
WORKERS' COMPENSATION INSURANCE FRAUD

The following is a discussion draft of a possible legislative proposal. It is intended only for purposes of the Business and Labor Interim Committee's November 14, 2007 meeting. For additional information, contact the Office of Legislative Research and General Counsel.

- 1 **34A-2-110. Workers' compensation insurance fraud -- Elements -- Penalties -- Notice.**
- 2 (1) As used in this section:
- 3 (a) "Corporation" has the same meaning as in Section 76-2-201.
- 4 (b) "Intentionally" has the same meaning as in Section 76-2-103.
- 5 (c) "Knowingly" has the same meaning as in Section 76-2-103.
- 6 (d) "Person" has the same meaning as in Section 76-1-601.
- 7 (e) "Recklessly" has the same meaning as in Section 76-2-103.
- 8 (f) "Thing of value" means one or more of the following obtained under this chapter or
- 9 Chapter 3, Utah Occupational Disease Act:
- 10 (i) workers' compensation insurance coverage;
- 11 (ii) disability compensation;
- 12 (iii) a medical benefit;
- 13 (iv) a good;
- 14 (v) a professional service;
- 15 (vi) a fee for a professional service; or
- 16 (vii) anything of value.
- 17 (2) (a) ~~[Any] A~~ person is guilty of workers' compensation insurance fraud if that person
- 18 intentionally, knowingly, or recklessly:
- 19 (i) ~~devises [any] a~~ scheme or artifice to ~~[obtain workers' compensation insurance coverage,~~
- 20 ~~disability compensation, medical benefits, goods, professional services, fees for professional~~
- 21 ~~services, or anything of value under this chapter or Chapter 3, Utah Occupational Disease Act,~~
- 22 ~~by means of false or fraudulent pretenses, representations, promises, or material omissions;~~
- 23 ~~and]~~ do the following by means of a false or fraudulent pretense, representation, promise, or
- 24 material omission:
- 25 (A) obtain a thing of value under this chapter or Chapter 3;
- 26 (B) avoid paying the premium, that an insurer charges for an employee on the basis of the
- 27 underwriting criteria applicable, to that employee to obtain a thing of value under this chapter or
- 28 Chapter 3;
- 29 (C) deprive an employee of a thing of value under this chapter or Chapter 3; and
- 30 (ii) communicates or causes a communication with another in furtherance of the scheme or artifice.
- 31 (b) A violation of Subsection (2) includes a scheme or artifice to:
- 32 (i) make or cause to be made a false written or oral statement with the intent to obtain insurance
- 33 coverage as mandated by this chapter or Chapter 3 at a rate that does not reflect the risk,
- 34 industry, employer, or class code actually covered by the insurance coverage;
- 35 (ii) form a business, reorganize a business, or change ownership in a business with the intent to
- 36 obtain insurance coverage as mandated by this chapter or Chapter 3 at a rate that does not
- 37 reflect the risk, industry, employer, or class code actually covered by the insurance coverage;
- 38 (iii) misclassify an employee as an independent contractor so as to avoid the obligation to
- 39 obtain insurance coverage as mandated by this chapter or Chapter 3;
- 40 (iv) misclassify an employee as one of the following so as to avoid the obligation to obtain
- 41 insurance coverage as mandated by this chapter or Chapter 3:
- 42 (A) a sole proprietor;
- 43 (B) an owner;
- 44 (C) a partner;
- 45 (D) a officer; or

46 (E) a member in a limited liability company;
47 (v) use a workers' compensation coverage waiver issued under Section 31A-22-1011 to deprive
48 an employee of workers' compensation coverage under this chapter or Chapter 3; or
49 (vi) collect or make a claim for temporary disability compensation as provided in Section
50 34A-2-410 while working for gain.
51 ~~[(b)]~~ (3)(a) Workers' compensation insurance fraud under Subsection ~~[(2)(a)]~~ (2) is
52 punishable in the manner prescribed by Section 76-10-1801 for communication fraud.
53 ~~[(3)]~~ (b) A corporation or association is guilty of the offense of workers' compensation
54 insurance fraud under the same conditions as those set forth in Section 76-2-204.
55 ~~[(4)]~~ (c) The determination of the degree of ~~[any]~~ an offense under Subsection (2) shall be
56 measured by the total value of all property, money, or other things obtained or sought to be
57 obtained by the scheme or artifice described in Subsection (2), except as provided in
58 Subsection 76-10-1801(1)(e).
59 ~~[(5)–Reliance]~~ (4) The following are not a necessary element of an offense described in
60 Subsection (2):
61 (a) reliance on the part of ~~[any]~~ a person ~~[is not a necessary element of the offense described~~
62 ~~in Subsection (2). (6)–An]~~ ;
63 (b) the intent on the part of the perpetrator of ~~[any]~~ an offense described in Subsection (2) to
64 permanently deprive ~~[any]~~ a person of property, money, or anything of value~~[is not a~~
65 ~~necessary element of this offense. (7)–An]~~ ; or
66 (c) an insurer or self-insured employer giving written notice in accordance with Subsection
67 ~~[(10)]~~ (5) that workers' compensation insurance fraud is a crime ~~[is not a necessary element of~~
68 ~~the offense described in Subsection (2)].~~
69 ~~[(8)–A scheme or artifice to obtain workers' compensation insurance coverage includes any~~
70 ~~scheme or artifice to make or cause to be made any false written or oral statement or business~~
71 ~~reorganization, incorporation, or change in ownership intended to obtain insurance coverage as~~
72 ~~mandated by this chapter or Chapter 3, Utah Occupational Disease Act, at rates that do not~~
73 ~~reflect the risk, industry, employer, or class codes actually covered by the policy.~~
74 ~~(9)–A scheme or artifice to obtain disability compensation includes a scheme or artifice to~~
75 ~~collect or make a claim for temporary disability compensation as provided in Section 34A-2-410~~
76 ~~while working for gain.]~~
77 ~~[(10)–(a)–Each]~~ (5)(a) An insurer or self-insured employer who, in connection with this chapter
78 or Chapter 3~~[, Utah Occupational Disease Act,]~~ prints, reproduces, or furnishes a form
79 described in Subsection (5)(b) ~~[to any person upon which that person applies for insurance~~
80 ~~coverage, reports payroll, makes a claim by reason of accident, injury, death, disease, or other~~
81 ~~claimed loss, or otherwise reports or gives notice to the insurer or self-insured employer,]~~ shall
82 cause to be printed or displayed in comparative prominence with other content on the form the
83 statement: "Any person who knowingly presents false or fraudulent underwriting information,
84 files or causes to be filed a false or fraudulent claim for disability compensation or medical
85 benefits, or submits a false or fraudulent report or billing for health care fees or other
86 professional services is guilty of a crime and may be subject to fines and confinement in state
87 prison."
88 (b) Subsection (5)(a) applies to a form upon which a person:
89 (i) applies for insurance coverage;
90 (ii) reports payroll;
91 (iii) makes a claim by reason of accident, injury, death, disease, or other claimed loss; or
92 (iv) makes a report or gives notice to an insurer or self-insured employer.
93 ~~[(b)–Each]~~ (c) An insurer or self-insured employer who issues a check, warrant, or other
94 financial instrument in payment of compensation issued under this chapter or Chapter 3, ~~[Utah~~
95 ~~Occupational Disease Act,]~~ shall cause to be printed or displayed in comparative prominence

96 above the area for endorsement a statement substantially similar to the following: "Workers'
97 compensation insurance fraud is a crime punishable by Utah law."
98 ~~[(c)(i) Subsections (10)(a) and (b) apply]~~ (d) This Subsection (5) applies only to the legal
99 obligations of an insurer or a self-insured employer.
100 (ii) A person who violates Subsection (2) is guilty of workers' compensation insurance fraud,
101 and the failure of an insurer or a self-insured employer to fully comply with ~~[-Subsections (10)(a)~~
102 ~~and (b) may not be]~~ this Subsection (5) is not :
103 (A) a defense to violating Subsection (2); or
104 (B) grounds for suppressing evidence.
105 ~~[(11)]~~ (6) In the absence of malice, a person, employer, insurer, or governmental entity that
106 reports a suspected fraudulent act relating to a workers' compensation insurance policy or claim
107 is not subject to ~~[any]~~ civil liability for libel, slander, or ~~[any other]~~ another relevant cause of
108 action.
109 ~~[(12)]~~ (7) In ~~[any]~~ an action involving workers' compensation, this section supersedes Title
110 31A, Chapter 31, Insurance Fraud Act.
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