

STATE ACTIVE DUTY AMENDMENTS

2019 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Val L. Peterson

Senate Sponsor: Daniel Hemmert

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

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

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

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

ENACTS:

39-1-65, Utah Code Annotated 1953

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

Section 1. Section 34A-2-104 is amended to read:

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

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

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

(A) in the service of:

(I) the state;

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

(III) a school district within the state;

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

(I) an election;

(II) appointment; or

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

(ii) including:

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

(B) a member of the Utah National Guard or Utah State Defense Force while on state active duty; and

(b) a person in the service of any employer, as defined in Section 34A-2-103, who employs one or more workers or operatives regularly in the same business, or in or about the same establishment:

(i) under any contract of hire:

(A) express or implied; and

(B) oral or written;

(ii) including aliens and minors, whether legally or illegally working for hire; and

(iii) not including any person whose employment:

(A) is casual; and

(B) not in the usual course of the trade, business, or occupation of the employee's

58 employer.

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

62 (i) covered for compensation by the lessor under this chapter and Chapter 3, Utah
63 Occupational Disease Act;

64 (ii) subject to this chapter and Chapter 3, Utah Occupational Disease Act; and

65 (iii) entitled to the benefits of this chapter and Chapter 3, Utah Occupational Disease
66 Act, to the same extent as if the lessee, employee, or sublessee were employees of the lessor
67 drawing the wages paid employees for substantially similar work.

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

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

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

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

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

84 (b) A partner of a partnership or an owner of a sole proprietorship is an employee of
85 the partnership or sole proprietorship under this chapter and Chapter 3, Utah Occupational

86 Disease Act, if:

87 (i) the partnership or sole proprietorship:

88 (A) is a motor carrier; and

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

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

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

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

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

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

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

102 (d) An exclusion under this Subsection (4) is subject to Subsection 34A-2-103(7)(d).

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

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

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

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

113 (a) a sales agent or associate broker, as defined in Section 61-2f-102, who performs

114 services in that capacity for a principal broker if:

115 (i) substantially all of the sales agent's or associate broker's income for services is from

116 real estate commissions; and

117 (ii) the sales agent's or associate broker's services are performed under a written

118 contract that provides that:

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

120 (B) the sales agent or associate broker is not to be treated as an employee for federal

121 income tax purposes;

122 (b) an offender performing labor under Section 64-13-16 or 64-13-19, except as

123 required by federal statute or regulation;

124 (c) an individual who for an insurance producer, as defined in Section 31A-1-301,

125 solicits, negotiates, places, or procures insurance if:

126 (i) substantially all of the individual's income from those services is from insurance

127 commissions; and

128 (ii) the services of the individual are performed under a written contract that states that

129 the individual:

130 (A) is an independent contractor;

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

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

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

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

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

136 (ii) personally operates the motor vehicle described in Subsection (5)(d)(i);

137 (iii) operates the motor vehicle described in Subsection (5)(d)(i) under a written

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

139 independent contractor; and

140 (iv) (A) provides to the motor carrier at the time the written agreement described in

141 Subsection (5)(d)(iii) is executed or as soon after the execution as provided by the commission,

a copy of a workers' compensation coverage waiver issued pursuant to Part 10, Workers' Compensation Coverage Waivers Act, to the individual; and

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

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

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

(b) commission rules.

(7) As used in this section:

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

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

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

(i) disability benefits;

(ii) death benefits; and

(iii) medical expense benefits, which include:

(A) hospital coverage;

(B) surgical coverage;

(C) prescription drug coverage; and

(D) dental coverage.

(8) For an individual described in Subsection (5)(d):

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

(i) occupational accident related insurance; and

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

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

Section 2. Section **39-1-65** is enacted to read:

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

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

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

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

(3) (a) If the disability temporarily incapacitates the servicemember from pursuing the servicemember's usual business or occupation, the servicemember is eligible to receive workers' compensation benefits in accordance with Title 34A, Chapter 2, Workers'

198 Compensation Act, and Chapter 3, Utah Occupational Disease Act.

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

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

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

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

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

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