

## Chapter 33 Workers' Compensation Fund

### 31A-33-101 Definitions.

As used in this chapter:

- (1) "Board" means the board of directors of the Workers' Compensation Fund.
- (2) "Chief executive officer" means the chief executive officer appointed by the board.
- (3) "Director" means a member of the board.
- (4) "Fund" and "Workers' Compensation Fund" mean the nonprofit, quasi-public corporation established by this chapter.
- (5) "Injury Fund" means the premiums, reserves, investment income, and any other funds administered by the Workers' Compensation Fund as provided in this chapter.
- (6) "Joint enterprise" means a joint business activity either for-profit or not-for-profit:
  - (a) by which two or more persons provide insurance, products, or services; and
  - (b) that is established by contract between the persons providing the insurance, products, or services.
- (7)
  - (a) "Workers' compensation products and services" means:
    - (i) medical or lost time claims management;
    - (ii) utilization review;
    - (iii) rehabilitation counseling or training;
    - (iv) fraud detection for workers' compensation claims;
    - (v) loss prevention or safety consultation;
    - (vi) data or information reporting or processing involving workers' compensation;
    - (vii) services related to improved employment practices, procedures, and data security; and
    - (viii) liability insurance claims management if the claims management is related to or arising out of:
      - (A) the sale of workers' compensation products and services described in Subsections (7)(a) (i) through (vii) by:
        - (I) the Workers' Compensation Fund; or
        - (II) a subsidiary of the fund; or
      - (B) workers' compensation insurance coverage through:
        - (I) the Workers' Compensation Fund; or
        - (II) a subsidiary of the fund in accordance with Section 31A-33-103.5.
  - (b) "Workers' compensation products and services" does not include the bearing of any insurance risk associated with insurance coverage.

Amended by Chapter 427, 2015 General Session

### 31A-33-102 Establishment of the Workers' Compensation Fund and the Injury Fund.

- (1)
  - (a) There is created a nonprofit, quasi-public corporation to be known as the Workers' Compensation Fund created by this chapter.
  - (b) The purpose of the fund is to:
    - (i) insure Utah employers against liability for compensation based on job-related accidental injuries and occupational diseases; and

- (ii) assure payment of this compensation to Utah employees who are entitled to it under Title 34A, Chapter 2, Workers' Compensation Act, and Chapter 3, Utah Occupational Disease Act.
- (2)
- (a) There is created an Injury Fund, which shall be maintained by the Workers' Compensation Fund.
  - (b) The Injury Fund shall consist of all assets acquired from premiums and penalties paid into the Injury Fund and interest and dividends earned on those assets.
  - (c) The Injury Fund is the sole source of money to:
    - (i) pay losses sustained on account of the insurance provided; and
    - (ii) pay salaries and other expenses of the Workers' Compensation Fund in accordance with this chapter.

Amended by Chapter 222, 2000 General Session

**31A-33-103 Legal nature of Workers' Compensation Fund.**

- (1) The Workers' Compensation Fund is:
- (a) a nonprofit, self-supporting, quasi-public corporation; and
  - (b) a legal entity, that may sue and be sued in its own name.
- (2) All of the business and affairs of the corporation shall be conducted in the name of the Workers' Compensation Fund or if conducted through a subsidiary, such other corporate names that comply with state law.

Amended by Chapter 222, 2000 General Session

**31A-33-103.5 Powers of fund -- Limitations.**

- (1) The fund may form or acquire subsidiaries or enter into a joint enterprise:
- (a) in accordance with Section 31A-33-107; and
  - (b) except as limited by this section and applicable insurance rules and statutes.
- (2) Subject to applicable insurance rules and statutes, the fund may only offer:
- (a) workers' compensation insurance and, subject to Subsection (5)(b), reinsurance in Utah;
  - (b) workers' compensation insurance and workers' compensation reinsurance in a state other than Utah;
  - (c) death, disability, or medical benefits arising from an industrial accident or occupational disease arising from employment in Utah or other states; and
  - (d) workers' compensation products and services in Utah or other states.
- (3) Subject to applicable law, including insurance rules and statutes, a subsidiary of the fund shall operate in Utah or a state other than Utah as a for profit, taxable business enterprise.
- (4) The fund shall write workers' compensation insurance in accordance with Section 31A-22-1001.
- (5)
- (a) The fund may enter into a joint enterprise that offers workers' compensation insurance and other coverage, provided:
    - (i) the joint enterprise offers only property or liability insurance in addition to workers' compensation insurance;
    - (ii) the fund may not bear any insurance risk associated with the insurance coverage other than risk associated with workers' compensation insurance; and
    - (iii) the offer of other insurance shall be part of an insurance program that includes workers' compensation insurance coverage that is provided by the fund.

(b)

- (i) The fund or a subsidiary of the fund may not offer, or enter into a joint enterprise that offers, or otherwise participate in the offering of accident and health insurance or administer a health benefit plan.
- (ii) Subject to Subsection (5)(b)(i), the fund or a subsidiary of the fund may serve as a reinsurer or reinsurance intermediary for medical or disability costs or exposures assumed by a self-insured employer in Utah.

Amended by Chapter 427, 2015 General Session

**31A-33-104 Workers' Compensation Fund exempted.**

- (1) The Workers' Compensation Fund is exempt from the provisions of:
  - (a) Title 52, Chapter 4, Open and Public Meetings Act;
  - (b) Title 63G, Chapter 2, Government Records Access and Management Act; and
  - (c) Title 63A, Utah Administrative Services Code.
- (2) The board may specifically exempt the Workers' Compensation Fund from any provisions of:
  - (a) Title 67, Chapter 19, Utah State Personnel Management Act; and
  - (b) Title 63G, Chapter 6a, Utah Procurement Code.
- (3) The provisions of Title 63G, Chapter 4, Administrative Procedures Act, do not govern the initial determination of any person's eligibility for benefits under Title 34A, Chapter 2, Workers' Compensation Act, and Title 34A, Chapter 3, Utah Occupational Disease Act.

Amended by Chapter 347, 2012 General Session

**31A-33-105 Price of insurance -- Liability of state.**

- (1) The Workers' Compensation Fund shall provide workers' compensation insurance at an actuarially sound price, which the board shall determine.
- (2) The state:
  - (a) is not liable for the expenses, liabilities, or debts of:
    - (i) the Workers' Compensation Fund;
    - (ii) a subsidiary of the fund; or
    - (iii) a joint enterprise in which the fund participates; and
  - (b) may not use any assets of the Injury Fund for any purpose.

Amended by Chapter 107, 1998 General Session

**31A-33-106 Board of directors -- Status of the fund in relationship to the state.**

- (1) There is created a board of directors of the Workers' Compensation Fund.
- (2) Except as provided in Subsection (18), the board shall consist of seven directors.
- (3) One director shall be the chief executive officer of the fund.
- (4)
  - (a) In accordance with a plan that meets the requirements of this section and the fund's articles of incorporation and bylaws, the board shall nominate and the policyholders shall elect six public directors as follows:
    - (i) four directors who are owners, officers, directors, or employees of policyholders, each of whom is an owner, officer, or employee of a policyholder that has been insured by the Workers' Compensation Fund for at least one year before the election of the director representing the policyholder; and

- (ii) two directors from the public in general.
- (b) The plan described in Subsection (4)(a) shall comply with Section 31A-5-409 to the extent that Section 31A-5-409 does not conflict with this section.
- (5) No two directors may represent or be employed by the same policyholder.
- (6) At least five directors elected by the policyholders shall have had previous experience in:
  - (a) the actuarial profession;
  - (b) accounting;
  - (c) investments;
  - (d) risk management;
  - (e) occupational safety;
  - (f) casualty insurance; or
  - (g) the legal profession.
- (7) A director who represents a policyholder that fails to maintain workers' compensation insurance through the Workers' Compensation Fund shall immediately resign from the board.
- (8) A person may not be a director if that person:
  - (a) has any interest as a stockholder, employee, attorney, or contractor of a competing insurance carrier providing workers' compensation insurance;
  - (b) fails to meet or comply with the conflict of interest policies established by the board; or
  - (c) is not bondable.
- (9) After notice and a hearing, the board may remove any director for cause which includes:
  - (a) neglect of duty; or
  - (b) malfeasance.
- (10)
  - (a) Except as required by Subsection (10)(b), the term of office of the directors elected by the policyholders shall be four years, beginning July 1 of the year of election.
  - (b) Notwithstanding the requirements of Subsection (10)(a), the board shall, at the time of election or reelection, adjust the length of terms to ensure that no more than two terms expire in a calendar year.
- (11) A director shall hold office until the director's successor is selected and qualified.
- (12) When a vacancy occurs in the membership of the board for any reason, the replacement shall be appointed by a majority of the board for the unexpired term, after which time the replacement shall stand for policyholder election as described in the fund's articles of incorporation and bylaws.
- (13) The board shall annually elect a chair and other officers as needed from its membership.
- (14)
  - (a) The board shall meet at least quarterly at a time and place designated by the chair.
  - (b) The chair:
    - (i) may call board meetings more frequently than quarterly; and
    - (ii) shall call additional board meetings if requested to do so by a majority of the board.
- (15) Except as provided in Subsection (18), four directors are a quorum for the purpose of transacting all business of the board.
- (16) Except as provided in Subsection (18), a decision of the board requires the affirmative vote of at least four directors for approval.
- (17)
  - (a) A director may receive compensation and be reimbursed for reasonable expenses incurred in the performance of the director's official duties:
    - (i) as determined by the board of directors; and

- (ii) in an amount not to exceed the reasonable market rate for directors of similarly situated insurance carriers.
  - (b) Directors may decline to receive compensation and expenses for their service.
  - (c) The Worker's Compensation Fund shall pay compensation to and reimburse reasonable expenses of directors as permitted by this section:
    - (i) from the Injury Fund; and
    - (ii) upon vouchers drawn in the same manner as the Workers' Compensation Fund pays its normal operating expenses.
  - (d) The chief executive officer of the Workers' Compensation Fund shall serve on the board without payment of compensation, but may be reimbursed for reasonable expenses in accordance with Subsection (17)(a).
  - (e) The Workers' Compensation Fund shall annually report to the commissioner compensation and expenses paid to the directors on the board.
- (18)
- (a) In accordance with this Subsection (18), the board may increase the number of directors on the board by one or two directors, except the board may not exceed a total of nine directors.
  - (b) The board may increase the number of directors if:
    - (i) the board determines by unanimous vote, that the business needs of the Workers' Compensation Fund would be best served by the expansion;
    - (ii) the majority of the total number of directors after the increase are policyholders of the Workers' Compensation Fund;
    - (iii) an added director has experience described in Subsection (6);
    - (iv) the term of an additional director is compliant with Subsection (10), except that if the board is increased to nine directors, at the time of election or reelection, the board shall adjust the length of terms to ensure that no more than three terms expire in a calendar year;
    - (v) at least one of the two additional directors is nominated and elected by the policyholders of the Workers' Compensation Fund subject to the requirements of:
      - (A) this section; and
      - (B) the Workers' Compensation Fund's articles of incorporation and bylaws; and
    - (vi) one of the two additional directors is not elected in accordance with Subsection (18)(b)(v), the director shall be selected subject to the requirements of:
      - (A) this section; and
      - (B) the Workers' Compensation Fund's articles of incorporation and bylaws.
  - (c) If the board is increased to nine directors:
    - (i) five directors are a quorum for the purpose of transacting all business of the board; and
    - (ii) a decision of the board requires the affirmative vote of at least five directors for approval.
- (19) The placement of this chapter in this title does not:
- (a) remove from the board of directors the managerial, financial, or operational control of the Workers' Compensation Fund;
  - (b) give to the state or the governor managerial, financial, or operational control of the Workers' Compensation Fund;
  - (c) consistent with Section 31A-33-105, cause the state to be liable for any:
    - (i) obligation of the Workers' Compensation Fund; or
    - (ii) expense, liability, or debt described in Section 31A-33-105;
  - (d) alter the legal status of the Workers' Compensation Fund as:
    - (i) a nonprofit, self-supporting, quasi-public corporation; and
    - (ii) an insurer:
      - (A) regulated under this title;

- (B) that is structured to operate in perpetuity; and
- (C) domiciled in the state; or
- (e) alter the requirement that the Workers' Compensation Fund provide workers' compensation:
  - (i) for the purposes set forth in Section 31A-33-102;
  - (ii) consistent with Section 34A-2-201; and
  - (iii) as provided in Section 31A-22-1001.

Amended by Chapter 110, 2016 General Session

Amended by Chapter 348, 2016 General Session

**31A-33-107 Duties of board -- Creation of subsidiaries -- Entering into joint enterprises.**

- (1) The board shall:
  - (a) appoint a chief executive officer to administer the Workers' Compensation Fund;
  - (b) receive and act upon financial, management, and actuarial reports covering the operations of the Workers' Compensation Fund;
  - (c) ensure that the Workers' Compensation Fund is administered according to law;
  - (d) examine and approve an annual operating budget for the Workers' Compensation Fund;
  - (e) serve as investment trustees and fiduciaries of the Injury Fund;
  - (f) receive and act upon recommendations of the chief executive officer;
  - (g) develop broad policy for the long-term operation of the Workers' Compensation Fund, consistent with its mission and fiduciary responsibility;
  - (h) subject to Chapter 19a, Part 4, Workers' Compensation Rates, approve any rating plans that would modify a policyholder's premium;
  - (i) subject to Chapter 19a, Part 4, Workers' Compensation Rates, approve the amount of deviation, if any, from standard insurance rates;
  - (j) approve the amount of the dividends, if any, to be returned to policyholders;
  - (k) adopt a procurement policy consistent with the provisions of Title 63G, Chapter 6a, Utah Procurement Code;
  - (l) develop and publish an annual report to policyholders, the governor, the Legislature, and interested parties that describes the financial condition of the Injury Fund, including a statement of expenses and income and what measures were taken or will be necessary to keep the Injury Fund actuarially sound;
  - (m) establish a fiscal year;
  - (n) determine and establish an actuarially sound price for insurance offered by the fund;
  - (o) establish conflict of interest requirements that govern the board, officers, and employees;
  - (p) establish compensation and reasonable expenses to be paid to directors on the board subject to the requirements of Section 31A-33-106, so that the board may not approve compensation that exceeds the amount described in Subsection 31A-33-106(17)(a); and
  - (q) perform all other acts necessary for the policymaking and oversight of the Workers' Compensation Fund.
- (2) Subject to board review and its responsibilities under Subsection (1)(e), the board may delegate authority to make daily investment decisions.
- (3) The fund may form or acquire a subsidiary or enter into a joint enterprise:
  - (a) only if that action is approved by the board; and
  - (b) subject to the limitations in Section 31A-33-103.5.

Amended by Chapter 110, 2016 General Session

**31A-33-108 Powers and duties of chief executive officer.**

(1) The chief executive officer shall:

- (a) administer all operations of the Workers' Compensation Fund under the direction of the board;
- (b) recommend to the board any necessary or desirable changes in the workers' compensation law;
- (c) recommend to the board an annual administrative budget covering the operations of the Workers' Compensation Fund and, upon approval, submit the administrative budget, financial status, and actuarial condition of the fund to the governor and the Legislature for their examination;
- (d) direct and control all expenditures of the approved budget;
- (e) from time to time, upon the recommendation of a consulting actuary, recommend to the board rating plans, the amount of deviation, if any, from standard rates, and the amount of dividends, if any, to be returned to policyholders;
- (f) invest the Injury Fund's assets under the guidance of the board and in accordance with Chapter 18, Investments;
- (g) recommend general policies and procedures to the board to guide the operations of the fund;
- (h) formulate and administer a system of personnel administration and employee compensation that uses merit principles of personnel management, includes employee benefits and grievance procedures consistent with those applicable to state agencies, and includes inservice training programs;
- (i) prepare and administer fiscal, payroll, accounting, data processing, and procurement procedures for the operation of the Workers' Compensation Fund;
- (j) conduct studies of the workers' compensation insurance business, including the preparation of recommendations and reports;
- (k) develop uniform procedures for the management of the Workers' Compensation Fund;
- (l) maintain contacts with governmental and other public or private groups having an interest in workers' compensation insurance;
- (m) within the limitations of the budget, employ necessary staff personnel and consultants, including actuaries, attorneys, medical examiners, adjusters, investment counselors, accountants, and clerical and other assistants to accomplish the purpose of the Workers' Compensation Fund;
- (n) maintain appropriate levels of property, casualty, and liability insurance as approved by the board to protect the fund, its directors, officers, employees, and assets; and
- (o) develop self-insurance programs as approved by the board to protect the fund, its directors, officers, employees, and assets to supersede or supplement insurance maintained under Subsection (1)(n).

(2) The chief executive officer may:

- (a) enter into contracts of workers' compensation and occupational disease insurance, which may include employer's liability insurance to cover the exposure of a policyholder to his Utah employees and their dependents for liability claims, including the cost of defense in the event of suit, for claims based upon bodily injury to the policyholder's Utah employees;
- (b) reinsure any risk or part of any risk;
- (c) cause to be inspected and audited the payrolls of policyholders or employers applying to the Workers' Compensation Fund for insurance;
- (d) establish procedures for adjusting claims against the Workers' Compensation Fund that comply with Title 34A, Chapter 2, Workers' Compensation Act, and Chapter 3, Utah Occupational Disease Act, and determine the persons to whom and through whom the payments of compensation are to be made;

- (e) contract with physicians, surgeons, hospitals, and other health care providers for medical and surgical treatment and the care and nursing of injured persons entitled to benefits from the Workers' Compensation Fund;
- (f) require policyholders to maintain an adequate deposit to provide security for periods of coverage for which premiums have not been paid;
- (g) contract with self-insured entities for the administration of workers' compensation claims and safety consultation services; and
- (h) with the approval of the board, adopt the calendar year or any other reporting period to report claims and payments made or reserves established on claims that are necessary to accommodate the reporting requirements of the Labor Commission, department, State Tax Commission, or National Council on Compensation Insurance.

Amended by Chapter 252, 2003 General Session

**31A-33-109 Liability limited.**

- (1) No officer or employee of the Workers' Compensation Fund is liable in a private capacity for any act performed or obligation entered into when done in good faith, without intent to defraud, and in an official capacity in connection with the administration, management, or conduct of the Workers' Compensation Fund or affairs relating to it.
- (2) Subject to the director's fiduciary responsibility as established by Section 31A-33-106, no director of the Workers' Compensation Fund is liable in a private capacity for any act performed or obligation entered into when done in good faith, without intent to defraud, and in an official capacity in connection with the administration, management, or conduct of the Workers' Compensation Fund or affairs relating to it.

Renumbered and Amended by Chapter 240, 1996 General Session

**31A-33-110 Audits and examinations required.**

- (1)
  - (a) The Workers' Compensation Fund shall annually obtain an audit:
    - (i) conducted in accordance with:
      - (A) generally accepted auditing standards; and
      - (B) government auditing standards; and
    - (ii) by a national firm of certified public accountants.
  - (b) The fund shall provide the audit performed under Subsection (1)(a) to the state auditor within 30 days of its completion.
- (2)
  - (a) The insurance commissioner shall examine the Injury Fund according to the purposes and procedures provided in Sections 31A-2-203 through 31A-2-205 at least once every five years.
  - (b) The chief executive officer shall pay the necessary expense of this examination from the Injury Fund.

Amended by Chapter 204, 1997 General Session

**31A-33-111 Adoption of rates.**

- (1) The Workers' Compensation Fund shall adopt the rates approved by the insurance commissioner under Chapter 19a, Part 4, Workers' Compensation Rates.

(2) The chief executive officer, with the approval of the board, may file with the insurance commissioner a resolution to deviate from the rates approved by the insurance commissioner in order to provide workers' compensation insurance at the lowest possible cost to policyholders consistent with maintaining the actuarial soundness of the Injury Fund.

Amended by Chapter 130, 1999 General Session

**31A-33-112 Withdrawal of policyholders.**

Any policyholder may, upon complying with Section 31A-22-1002, withdraw from the Workers' Compensation Fund by providing an advance written notice of his intent to cancel. The policyholder shall remain liable for any unpaid premium for periods of coverage prior to cancellation.

Renumbered and Amended by Chapter 240, 1996 General Session

**31A-33-113 Cancellation of policies.**

The Workers' Compensation Fund may cancel a policy as provided in Section 31A-22-1002.

Amended by Chapter 116, 2001 General Session

**31A-33-114 Premium assessment.**

The Workers' Compensation Fund is liable for the premium assessment provided by Subsection 59-9-101(2) to the same extent as private workers' compensation insurance companies.

Renumbered and Amended by Chapter 240, 1996 General Session

**31A-33-115 Interest and costs of collecting delinquent premium.**

If the Workers' Compensation Fund commences a legal action for collection of delinquent premium, it is entitled, in addition to the unpaid premium, to interest on the unpaid premium at the same rate as is then being charged by the United States Internal Revenue Service for delinquent taxes from the due date of the unpaid premium, and for all costs of collection including reasonable attorneys' fees and court costs. The remedies of the Workers' Compensation Fund under this section do not affect or diminish, and may be exercised in addition to, its right to cancel policies under Sections 31A-33-112 and 31A-33-113.

Renumbered and Amended by Chapter 240, 1996 General Session

**31A-33-116 Dividends.**

The board may declare a dividend to policyholders if it determines that a surplus exists in the Injury Fund at the end of a fiscal period after the payment of all claims, administrative costs, and the establishment of appropriate reserves for future liabilities. In making this determination, the board shall require a certified audit and actuarial report of the financial condition of the Injury Fund. The board shall establish uniform eligibility requirements for such dividends. In determining the amount of dividend to be paid to policyholders, the board may establish a procedure which takes into consideration the claims loss experience of policyholders as an incentive to encourage safe working conditions for employees. The Workers' Compensation Fund may use dividends to offset amounts due or owing by policyholders or former policyholders.

Renumbered and Amended by Chapter 240, 1996 General Session

**31A-33-117 Availability of employers' reports.**

The Labor Commission shall make the employers' annual reports provided for in Section 34A-2-206 available to the Workers' Compensation Fund, to the same extent the reports would be available to private insurers.

Amended by Chapter 375, 1997 General Session

**31A-33-118 Scope of chapter.**

The placement of this chapter in this title may not be construed to change the Workers' Compensation Fund's legal nature or purpose as set forth in this chapter.

Amended by Chapter 107, 1998 General Session