

LABOR COMMISSION ENFORCEMENT AMENDMENTS

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: D. Gregg Buxton

House Sponsor: _____

LONG TITLE

General Description:

This bill modifies provisions related to enforcement of administrative orders from within the Utah Labor Commission.

Highlighted Provisions:

This bill:

- ▶ provides that a district court may renew as a judgment of the district court certain final administrative orders related to wage claims and workers' compensation; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

34-28-9, as last amended by Laws of Utah 2014, Chapter 188

34A-2-212, as last amended by Laws of Utah 2014, Chapter 192

34A-6-307, as last amended by Laws of Utah 2008, Chapter 382

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

Section 1. Section **34-28-9** is amended to read:



28 **34-28-9. Enforcement of chapter -- Rulemaking authority.**

29 (1) (a) The division shall:

30 (i) ensure compliance with this chapter;

31 (ii) investigate any alleged violations of this chapter; and

32 (iii) determine the validity of a claim for any violation of this chapter that is filed with
33 the division by an employee.

34 (b) The commission may make rules consistent with this chapter governing wage
35 claims and payment of wages.

36 (c) The minimum wage claim that the division may accept is \$50.

37 (d) The maximum wage claim that the division may accept is \$10,000.

38 (e) A wage claim shall be filed within one year after the day on which the wages were
39 earned.

40 (2) (a) The division may assess against an employer who fails to pay an employee in
41 accordance with this chapter, a penalty of 5% of the unpaid wages owing to the employee
42 which shall be assessed daily until paid for a period not to exceed 20 days.

43 (b) The division shall:

44 (i) retain 50% of the money received from a penalty payment under Subsection (2)(a)
45 for the costs of administering this chapter;

46 (ii) pay all the sums retained under Subsection (2)(b)(i) to the state treasurer; and

47 (iii) pay the 50% not retained under Subsection (2)(b)(i) to the employee.

48 (c) Subsections (2)(a) and (b) do not apply to a violation of Subsection 34-28-3(5).

49 (3) (a) A person who violates Subsection 34-28-3(5) is subject to a civil fine of:

50 (i) \$50 for the first violation within a one-year period;

51 (ii) \$100 for the second violation within a one-year period;

52 (iii) \$100 for the third violation within a one-year period; and

53 (iv) \$500 for the fourth violation and each subsequent violation within a one-year
54 period.

55 (b) The division shall deposit the money that the division receives under Subsection
56 (3)(a) into the General Fund as a dedicated credit to the division to pay for the costs of
57 administering this chapter.

58 (4) (a) An abstract of any final award under this section may be filed in the office of the

59 clerk of the district court of any county in the state. If so filed, the abstract shall be docketed in
60 the judgment docket of that district court.

61 (b) The time of the receipt of the abstract shall be noted by the clerk and entered in the
62 judgment docket.

63 (c) Unless the award was previously satisfied, if an abstract is filed and docketed, the
64 award constitutes a lien upon the employer's real property that is situated in the county in which
65 the abstract is filed for a period of eight years after the day on which the award is granted.

66 (d) ~~[Execution may be issued]~~ The district court may issue an execution or a renewal
67 on the [award] order within the same time and in the same manner and with the same effect as
68 if the [award] order were a judgment ~~[of]~~ issued by the district court.

69 (5) (a) The commission may employ counsel, appoint a representative, or request the
70 attorney general, or the county attorney for the county in which the final award is filed and
71 docketed, to represent the commission on all appeals and to enforce judgments.

72 (b) The counsel employed by the commission, the attorney general, or the county
73 representing the commission, shall be awarded:

74 (i) reasonable attorney fees, as specified by the commission; and

75 (ii) costs for:

76 (A) appeals when the plaintiff prevails; and

77 (B) judgment enforcement proceedings.

78 (6) (a) The commission may enter into reciprocal agreements with the labor department
79 or a corresponding agency of any other state or with the person, board, officer, or commission
80 authorized to act on behalf of that department or agency, for the collection in any other state of
81 claims or judgments for wages and other demands based upon claims previously assigned to
82 the commission.

83 (b) The commission may, to the extent provided by any reciprocal agreement entered
84 into under Subsection (6)(a), or by the laws of any other state, maintain actions in the courts of
85 the other states for the collection of any claims for wages, judgments, and other demands and
86 may assign the claims, judgments, and demands to the labor department or an agency of any
87 other state for collection to the extent that may be permitted or provided by the laws of that
88 state or by reciprocal agreement.

89 (c) The commission may maintain actions in the courts of this state upon assigned

90 claims for wages, judgments, and demands arising in any other state in the same manner and to
91 the same extent that the actions by the commission are authorized when arising in this state if:

92 (i) the labor department or a corresponding agency of any other state or of any person,
93 board, officer, or commission of that state authorized to act on behalf of the labor department
94 or corresponding agency requests in writing that the commission commence and maintain the
95 action; and

96 (ii) the other state by legislation or reciprocal agreement extends the same comity to
97 this state.

98 Section 2. Section **34A-2-212** is amended to read:

99 **34A-2-212. Docketing awards in district court -- Enforcing judgment.**

100 (1) (a) Except as provided in Subsection (3), an abstract of a final order of the
101 commission providing an award may be filed under this chapter or Chapter 3, Utah
102 Occupational Disease Act, in the office of the clerk of the district court of any county in the
103 state when all administrative and appellate remedies are exhausted.

104 (b) The abstract shall be docketed in the judgment docket of the district court where the
105 abstract is filed. The time of the receipt of the abstract shall be noted on the abstract by the
106 clerk of the district court and entered in the docket.

107 (c) When filed and docketed under Subsections (1)(a) and (b), the order shall constitute
108 a lien from the time of the docketing upon the real property of the employer situated in the
109 county, for a period of eight years from the date of the order unless the award provided in the
110 final order is satisfied during the eight-year period.

111 (d) ~~[Execution may be issued on the lien]~~ The district court may issue an execution or a
112 renewal on the order within the same time and in the same manner and with the same effect as
113 if the ~~[award]~~ order were a judgment ~~[of]~~ issued by the district court.

114 (2) (a) If the employer was uninsured at the time of the injury, the county attorney for
115 the county in which the applicant or the employer resides, depending on the district in which
116 the final order is docketed, shall enforce the judgment when requested by the commission or
117 division on behalf of the commission.

118 (b) In an action to enforce an order docketed under Subsection (1), reasonable attorney
119 fees and court costs shall be allowed in addition to the award.

120 (3) Unless stayed pursuant to Section [63G-4-405](#), or set aside by the court of appeals, a

121 preliminary or final decision of the commissioner or Appeals Board awarding permanent total
122 disability compensation under Section 34A-2-413 is enforceable by abstract filed in the office
123 of the clerk of the district court of any county in the state.

124 Section 3. Section 34A-6-307 is amended to read:

125 **34A-6-307. Civil and criminal penalties.**

126 (1) The commission may assess civil penalties against any employer who has received
127 a citation under Section 34A-6-302 as follows:

128 (a) Except as provided in Subsections (1)(b) through (d), the commission may assess
129 up to \$7,000 for each cited violation.

130 (b) The commission may not assess less than \$250 nor more than \$7,000 for each cited
131 serious violation. A violation is serious only if:

132 (i) it arises from a condition, practice, method, operation, or process in the workplace
133 of which the employer knows or should know through the exercise of reasonable diligence; and

134 (ii) there is a substantial possibility that the condition, practice, method, operation, or
135 process could result in death or serious physical harm.

136 (c) The commission may not assess less than \$5,000 nor more than \$70,000 for each
137 cited willful violation.

138 (d) The commission may assess up to \$70,000 for each cited violation if the employer
139 has previously been found to have violated the same standards, code, rule, or order.

140 (e) After the expiration of the time permitted to an employer to correct a cited
141 violation, the commission may assess up to \$7,000 for each day the violation continues
142 uncorrected.

143 (2) The commission may assess a civil penalty of up to \$7,000 for each violation of any
144 posting requirement under this chapter.

145 (3) In deciding the amount to assess for a civil penalty, the commission shall consider
146 all relevant factors, including:

147 (a) the size of the employer's business;

148 (b) the nature of the violation;

149 (c) the employer's good faith or lack of good faith; and

150 (d) the employer's previous record of compliance or noncompliance with this chapter.

151 (4) Any civil penalty collected under this chapter shall be paid into the General Fund.

152 (5) Criminal penalties under this chapter are as follows:

153 (a) Any employer who willfully violates any standard, code, rule, or order issued under
154 Section 34A-6-202, or any rule made under this chapter, is guilty of a class A misdemeanor if
155 the violation caused the death of an employee. If the violation causes the death of more than
156 one employee, each death is considered a separate offense.

157 (b) Any person who gives advance notice of any inspection conducted under this
158 chapter without authority from the administrator or the administrator's representatives is guilty
159 of a class A misdemeanor.

160 (c) Any person who knowingly makes a false statement, representation, or certification
161 in any application, record, report, plan, or other document filed or required to be maintained
162 under this chapter is guilty of a class A misdemeanor.

163 (6) After a citation issued under this chapter and an opportunity for a hearing under
164 Title 63G, Chapter 4, Administrative Procedures Act, the division may file an abstract for any
165 uncollected citation penalty in the district court. The filed abstract shall have the effect of a
166 judgment ~~[of]~~ issued by that court. The abstract shall state the amount of the uncollected
167 citation penalty, reasonable attorneys' fees as set by commission rule, and court costs.

Legislative Review Note
Office of Legislative Research and General Counsel