsured Employers' Fund shall be deposited into the Uninsured
284 Employers' Fund in accordance with this chapter and Subsection 59-9-101(2).

285 (b) The commissioner shall appoint an administrator of the Uninsured Employers'
286 Fund.

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

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

290 (3) Reasonable costs of administering the Uninsured Employers' Fund or other fees
291 required to be paid by the Uninsured Employers' Fund may be paid from the Uninsured
292 Employers' Fund.

293 (4) The state treasurer shall:

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

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

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

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

303 (i) the attorney general; or

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

- 305 (A) an investigation, hearing, or trial under this chapter or Chapter 3, Utah
306 Occupational Disease Act, is pending;
- 307 (B) the employee resides; or
308 (C) an employer:
309 (I) resides; or
310 (II) is doing business.
- 311 (c) (i) Notwithstanding Title 63A, Chapter 3, Part 5, Office of State Debt Collection,
312 the administrator shall provide for the collection of money required to be deposited in the
313 Uninsured Employers' Fund under this chapter and Chapter 3, Utah Occupational Disease Act.
- 314 (ii) To comply with Subsection (5)(c)(i), the administrator may:
315 (A) take appropriate action, including docketing an award in a manner consistent with
316 Section [34A-2-212](#); and
317 (B) employ counsel and other personnel necessary to collect the money described in
318 Subsection (5)(c)(i).
- 319 (6) To the extent of the compensation and other benefits paid or payable to or on behalf
320 of an employee or the employee's dependents from the Uninsured Employers' Fund, the
321 Uninsured Employers' Fund, by subrogation, has the rights, powers, and benefits of the
322 employee or the employee's dependents against the employer failing to make the compensation
323 payments.
- 324 (7) (a) The receiver, trustee, liquidator, or statutory successor of an employer meeting a
325 condition listed in Subsection (1)(a)(i)(B) is bound by a settlement of a covered claim by the
326 Uninsured Employers' Fund.
- 327 (b) A court with jurisdiction shall grant a payment made under this section a priority
328 equal to that to which the claimant would have been entitled in the absence of this section
329 against the assets of the employer meeting a condition listed in Subsection (1)(a)(i)(B).
- 330 (c) The expenses of the Uninsured Employers' Fund in handling a claim shall be
331 accorded the same priority as the liquidator's expenses.
- 332 (8) (a) The administrator shall periodically file the information described in Subsection
333 (8)(b) with the receiver, trustee, or liquidator of:
334 (i) an employer that meets a condition listed in Subsection (1)(a)(i)(B);
335 (ii) a public agency insurance mutual, as defined in Section [31A-1-103](#), that meets a

336 condition listed in Subsection (1)(a)(i)(B); or

337 (iii) an insolvent insurance carrier.

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

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

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

341 (c) A filing under this Subsection (8) preserves the rights of the Uninsured Employers'

342 Fund for claims against the assets of the employer that meets a condition listed in Subsection

343 (1)(a)(i)(B).

344 (9) When an injury or death for which compensation is payable from the Uninsured

345 Employers' Fund has been caused by the wrongful act or neglect of another person not in the

346 same employment, the Uninsured Employers' Fund has the same rights as allowed under

347 Section [34A-2-106](#).

348 (10) The Uninsured Employers' Fund, subject to approval of the administrator, shall

349 discharge its obligations by:

350 (a) adjusting its own claims; or

351 (b) contracting with an adjusting company, risk management company, insurance

352 company, or other company that has expertise and capabilities in adjusting and paying workers'

353 compensation claims.

354 (11) (a) For the purpose of maintaining the Uninsured Employers' Fund, an

355 administrative law judge, upon rendering a decision with respect to a claim for workers'

356 compensation benefits in which an employer that meets a condition listed in Subsection

357 (1)(a)(i)(B) is duly joined as a party, shall:

358 (i) order the employer that meets a condition listed in Subsection (1)(a)(i)(B) to

359 reimburse the Uninsured Employers' Fund for the benefits paid to or on behalf of an injured

360 employee by the Uninsured Employers' Fund along with interest, costs, and attorney fees; and

361 (ii) impose a penalty against the employer that meets a condition listed in Subsection

362 (1)(a)(i)(B):

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

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

365 (b) An award under this Subsection (11) shall be collected by the administrator in

366 accordance with Subsection (5)(c).

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

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

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

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

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

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

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

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

382 (D) other expenses authorized by this section.

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

384 (A) a self-insured employer, as defined in Section [34A-2-201.5](#), that meets a condition
385 listed in Subsection (1)(a)(i)(B); or

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

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

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

394 (d) (i) A self-insured employer may not be assessed in any year an amount greater than
395 2% of that self-insured employer's manual premium for the preceding calendar year.

396 (ii) If the maximum assessment does not provide in a year an amount sufficient to
397 make all necessary payments from the Uninsured Employers' Fund for one or more self-insured

398 employers that meet a condition listed in Subsection (1)(a)(i)(B), the unpaid portion shall be
399 paid as soon as money becomes available.

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

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

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

410 (i) a self-insured employer; or

411 (ii) if the self-insured employer is a public agency insurance mutual, a member of the
412 public agency insurance mutual.

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

415 (i) that self-insured employer; or

416 (ii) if the self-insured employer is a public agency insurance mutual, a member of the
417 public agency mutual.

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

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

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

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

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

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

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

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

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

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

439 (18) A director or officer of a corporation may not recover compensation or other
440 benefits from the Uninsured Employers' Fund if the director or officer is excluded from
441 coverage under Subsection 34A-2-104(4).

442 (19) The Uninsured Employers' Fund:

443 (a) shall be:

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

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

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

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

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

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

451 (b) may not be used for:

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

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

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

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

457 and

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

459 (II) the employee regularly performs work duties in the state for the employer who is

460 liable for the benefits; or

461 (ii) the employee is:

462 (A) a resident of the state; and

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

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

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

468 **34A-2-1003. Issuance of a waiver.**

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

471 (a) elects not to include an owner, partner, or corporate officer or director as an
472 employee under a workers' compensation policy in accordance with Section 34A-2-103 and
473 Subsection 34A-2-104(3) or (4);

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

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

477 (d) pays a fee [~~established by~~] the commission establishes in accordance with Section
478 63J-1-504, [~~except that the fee may~~] that does not exceed \$50.

479 (2) (a) Subject to Subsection (2)(b), the commission may issue a workers'

480 compensation coverage waiver for as many as three employed minors to:

481 (i) a partnership;

482 (ii) a sole proprietorship; or

483 (iii) a limited liability company that pays federal income tax as a partnership or sole
484 proprietorship.

485 (b) The commission shall issue a workers' compensation coverage waiver to an entity
486 described in Subsection (2)(a), if the entity:

487 (i) elects not to include a minor as an employee under a workers' compensation policy
488 in accordance with Subsection 34A-2-104(5);

489 (ii) on the day on which the commission issues the waiver to the entity, employs no
490 employee other than:

491 (A) a minor for whom the entity makes the election described in Subsection (2)(b)(i);
492 (B) if a sole proprietorship, the owner's legal spouse; or
493 (C) if a limited liability company with a single member, the member's legal spouse;
494 (iii) provides to the commission the information required by Section 34A-2-1004; and
495 (iv) pays a fee the commission establishes in accordance with Section 63J-1-504, that
496 does not exceed \$50.

497 ~~[(2)]~~ (3) (a) A waiver issued under this section expires one year from the day on which
498 it is issued unless renewed by the holder of the waiver.

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

501 (i) employ no other employee on the day on which the commission renews the waiver;
502 (ii) provide to the commission the information required by Section 34A-2-1004; and
503 (iii) pay a fee established by the commission in accordance with Section 63J-1-504,
504 [except that the fee may] that does not exceed \$50.

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

506 (i) provide to the commission the information required by Section 34A-2-1004; and
507 (ii) pay a fee the commission establishes in accordance with Section 63J-1-504, that
508 does not exceed \$50.

509 ~~[(3)]~~ (4) (a) As of the day on which a business entity described in Subsection (1)
510 employs an employee other than an owner, partner, or corporate officer or director described in
511 Subsection (1)(a):

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

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

515 (b) As of the day on which an entity described in Subsection (2) employs any
516 individual other than an individual described in Subsection (2)(b)(ii) or fails to provide health
517 insurance coverage to the extent required under Subsection 34A-2-104(5):

518 (i) the entity's waiver is invalid; and

519 (ii) the entity is required to provide workers' compensation coverage for the employed
520 minor in accordance with Section 34A-2-201.

521 ~~[(4)]~~ (5) The commission shall deposit a fee collected under this section in the

522 Industrial Accident Restricted Account created in Section [34A-2-705](#).

523 ~~[(5)]~~ (6) Unless invalidated under Section [34A-2-1005](#), notwithstanding the other
524 provisions of this section, a waiver issued by an insurer that is valid on June 30, 2011, remains
525 valid until ~~[its]~~ the waiver's expiration date.

526 Section 5. Section **34A-2-1004** is amended to read:

527 **34A-2-1004. Information required to obtain a waiver.**

528 (1) To obtain or renew a waiver, a business entity shall submit to the commission:

529 ~~[(1)]~~ (a) a copy of two or more of the following:

530 ~~[(a)]~~ (i) the business entity's federal or state income tax return that shows business
531 income for the complete taxable year that immediately precedes the day on which the business
532 entity submits the information;

533 ~~[(b)]~~ (ii) a valid business license;

534 ~~[(c)]~~ (iii) a license to engage in an occupation or profession, including a license under
535 Title 58, Occupations and Professions; or

536 ~~[(d)]~~ (iv) documentation of an active liability insurance policy that covers the business
537 entity's activities; or

538 ~~[(2)]~~ (b) a copy of one item listed in Subsection (1)(a) and a copy of two or more of the
539 following:

540 ~~[(a)]~~ (i) proof of a bank account for the business entity;

541 ~~[(b)]~~ (ii) proof that for the business entity there is:

542 ~~[(1)]~~ (A) a telephone number; and

543 ~~[(2)]~~ (B) a physical location; or

544 ~~[(c)]~~ (iii) an advertisement of services showing the business entity's name and contact
545 information:

546 ~~[(1)]~~ (A) in a newspaper of general circulation;

547 ~~[(2)]~~ (B) in a telephone directory;

548 ~~[(3)]~~ (C) on a website or social media; or

549 ~~[(4)]~~ (D) in a trade magazine.

550 (2) In addition to the requirements described in Subsection (1), to obtain or renew a
551 waiver under Subsection [34A-2-1003\(2\)](#), an entity shall submit to the commission:

552 (a) proof that the entity employs no employee other than:

- 553 (i) a minor for whom the entity elects to obtain a workers' compensation coverage
554 waiver;
555 (ii) if a sole proprietorship, the owner's legal spouse; or
556 (iii) if a limited liability company with a single member, the member's legal spouse;
557 (b) proof that each minor employee for whom the entity seeks to obtain or renew a
558 waiver is a child of:
559 (i) a partner of the partnership;
560 (ii) the owner of the sole proprietorship; or
561 (iii) a member of the limited liability company;
562 (c) proof that the entity carries health insurance coverage for each minor employee for
563 whom the entity seeks to obtain or renew a waiver to the extent required under Subsection
564 34A-2-104(5); and
565 (d) written confirmation from the entity's insurer that the insurer will cover each minor
566 employee for any work-related injury.

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

568 **34A-2-1005. Enforcement.**

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

- 570 (a) the business entity validly elects to not cover an owner, partner, or corporate officer
571 or director as an employee under a workers' compensation policy in accordance with Section
572 34A-2-103[-]; or

- 573 (b) the business entity validly elects not to cover an employed minor as an employee
574 under a workers' compensation policy in accordance with Section 34A-2-104.

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

- 577 (a) prohibit a business entity from using a waiver obtained under this part; and
578 (b) take any action provided for under this chapter or Chapter 3, Utah Occupational
579 Disease Act, for failure to obtain workers' compensation coverage for an employee.