

1 **WORKERS' COMPENSATION COVERAGE AMENDMENTS**

2 2019 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Rex P. Shipp**

5 Senate Sponsor: _____

7 **LONG TITLE**

8 **General Description:**

9 This bill modifies provisions related to workers' compensation coverage.

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ provides that a partnership or a sole proprietorship is not required to provide
13 workers' compensation coverage for a minor employee who is a child of a partner of
14 the partnership or an owner of the sole proprietorship; and
15 ▶ make technical and conforming changes.

16 **Money Appropriated in this Bill:**

17 None

18 **Other Special Clauses:**

19 None

20 **Utah Code Sections Affected:**

21 AMENDS:

22 **34A-2-102**, as last amended by Laws of Utah 2017, Chapter 363

23 **34A-2-104**, as last amended by Laws of Utah 2017, Chapter 146

24 **34A-2-704**, as last amended by Laws of Utah 2018, Chapter 207

25 **34A-2-1003**, as last amended by Laws of Utah 2017, Chapter 146

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



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

29 **34A-2-102. Definition of terms.**

30 (1) As used in this chapter:

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

32 Section 34A-2-409.

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

34 due:

35 (i) an injured employee; or

36 (ii) a dependent of a deceased employee.

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

38 Chapter 3, Utah Occupational Disease Act.

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

40 (A) an administrative law judge; or

41 (B) in accordance with Section 34A-2-801:

42 (I) the commissioner; or

43 (II) the Appeals Board.

44 (ii) "Decision" includes:

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

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

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

48 Occupational Disease Act.

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

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

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

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

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

54 (h) "Impairment" is a purely medical condition reflecting an anatomical or functional

55 abnormality or loss. Impairment may be either temporary or permanent, industrial or

56 nonindustrial.

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

58 [(†)] (j) "Order" means an action of the commission that determines the legal rights,

59 duties, privileges, immunities, or other interests of one or more specific persons, but not a class
60 of persons.

61 ~~[(j)]~~ (k) (i) "Personal injury by accident arising out of and in the course of
62 employment" includes an injury caused by the willful act of a third person directed against an
63 employee because of the employee's employment.

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

66 ~~[(k)]~~ (l) "Safe" and "safety," as applied to employment or a place of employment,
67 means the freedom from danger to the life or health of employees reasonably permitted by the
68 nature of the employment.

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

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

71 (b) "Child" includes:

72 (i) a posthumous child; or

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

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

75 **34A-2-104. "Employee," "worker," and "operative" defined -- Specific**
76 **circumstances -- Exemptions.**

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

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

80 (A) in the service of:

81 (I) the state;

82 (II) a county, city, or town within the state; or

83 (III) a school district within the state;

84 (B) serving the state, or any county, city, town, or school district under:

85 (I) an election;

86 (II) appointment; or

87 (III) any contract of hire, express or implied, written or oral; and

88 (ii) including:

89 (A) an officer or employee of the state institutions of learning; and

90 (B) a member of the National Guard while on state active duty; and
91 (b) a person in the service of any employer, as defined in Section 34A-2-103, who
92 employs one or more workers or operatives regularly in the same business, or in or about the
93 same establishment:

94 (i) under any contract of hire:
95 (A) express or implied; and
96 (B) oral or written;
97 (ii) including aliens and minors, whether legally or illegally working for hire; and
98 (iii) not including any person whose employment:
99 (A) is casual; and
100 (B) not in the usual course of the trade, business, or occupation of the employee's
101 employer.

102 (2) (a) Unless a lessee provides coverage as an employer under this chapter and
103 Chapter 3, Utah Occupational Disease Act, any lessee in mines or of mining property and each
104 employee and sublessee of the lessee shall be:

105 (i) covered for compensation by the lessor under this chapter and Chapter 3, Utah
106 Occupational Disease Act;
107 (ii) subject to this chapter and Chapter 3, Utah Occupational Disease Act; and
108 (iii) entitled to the benefits of this chapter and Chapter 3, Utah Occupational Disease
109 Act, to the same extent as if the lessee, employee, or sublessee were employees of the lessor
110 drawing the wages paid employees for substantially similar work.

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

113 (3) (a) (i) Except as provided in Subsection (3)(b), a partnership or sole proprietorship
114 may elect to include [~~any partner of the partnership or owner of the sole proprietorship~~] any of
115 the following as an employee of the partnership or sole proprietorship under this chapter and
116 Chapter 3, Utah Occupational Disease Act[-]:

117 (A) any partner of the partnership;
118 (B) any owner of the sole proprietorship; or
119 (C) a minor employed by a partnership or a sole proprietorship who is a child of a
120 partner of the partnership or an owner of the sole proprietorship.

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

124 (iii) ~~[A partner of a partnership or owner of a sole proprietorship]~~ An individual
125 described in Subsection (3)(a)(i) may not be considered an employee of the ~~[partner's]~~
126 partnership or ~~[the owner's]~~ sole proprietorship under this chapter or Chapter 3, Utah
127 Occupational Disease Act, until the notice described in Subsection (3)(a)(ii) is given.

128 (iv) For premium rate making, the insurance carrier shall assume the salary or wage of
129 the ~~[partner or sole proprietor electing]~~ individual for whom the partnership or sole
130 proprietorship elects coverage under Subsection (3)(a)(i) to be 100% of the state's average
131 weekly wage.

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

135 (i) the partnership or sole proprietorship:

136 (A) is a motor carrier; and

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

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

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

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

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

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

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

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

151 (e) A director or officer of a corporation is considered an employee under this chapter

152 and Chapter 3, Utah Occupational Disease Act, until the notice described in Subsection (4)(b)
153 is given.

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

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

159 (5) As used in this chapter and Chapter 3, Utah Occupational Disease Act, "employee,"
160 "worker," and "operative" do not include:

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

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

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

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

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

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

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

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

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

178 (A) is an independent contractor;

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

180 (C) can derive income from more than one insurance company; [or]

181 (d) subject to Subsections (6), (7), and (8), an individual who:

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

- 183 (B) leases a motor vehicle to a motor carrier;
- 184 (ii) personally operates the motor vehicle described in Subsection (5)(d)(i);
- 185 (iii) operates the motor vehicle described in Subsection (5)(d)(i) under a written
- 186 agreement with the motor carrier that states that the individual operates the motor vehicle as an
- 187 independent contractor; and
- 188 (iv) (A) provides to the motor carrier at the time the written agreement described in
- 189 Subsection (5)(d)(iii) is executed or as soon after the execution as provided by the commission,
- 190 a copy of a workers' compensation coverage waiver issued pursuant to Part 10, Workers'
- 191 Compensation Coverage Waivers Act, to the individual; and
- 192 (B) provides to the motor carrier at the time the written agreement described in
- 193 Subsection (5)(d)(iii) is executed or as soon after the execution as provided by an insurer, proof
- 194 that the individual is covered by occupational accident related insurance with the coverage and
- 195 benefit limits listed in Subsection (7)(c)[-]; or
- 196 (e) a minor employed by a partnership or a sole proprietorship, if the minor is a child of
- 197 a partner of the partnership or an owner of the sole proprietorship.
- 198 (6) An individual described in Subsection (5)(d) may become an employee under this
- 199 chapter and Chapter 3, Utah Occupational Disease Act, if the employer of the individual
- 200 complies with:
- 201 (a) this chapter and Chapter 3, Utah Occupational Disease Act; and
- 202 (b) commission rules.
- 203 (7) As used in this section:
- 204 (a) "Motor carrier" means a person engaged in the business of transporting freight,
- 205 merchandise, or other property by a commercial vehicle on a highway within this state.
- 206 (b) "Motor vehicle" means a self-propelled vehicle intended primarily for use and
- 207 operation on the highways, including a trailer or semitrailer designed for use with another
- 208 motorized vehicle.
- 209 (c) "Occupational accident related insurance" means insurance that provides the
- 210 following coverage at a minimum aggregate policy limit of \$1,000,000 for all benefits paid,
- 211 including medical expense benefits, for an injury sustained in the course of working under a
- 212 written agreement described in Subsection (5)(d)(iii):
- 213 (i) disability benefits;

- 214 (ii) death benefits; and
- 215 (iii) medical expense benefits, which include:
- 216 (A) hospital coverage;
- 217 (B) surgical coverage;
- 218 (C) prescription drug coverage; and
- 219 (D) dental coverage.
- 220 (8) For an individual described in Subsection (5)(d):
- 221 (a) if the individual is not covered by a workers' compensation policy, the individual
- 222 shall obtain:
- 223 (i) occupational accident related insurance; and
- 224 (ii) a waiver in accordance with Part 10, Workers' Compensation Coverage Waivers
- 225 Act; and
- 226 (b) the commission shall verify the existence of occupational accident insurance
- 227 coverage with the coverage and benefit limits listed in Subsection (7)(c) before the commission
- 228 may issue a workers' compensation coverage waiver to the individual pursuant to Part 10,
- 229 Workers' Compensation Coverage Waivers Act.

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

231 **34A-2-704. Uninsured Employers' Fund.**

- 232 (1) (a) There is created an Uninsured Employers' Fund. The Uninsured Employers'
- 233 Fund has the purpose of assisting in the payment of workers' compensation benefits to a person
- 234 entitled to the benefits, if:
- 235 (i) that person's employer:
- 236 (A) is individually, jointly, or severally liable to pay the benefits; and
- 237 (B) (I) becomes or is insolvent;
- 238 (II) appoints or has appointed a receiver; or
- 239 (III) otherwise does not have sufficient funds, insurance, sureties, or other security to
- 240 cover workers' compensation liabilities; and
- 241 (ii) the employment relationship between that person and the person's employer is
- 242 localized within the state as provided in Subsection (20).
- 243 (b) The Uninsured Employers' Fund succeeds to money previously held in the Default
- 244 Indemnity Fund.

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

248 (2) (a) Money for the Uninsured Employers' Fund shall be deposited into the Uninsured
249 Employers' Fund in accordance with this chapter, Subsection 59-9-101(2), and Subsection
250 34A-2-213(3).

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

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

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

256 (3) Reasonable costs of administering the Uninsured Employers' Fund or other fees
257 required to be paid by the Uninsured Employers' Fund may be paid from the Uninsured
258 Employers' Fund.

259 (4) The state treasurer shall:

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

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

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

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

269 (i) the attorney general; or

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

271 (A) an investigation, hearing, or trial under this chapter or Chapter 3, Utah
272 Occupational Disease Act, is pending;

273 (B) the employee resides; or

274 (C) an employer:

275 (I) resides; or

276 (II) is doing business.

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

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

281 (A) take appropriate action, including docketing an award in a manner consistent with
282 Section 34A-2-212; and

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

285 (6) To the extent of the compensation and other benefits paid or payable to or on behalf
286 of an employee or the employee's dependents from the Uninsured Employers' Fund, the
287 Uninsured Employers' Fund, by subrogation, has the rights, powers, and benefits of the
288 employee or the employee's dependents against the employer failing to make the compensation
289 payments.

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

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

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

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

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

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

303 (iii) an insolvent insurance carrier.

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

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

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

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

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

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

316 (a) adjusting its own claims; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

348 (D) other expenses authorized by this section.

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

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

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

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

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

360 (d) (i) A self-insured employer may not be assessed in any year an amount greater than
361 2% of that self-insured employer's manual premium for the preceding calendar year.

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

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

369 Subsection (1)(a)(i)(B).

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

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

376 (i) a self-insured employer; or

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

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

381 (i) that self-insured employer; or

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

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

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

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

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

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

397 (17) A partner in a partnership [or], an owner of a sole proprietorship, or a minor
398 employed by a partnership or a sole proprietorship who is a child of a partner of the partnership
399 or an owner of the sole proprietorship may not recover compensation or other benefits from the

400 Uninsured Employers' Fund if:

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

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

403 (i) the person's employer fails to insure or otherwise provide adequate payment of

404 direct compensation; and

405 (ii) the failure described in Subsection (17)(b)(i) is attributable to an act or omission

406 over which the person had or shared control or responsibility.

407 (18) A director or officer of a corporation may not recover compensation or other

408 benefits from the Uninsured Employers' Fund if the director or officer is excluded from

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

410 (19) The Uninsured Employers' Fund:

411 (a) shall be:

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

413 (A) the purpose of assisting in the payment of workers' compensation benefits in

414 accordance with Subsection (1); and

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

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

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

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

419 (b) may not be used for:

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

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

422 (20) (a) For purposes of Subsection (1), an employment relationship is localized in the

423 state if:

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

425 and

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

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

428 liable for the benefits; or

429 (ii) the employee is:

430 (A) a resident of the state; and

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

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

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

436 **34A-2-1003. Issuance of a waiver.**

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

439 (a) elects not to include an owner, a partner, ~~[or]~~ a minor child of an owner or a
440 partner, or a corporate officer or director as an employee under a workers' compensation policy
441 in accordance with Section **34A-2-103** and Subsection **34A-2-104**(3) or (4);

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

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

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

447 (2) (a) A waiver issued under this section expires one year from the day on which it is
448 issued unless renewed by the holder of the waiver.

449 (b) To renew a waiver issued under this part, the holder of the waiver shall:

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

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

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

454 (3) As of the day on which a business entity described in Subsection (1) employs an
455 employee other than an owner, partner, or corporate officer or director described in Subsection
456 (1)(a):

457 (a) the business entity's waiver is invalid; and

458 (b) the business entity is required to provide workers' compensation coverage for that
459 employee in accordance with Section **34A-2-201**.

460 (4) The commission shall deposit a fee collected under this section in the Industrial
461 Accident Restricted Account created in Section **34A-2-705**.

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