

Chapter 4 Risk Management

Part 1 Risk Manager

63A-4-101.1 Definitions.

As used in this chapter:

- (1) "Captive insurance company" means the same as that term is defined in Section 31A-37-102.
- (2) "Covered entity" means a participating entity of:
 - (a) the Risk Management Fund; or
 - (b) any captive insurance company created by the risk manager.

Enacted by Chapter 33, 2021 General Session

63A-4-101.5 Risk manager -- Appointment -- Duties.

- (1)
 - (a) There is created within the department the Division of Risk Management.
 - (b) The executive director shall, with the approval of the governor, appoint a risk manager as the division director, who shall be qualified by education and experience in the management of general property and casualty insurance.
- (2) The risk manager shall:
 - (a) except as provided in Subsection (4), acquire and administer the following purchased by the state or any captive insurance company created by the risk manager:
 - (i) all property and casualty insurance;
 - (ii) reinsurance of property and casualty insurance; and
 - (iii) subject to Section 34A-2-203, workers' compensation insurance;
 - (b) make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act:
 - (i) prescribing reasonable and objective underwriting and risk control standards for:
 - (A) all covered entities of the Risk Management Fund; and
 - (B) any captive insurance company created by the risk manager;
 - (ii) prescribing the risks to be covered by the Risk Management Fund and the extent to which these risks will be covered;
 - (iii) prescribing the properties, risks, deductibles, and amount limits eligible for payment out of the Risk Management Fund;
 - (iv) prescribing procedures for making claims and proof of loss; and
 - (v) establishing procedures for the resolution of disputes relating to coverage or claims, which may include binding arbitration;
 - (c) implement a risk management and loss prevention program for covered entities for the purpose of reducing risks, accidents, and losses to assist covered entities in fulfilling their responsibilities for risk control and safety;
 - (d) coordinate and cooperate with any covered entity having responsibility to manage and protect state properties, including:
 - (i) the state fire marshal;
 - (ii) the director of the Division of Facilities Construction and Management;
 - (iii) the Department of Public Safety;
 - (iv) institutions of higher education;

- (v) school districts; and
 - (vi) charter schools;
 - (e) maintain records necessary to fulfill the requirements of this section;
 - (f) manage the Risk Management Fund and any captive insurance company created by the risk manager in accordance with economically and actuarially sound principles to produce adequate reserves for the payment of contingencies, including unpaid and unreported claims, and may purchase any insurance or reinsurance considered necessary to accomplish this objective; and
 - (g) inform the covered entity's governing body and the governor when any covered entity fails or refuses to comply with reasonable risk control recommendations made by the risk manager.
- (3) Before the effective date of any rule, the risk manager shall provide a copy of the rule to each covered entity affected by it.
- (4) The risk manager may not use a captive insurance company created by the risk manager to purchase:
- (a) workers' compensation insurance;
 - (b) health insurance; or
 - (c) life insurance.

Amended by Chapter 169, 2022 General Session

63A-4-102 Risk manager -- Powers.

- (1) The risk manager may:
- (a) enter into contracts;
 - (b) form one or more captive insurance companies authorized under Title 31A, Chapter 37, Captive Insurance Companies Act;
 - (c) purchase insurance or reinsurance;
 - (d) adjust, settle, and pay claims;
 - (e) pay expenses and costs;
 - (f) study the risks of all covered entities and properties;
 - (g) issue certificates of coverage or insurance for covered entities with respect to any risks covered by the Risk Management Fund or any captive insurance company created by the risk manager;
 - (h) make recommendations about risk management and risk reduction strategies to covered entities;
 - (i) in consultation with the attorney general, prescribe insurance, indemnification, and liability provisions to be included in all state contracts;
 - (j) review covered entity building construction, major remodeling plans, program plans, and make recommendations to the covered entity about needed changes to address risk considerations;
 - (k) attend covered entity planning and management meetings when necessary;
 - (l) review any proposed legislation and communicate with legislators and legislative committees about the liability or risk management issues connected with any legislation; and
 - (m) solicit any needed information about covered entity plans, programs, or risks necessary to perform the risk manager's responsibilities under this part.
- (2)
- (a) The risk manager may expend money from the Risk Management Fund to procure and provide coverage to all covered entities and their indemnified employees, except those entities or employees specifically exempted by statute.

- (b) The risk manager shall apportion the costs of that coverage according to the requirements of this part.
- (3) Before charging a rate, fee, or other amount to an executive branch agency, or to a subscriber of services other than an executive branch agency, the director shall:
 - (a) submit the proposed rates, fees, or other amount and cost analysis to the Rate Committee established in Section 63A-1-114; and
 - (b) obtain the approval of the Legislature as required by Section 63J-1-410.
- (4) The director shall conduct a market analysis by July 1, 2005, and periodically thereafter, of proposed rates and premiums, which analysis shall include a comparison of the division's rates and premiums with the rates and premiums of other public or private sector providers where comparable services and rates are reasonably available.

Amended by Chapter 169, 2022 General Session

63A-4-103 Risk management -- Duties of covered entities.

- (1)
 - (a) Unless expressly authorized by statute, a covered entity may not:
 - (i) purchase insurance or self-fund any risk unless authorized by the risk manager; or
 - (ii) procure or provide liability insurance for the state.
 - (b)
 - (i) Notwithstanding the provisions of Subsection (1)(a), the Utah Board of Higher Education may authorize higher education institutions to purchase insurance for, or self-fund, risks associated with their programs and activities that are not covered through the risk manager.
 - (ii) The Utah Board of Higher Education shall provide copies of those purchased policies to the risk manager.
 - (iii) The Utah Board of Higher Education shall ensure that the state is named as additional insured on any of those policies.
- (2) Each covered entity shall:
 - (a) comply with reasonable risk related recommendations made by the risk manager;
 - (b) participate in risk management training activities conducted or sponsored by the risk manager;
 - (c) include the insurance, indemnification, and liability provisions prescribed by the risk manager in all state contracts, together with a statement certifying to the other party to the contract that the insurance and liability provisions in the contract are those prescribed by the risk manager;
 - (d) upon request of the risk manager, provide written notice to the risk manager that construction and major remodeling plans relating to covered entity buildings and facilities to be covered by the Risk Management Fund are available for review at each principal design stage, for risk control purposes, and make them available to the risk manager for review and to provide recommendations; and
 - (e) cooperate fully with requests from the risk manager for covered entity planning, program, or risk related information, and allow the risk manager to attend covered entity planning and management meetings.
- (3) Failure to include in the contract the provisions required by Subsection (2)(c) does not make the contract unenforceable by the state.

Amended by Chapter 33, 2021 General Session

63A-4-104 Course-of-construction insurance for facilities constructed by This is the Place Foundation.

The risk manager may provide course-of-construction insurance for facilities constructed by This is the Place Foundation at This is the Place State Park and bill the Division of State Parks for the cost of the insurance.

Amended by Chapter 280, 2021 General Session

**Part 2
Risk Management Fund**

63A-4-201 Risk Management Fund created -- Administration -- Use.

- (1)
 - (a) There is created the Risk Management Fund, which shall be administered by the risk manager.
 - (b) The fund shall cover property, liability, fidelity, and other risks as determined by the risk manager in consultation with the executive director.
- (2) The risk manager may only use the Risk Management Fund to pay:
 - (a) insurance or reinsurance premiums;
 - (b) costs of administering the Risk Management Fund and any captive insurance companies created by the risk manager;
 - (c) loss adjustment expenses;
 - (d) risk control and related educational and training expenses; and
 - (e) loss costs which at the time of loss were eligible for payment under rules made by the risk manager in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- (3) In addition to any money appropriated to the Risk Management Fund by the Legislature, the risk manager shall deposit with the state treasurer for credit to the Risk Management Fund:
 - (a) any insured loss or loss expenses paid by insurance or reinsurance companies;
 - (b) the gross amount of all premiums and surcharges received under Section 63A-4-202;
 - (c) the net refunds from cancelled insurance policies necessary to self-insure previously insured risks, with the balance of the proceeds to be refunded to the previously insured entities;
 - (d) all refunds, returns, or dividends from insurance carriers not specifically covered in Subsections (3)(a), (b), and (c);
 - (e) savings from amounts otherwise appropriated for participation in the fund; and
 - (f) all net proceeds from sale of salvage and subrogation recoveries from adverse parties related to losses paid out of the fund.
- (4) The state treasurer shall invest the Risk Management Fund in accordance with Section 63A-4-208 and deposit all interest or other income earned from investments into the Risk Management Fund.

Amended by Chapter 169, 2022 General Session

63A-4-202 Determination of insurance premiums -- Information furnished by covered entities -- Notice to covered entities.

- (1) Each covered entity shall provide the risk manager with all reasonable information necessary to compute insurance premiums whenever the risk manager requests that information.

- (2)
 - (a) The risk manager shall charge to each entity that receives insurance coverage from the Risk Management Fund or any captive insurance company created by the risk manager its proportionate share of the cost incurred based upon actuarially sound rating techniques.
 - (b) The risk manager shall include in the premium determined under this section all costs of operating the Risk Management Fund as stated in Section 63A-4-201 and operating any captive insurance company created by the risk manager.
- (3) To enable each covered entity to meet its budgeting requirements, the risk manager shall provide each covered entity with projected insurance costs for the next two fiscal years within the time limits required.

Amended by Chapter 33, 2021 General Session

63A-4-203 Refusal of agency to pay charges -- Notice to the Division of Finance for collection.

- (1) If any agency of the state refuses to remit any payment as charged by the risk manager within 30 days after the date due, the risk manager may certify to the director of the Division of Finance the fact of the refusal and the amount of the delinquent payment, together with a request that the amount be transferred from funds of the delinquent agency to the Risk Management Fund.
- (2) The risk manager shall mail a copy of the certification and request to the delinquent agency.
- (3) The risk manager shall resolve claims against the fund in an expeditious manner.

Renumbered and Amended by Chapter 212, 1993 General Session

63A-4-204 School district participation in Risk Management Fund.

- (1)
 - (a) For the purpose of this section, action by a public school district shall be taken upon resolution by a majority of the members of the school district's board of education.
 - (b)
 - (i) Upon approval by the state risk manager and the board of education of the school district, a public school district may participate in the Risk Management Fund or any captive insurance company created by the risk manager, and may permit a foundation established under Section 53E-3-403 to participate in the Risk Management Fund or any captive insurance company created by the risk manager.
 - (ii) Upon approval by the state risk manager and the State Board of Education, a state public education foundation may participate in the Risk Management Fund or any captive insurance company created by the risk manager.
 - (c) Subject to any cancellation or other applicable coverage provisions, either the state risk manager or the public school district may terminate participation in the Risk Management Fund.
- (2) The state risk manager shall contract for all insurance, reinsurance, legal, loss adjustment, consulting, loss control, safety, and other related services necessary to support the insurance programs provided to a participating public school district, except that all supporting legal services are subject to the prior approval of the state attorney general.
- (3) Each public school district participating in the Risk Management Fund shall comply with Section 63A-4-103.
- (4)

- (a) Each year, the risk manager shall prepare, in writing, the information required by Subsection (4)(b) regarding the coverage against legal liability provided a school district employee of this state:
 - (i) by the Risk Management Fund or any captive insurance company created by the risk manager;
 - (ii) under Title 63G, Chapter 7, Governmental Immunity Act of Utah; and
 - (iii) under Title 52, Chapter 6, Reimbursement of Legal Fees and Costs to Officers and Employees Act.
- (b)
 - (i) The information described in Subsection (4)(a) shall include:
 - (A) the eligibility requirements, if any, to receive the coverage;
 - (B) the basic nature of the coverage for a school district employee, including what is not covered; and
 - (C) whether the coverage is primary or in excess of any other coverage the risk manager knows is commonly available to a school district employee in this state.
 - (ii) The information described in Subsection (4)(a) may include:
 - (A) comparisons the risk manager considers beneficial to a school district employee between:
 - (I) the coverage described in Subsection (4)(a); and
 - (II) other coverage the risk manager knows is commonly available to a school district employee in this state; and
 - (B) any other information the risk manager considers appropriate.
- (c) By no later than July 1 of each year, the risk manager shall provide the information prepared under this Subsection (4) to each school district that participates in the Risk Management Fund or any captive insurance company created by the risk manager.
- (d) A school district that participates in the Risk Management Fund shall provide a copy of the information described in Subsection (4)(c) to each school district employee within the school district no later than the first day of each school year.
- (e) If a school district hires an employee after the first day of the school year, no later than 10 days after the day on which the employee is hired, the school district shall provide the information described in Subsection (4)(c) to the employee.

Amended by Chapter 33, 2021 General Session

63A-4-204.5 Charter school participation in Risk Management Fund.

- (1) A charter school established under the authority of Title 53G, Chapter 5, Charter Schools, may participate in the Risk Management Fund or any captive insurance company created by the risk manager upon the approval of the state risk manager and the governing body of the charter school.
- (2) Each charter school participating in the Risk Management Fund shall comply with Section 63A-4-103.
- (3)
 - (a) Each year, the risk manager shall prepare, in writing, the information required by Subsection (3)(b) regarding the coverage against legal liability provided a charter school employee of this state:
 - (i) by the Risk Management Fund or any captive insurance company created by the risk manager;
 - (ii) under Title 63G, Chapter 7, Governmental Immunity Act of Utah; and

- (iii) under Title 52, Chapter 6, Reimbursement of Legal Fees and Costs to Officers and Employees Act.
- (b)
 - (i) The information described in Subsection (3)(a) shall include:
 - (A) the eligibility requirements, if any, to receive the coverage;
 - (B) the basic nature of the coverage for a charter school employee, including what is not covered; and
 - (C) whether the coverage is primary or in excess of any other coverage the risk manager knows is commonly available to a charter school employee in this state.
 - (ii) The information described in Subsection (3)(a) may include:
 - (A) comparisons the risk manager considers beneficial to a charter school employee between:
 - (I) the coverage described in Subsection (3)(a); and
 - (II) other coverage the risk manager knows is commonly available to a charter school employee in this state; and
 - (B) any other information the risk manager considers appropriate.
 - (c) By no later than July 1 of each year, the risk manager shall provide the information prepared under this Subsection (3) to each charter school that participates in the Risk Management Fund or any captive insurance company created by the risk manager.
 - (d) A charter school that participates in the Risk Management Fund or any captive insurance company created by the risk manager shall provide a copy of the information described in Subsection (3)(c) to each charter school employee within the charter school no later than the first day of each school year.
 - (e) If a charter school hires an employee after the first day of the school year, no later than 10 days after the day on which the employee is hired, the charter school shall provide the information described in Subsection (3)(c) to the employee.

Amended by Chapter 33, 2021 General Session

63A-4-205.5 Risk management -- Coverage of the Utah Communications Authority.

The Utah Communications Authority established under authority of Title 63H, Chapter 7a, Utah Communications Authority Act, may participate in the Risk Management Fund or any captive insurance company created by the risk manager.

Amended by Chapter 33, 2021 General Session

63A-4-206 Limits on use of risk management data as evidence.

Notwithstanding any other provisions of law, any reports, recommendations, surveys, schedules, lists, or data compiled, or action taken or not taken by or at the request of the risk manager to identify, evaluate, or plan the safety enhancement or risk reduction of any potential accident sites or other hazards related to any entity covered by the Risk Management Fund may not be admitted into evidence in any court, or used for any other purposes in any action for damages arising from any occurrence at a location mentioned or addressed in those reports, recommendations, surveys, schedules, lists, or data.

Renumbered and Amended by Chapter 212, 1993 General Session

63A-4-207 Records of risk management.

- (1) A record provided to the Division of Risk Management by any governmental entity or political subdivision covered by the Risk Management Fund for the purpose of risk control or claims activities of the division shall be considered a record of the originating governmental entity or political subdivision for purposes of Title 63G, Chapter 2, Government Records Access and Management Act, if the originating governmental entity or political subdivision retains a copy of the record.
- (2) Notwithstanding Subsection 63G-2-201(5), records may be exchanged between the Division of Risk Management and any governmental entity or political subdivision covered by the Risk Management Fund without meeting the requirements of Section 63G-2-206, provided that they are used only for purposes of risk control or claims activities.

Amended by Chapter 382, 2008 General Session

63A-4-208 Investment of Risk Management Fund.

- (1) The state treasurer shall invest the assets of the Risk Management Fund created under Section 63A-4-201 with the primary goal of providing for the stability, income, and growth of the principal.
- (2) Nothing in this section requires a specific outcome in investing.
- (3) The state treasurer may deduct any administrative costs incurred in managing fund assets from earnings before distributing the earnings.
- (4)
 - (a) The state treasurer may employ professional asset managers to assist in the investment of the assets of the funds.
 - (b) The treasurer may only provide compensation to asset managers from earnings generated by the funds' investments.
- (5)
 - (a) The state treasurer shall invest and manage the assets of the funds as a prudent investor would by:
 - (i) considering the purposes, terms, distribution requirements, and other circumstances of the funds; and
 - (ii) exercising reasonable care, skill, and caution in order to meet the standard of care of a prudent investor.
 - (b) In determining whether the state treasurer has met the standard of care of a prudent investor, the judge or finder of fact shall:
 - (i) consider the state treasurer's actions in light of the facts and circumstances existing at the time of the investment decision or action, and not by hindsight; and
 - (ii) evaluate the state treasurer's investment and management decisions respecting individual assets:
 - (A) not in isolation, but in the context of a fund portfolio as a whole; and
 - (B) as a part of an overall investment strategy that has risk and return objectives reasonably suited to the funds.

Enacted by Chapter 33, 2021 General Session