

**WORKERS COMPENSATION COVERAGE  
AMENDMENTS**

1999 GENERAL SESSION

STATE OF UTAH

**Sponsor: Gerry A. Adair**

AN ACT RELATING TO LABOR; AMENDING WORKERS COMPENSATION COVERAGE REQUIREMENTS; AMENDING PROVISIONS RELATED TO EMPLOYERS WHO ARE SELF-INSURED FOR PURPOSES OF WORKERS COMPENSATION; AND MAKING TECHNICAL CHANGES.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

**31A-15-103**, as last amended by Chapter 375, Laws of Utah 1997

**34A-2-103 (Effective 07/01/99)**, as last amended by Chapter 277, Laws of Utah 1998

**34A-2-103 (Superseded 07/01/99)**, as last amended by Chapter 277, Laws of Utah 1998

**34A-2-201**, as renumbered and amended by Chapter 375, Laws of Utah 1997

**34A-2-401**, as renumbered and amended by Chapter 375, Laws of Utah 1997

ENACTS:

**34A-2-201.5**, Utah Code Annotated 1953

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

Section 1. Section **31A-15-103** is amended to read:

**31A-15-103. Surplus lines insurance -- Unauthorized insurers.**

(1) Notwithstanding Section 31A-15-102, a foreign insurer that has not obtained a certificate of authority to do business in this state under Section 31A-14-202 may negotiate for and make insurance contracts with persons in this state and on risks located in this state, subject to the limitations and requirements of this section.

(2) For contracts made under this section, the insurer may, in this state, inspect the risks to be insured, collect premiums and adjust losses, and do all other acts reasonably incidental to the contract, through employees or through independent contractors.

(3) (a) Subsections (1) and (2) do not permit any person to solicit business in this state on

behalf of an insurer that has no certificate of authority.

(b) Any insurance placed with a nonadmitted insurer shall be placed with a surplus lines broker licensed under Chapter 23.

(c) The commissioner may by rule prescribe how a surplus lines broker may:

(i) pay or permit the payment, commission, or other remuneration on insurance placed by [him] the surplus lines broker under authority of [his] the surplus lines broker's license to one holding a license to act as an insurance agent[;]; and [how he may]

(ii) advertise the availability of [his] the surplus lines broker's services in procuring, on behalf of persons seeking insurance, contracts with nonadmitted insurers.

(4) For contracts made under this section, nonadmitted insurers are subject to Sections 31A-23-302 and 31A-26-303 and the rules adopted under those sections.

(5) A nonadmitted insurer may not issue workers' compensation insurance coverage to employers located in this state, except for stop loss coverages issued to employers securing workers' compensation under Subsection 34A-2-201[(1)(c)](3).

(6) (a) The commissioner may by rule prohibit making contracts under Subsection (1) for a specified class of insurance if authorized insurers provide an established market for the class in this state that is adequate and reasonably competitive.

(b) The commissioner may by rule place restrictions and limitations on and create special procedures for making contracts under Subsection (1) for a specified class of insurance if there have been abuses of placements in the class or if the policyholders in the class, because of limited financial resources, business experience, or knowledge, cannot protect their own interests adequately.

(c) The commissioner may prohibit an individual insurer from making any contract under Subsection (1) and all insurance agents and brokers from dealing with the insurer if:

(i) the insurer has willfully violated this section, Section 31A-4-102, 31A-23-302, or 31A-26-303, or any rule adopted under any of these sections;

(ii) the insurer has failed to pay the fees and taxes specified under Section 31A-3-301; or

(iii) the commissioner has reason to believe that the insurer is in an unsound condition or is operated in a fraudulent, dishonest, or incompetent manner or in violation of the law of its

domicile.

(d) The commissioner may issue lists of unauthorized foreign insurers whose solidity [~~he~~] the commissioner doubts, or whose practices [~~he~~] the commissioner considers objectionable. The commissioner shall issue lists of unauthorized foreign insurers [~~he~~] the commissioner considers to be reliable and solid. The commissioner may also issue other relevant evaluations of unauthorized insurers. No action lies against the commissioner or any employee of the department for any written or oral communication made in, or in connection with the issuance of, these lists or evaluations. A foreign unauthorized insurer shall be listed on the commissioner's "reliable" list only if the unauthorized insurer:

- (i) has delivered a request to the commissioner to be on the list;
- (ii) has established satisfactory evidence of good reputation and financial integrity;
- (iii) has delivered to the commissioner a copy of its current annual statement certified by the insurer and continues each subsequent year to file its annual statements with the commissioner within 60 days of its filing with the insurance regulatory authority where it is domiciled; and
- (iv) (A) is in substantial compliance with the solvency standards in Chapter 17, Part [6] VI, Risk-Based Capital, or maintains capital and surplus of at least \$5,000,000, whichever is greater, and maintains in the United States an irrevocable trust fund in either a national bank or a member of the Federal Reserve System, or maintains a deposit meeting the statutory deposit requirements for insurers in the state where it is made, which trust fund or deposit:
  - (I) shall be in an amount not less than \$1,500,000 for the protection of all of the insurer's policyholders in the United States;
  - (II) may consist of cash, securities, or investments of substantially the same character and quality as those which are "qualified assets" under Section 31A-17-201; and
  - (III) may include as part of the trust arrangement a letter of credit that qualifies as acceptable security under Subsection 31A-17-404(3)(c)(iii); or
- (B) in the case of any "Lloyd's" or other similar incorporated or unincorporated group of alien individual insurers, maintains a trust fund that:
  - (I) shall be in an amount not less than \$50,000,000 as security to its full amount for all

policyholders and creditors in the United States of each member of the group;

(II) may consist of cash, securities, or investments of substantially the same character and quality as those which are "qualified assets" under Section 31A-17-201; and

(III) may include as part of this trust arrangement a letter of credit that qualifies as acceptable security under Subsection 31A-17-404(3)(c)(iii).

(7) A surplus lines broker may not, either knowingly or without reasonable investigation of the financial condition and general reputation of the insurer, place insurance under this section with financially unsound insurers or with insurers engaging in unfair practices, or with otherwise substandard insurers, unless the broker gives the applicant notice in writing of the known deficiencies of the insurer or the limitations on his investigation, and explains the need to place the business with that insurer. A copy of this notice shall be kept in the office of the broker for at least five years. To be financially sound, an insurer shall satisfy standards that are comparable to those applied under the laws of this state to authorized insurers. Insurers on the "doubtful or objectionable" list under Subsection (6)(d) and insurers not on the commissioner's "reliable" list under Subsection (6)(d) are presumed substandard.

(8) A policy issued under this section shall include a description of the subject of the insurance and indicate the coverage, conditions, and term of the insurance, the premium charged and premium taxes to be collected from the policyholder, and the name and address of the policyholder and insurer. If the direct risk is assumed by more than one insurer, the policy shall state the names and addresses of all insurers and the portion of the entire direct risk each has assumed. All policies issued under the authority of this section shall have attached or affixed to the policy the following statement: "The insurer issuing this policy does not hold a certificate of authority to do business in this state and thus is not fully subject to regulation by the Utah insurance commissioner. This policy receives no protection from any of the guaranty associations created under Title 31A, Chapter 28."

(9) Upon placing a new or renewal coverage under this section, the broker shall promptly deliver to the policyholder or his agent evidence of the insurance consisting either of the policy as issued by the insurer or, if the policy is not then available, a certificate, cover note, or other confirmation of insurance complying with Subsection (8).

(10) If [he] the commissioner finds it necessary to protect the interests of insureds and the public in this state, the commissioner may by rule subject policies issued under this section to as much of the regulation provided by this title as is required for comparable policies written by authorized foreign insurers.

(11) (a) Each surplus lines transaction in this state shall be examined to determine whether it complies with:

- (i) the surplus lines tax levied under Chapter 3;
- (ii) the solicitation limitations of Subsection (3);
- (iii) the requirement of Subsection (3) that placement be through a surplus lines broker;
- (iv) placement limitations imposed under Subsections (6)(a), (b), and (c); and
- (v) the policy form requirements of Subsections (8) and (10).

(b) The examination described in Subsection (11)(a) shall take place as soon as practicable after the transaction. The surplus lines broker shall submit to the examiner information necessary to conduct the examination within a period specified by rule.

(c) The examination described in Subsection (11)(a) may be conducted by the commissioner or by an advisory organization created under Section 31A-15-111 and authorized by the commissioner to conduct these examinations. The commissioner is not required to authorize any additional advisory organizations to conduct examinations under this subsection. The commissioner's authorization of one or more advisory organizations to act as examiners under this subsection shall be by rule. In addition, the authorization shall be evidenced by a contract, on a form provided by the commissioner, between the authorized advisory organization and the department.

(d) The person conducting the examination described in Subsection (11)(a) shall collect a stamping fee of an amount not to exceed 1% of the policy premium payable in connection with the transaction. Stamping fees collected by the commissioner shall be deposited in the General Fund. The commissioner shall establish this fee by rule. Stamping fees collected by an advisory organization are the property of the advisory organization to be used in paying the expenses of the advisory organization. Liability for paying the stamping fee is as required under Subsection 31A-3-303(1) for taxes imposed under Section 31A-3-301. The commissioner shall adopt a rule

dealing with the payment of stamping fees. If stamping fees are not paid when due, the commissioner or advisory organization may impose a penalty of 25% of the fee due, plus 1-1/2% per month from the time of default until full payment of the fee. Fees relative to policies covering risks located partially in this state shall be allocated in the same manner as under Subsection 31A-3-303(4).

(e) The commissioner, representatives of the department, advisory organizations, representatives and members of advisory organizations, authorized insurers, and surplus lines insurers are not liable for damages on account of statements, comments, or recommendations made in good faith in connection with their duties under this subsection or under Section 31A-15-111.

(f) Examinations conducted under this subsection and the documents and materials related to the examinations are confidential.

Section 2. Section **34A-2-103 (Effective 07/01/99)** is amended to read:

**34A-2-103 (Effective 07/01/99). Employers enumerated and defined -- Regularly employed -- Statutory employers.**

(1) (a) The state, and each county, city, town, and school district in the state are considered employers under this chapter and Chapter 3, Utah Occupational Disease Act.

(b) For the purposes of the exclusive remedy in this chapter and Chapter 3, Utah Occupational Disease Act prescribed in Sections 34A-2-105 and 34A-3-102, the state is considered to be a single employer and includes any office, department, agency, authority, commission, board, institution, hospital, college, university, or other instrumentality of the state.

(2) Except as provided in Subsection (4), each person, including each public utility and each independent contractor, who regularly employs one or more workers or operatives in the same business, or in or about the same establishment, under any contract of hire, express or implied, oral or written, is considered an employer under this chapter and Chapter 3, Utah Occupational Disease Act. As used in this Subsection (2):

(a) "Independent contractor" means any person engaged in the performance of any work for another who, while so engaged, is:

(i) independent of the employer in all that pertains to the execution of the work;

(ii) not subject to the routine rule or control of the employer;  
(iii) engaged only in the performance of a definite job or piece of work; and  
(iv) subordinate to the employer only in effecting a result in accordance with the employer's design.

(b) "Regularly" includes all employments in the usual course of the trade, business, profession, or occupation of the employer, whether continuous throughout the year or for only a portion of the year.

(3) (a) The client company in an employee leasing arrangement under Title 58, Chapter 59, Employee Leasing Company Licensing Act, is considered the employer of leased employees and shall secure workers' compensation benefits for them by complying with Subsection 34A-2-201(1)[(a)] or [(b)] (2) and commission rules.

(b) Insurance carriers may underwrite workers' compensation secured in accordance with Subsection (3)(a) showing the leasing company as the named insured and each client company as an additional insured by means of individual endorsements.

(c) Endorsements shall be filed with the division as directed by commission rule.

(d) The division shall promptly inform the Division of Occupation and Professional Licensing within the Department of Commerce if the division has reason to believe that an employee leasing company is not in compliance with Subsection 34A-2-201(1)[(a)] or [(b)] (2) and commission rules.

(4) A domestic employer who does not employ one employee or more than one employee at least 40 hours per week is not considered an employer under this chapter and Chapter 3, Utah Occupational Disease Act.

(5) (a) As used in this Subsection (5):

(i) (A) "agricultural employer" means a person who employs agricultural labor as defined in Subsections 35A-4-206(1) and (2) and does not include employment as provided in Subsection 35A-4-206(3); and

(B) notwithstanding Subsection (5)(a)(i)(A), only for purposes of determining who is a member of the employer's immediate family under Subsection (5)(a)(ii), if the agricultural employer

is a corporation, partnership, or other business entity, "agricultural employer" means an officer, director, or partner of the business entity;

(ii) "employer's immediate family" means:

(A) an agricultural employer's:

(I) spouse;

(II) grandparent;

(III) parent;

(IV) sibling;

(V) child;

(VI) grandchild;

(VII) nephew; or

(VIII) niece;

(B) a spouse of any person provided in Subsection (4)(a)(ii)(A)(II) through (VIII); or

(C) an individual who is similar to those listed in Subsections (4)(a)(ii)(A) or (B) as defined

by rules of the commission; and

(iii) "non-immediate family" means a person who is not a member of the employer's immediate family.

(b) For purposes of this chapter and Chapter 3, Utah Occupational Disease Act, an agricultural employer is not considered an employer of a member of the employer's immediate family.

(c) For purposes of this chapter and Chapter 3, Utah Occupational Disease Act, an agricultural employer is not considered an employer of a non-immediate family employee if:

(i) for the previous calendar year the agricultural employer's total annual payroll for all non-immediate family employees was less than \$8,000; or

(ii) (A) for the previous calendar year the agricultural employer's total annual payroll for all non-immediate family employees was equal to or greater than \$8,000 but less than \$50,000; and

(B) the agricultural employer maintains insurance that covers job-related injuries of the employer's nonimmediate family employees in at least the following amounts:



(I) \$300,000 liability insurance, as defined in Section 31A-1-301; and  
(II) \$5,000 for medical, hospital, and surgical benefits as described in Subsection 31A-1-301(50)(a)(ii).

(d) For purposes of this chapter and Chapter 3, Utah Occupational Disease Act, an agricultural employer is considered an employer of a non-immediate family employee if:

(i) for the previous calendar year the agricultural employer's total annual payroll for all non-immediate family employees is equal to or greater than \$50,000; or

(ii) (A) for the previous year the agricultural employer's total payroll for non-immediate family employees was equal to or exceeds \$8,000 but is less than \$50,000; and

(B) the agricultural employer fails to maintain the insurance required under Subsection (5)(c)(ii).

(6) An employer of agricultural laborers or domestic servants who is not considered an employer under this chapter and Chapter 3, Utah Occupational Disease Act, may come under this chapter and Chapter 3, Utah Occupational Disease Act, by complying with:

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

(b) the rules of the commission.

(7) (a) If any person who is an employer procures any work to be done wholly or in part for the employer by a contractor over whose work the employer retains supervision or control, and this work is a part or process in the trade or business of the employer, the contractor, all persons employed by the contractor, all subcontractors under the contractor, and all persons employed by any of these subcontractors, are considered employees of the original employer for the purposes of this chapter and Chapter 3, Utah Occupational Disease Act.

(b) Any person who is engaged in constructing, improving, repairing, or remodelling a residence that the person owns or is in the process of acquiring as the person's personal residence may not be considered an employee or employer solely by operation of Subsection (7)(a).

(c) A partner in a partnership or an owner of a sole proprietorship may not be considered an employee under Subsection (7)(a) if the employer who procures work to be done by the partnership or sole proprietorship obtains and relies on either:

(i) a valid certification of the partnership's or sole proprietorship's compliance with Section 34A-2-201 indicating that the partnership or sole proprietorship secured the payment of workers' compensation benefits pursuant to Section 34A-2-201; or

(ii) if a partnership or sole proprietorship with no employees other than a partner of the partnership or owner of the sole proprietorship, a workers' compensation policy issued by an insurer pursuant to Subsection 31A-21-104(8) stating that:

(A) the partnership or sole proprietorship is customarily engaged in an independently established trade, occupation, profession, or business; and

(B) the partner or owner personally waives the partner's or owner's entitlement to the benefits of this chapter and Chapter 3, Utah Occupational Disease Act, in the operation of the partnership or sole proprietorship.

(d) A director or officer of a corporation may not be considered an employee under Subsection (7)(a) if the director or officer is excluded from coverage under Subsection 34A-2-104(4).

(e) A contractor or subcontractor is not an employee of the employer under Subsection (7)(a), if the employer who procures work to be done by the contractor or subcontractor obtains and relies on either:

(i) a valid certification of the contractor's or subcontractor's compliance with Section 34A-2-201; or

(ii) if a partnership, corporation, or sole proprietorship with no employees other than a partner of the partnership, officer of the corporation, or owner of the sole proprietorship, a workers' compensation policy issued by an insurer pursuant to Subsection 31A-21-104(8) stating that:

(A) the partnership, corporation, or sole proprietorship is customarily engaged in an independently established trade, occupation, profession, or business; and

(B) the partner, corporate officer, or owner personally waives the partner's, corporate officer's, or owner's entitlement to the benefits of this chapter and Chapter 3, Utah Occupational Disease Act, in the operation of the partnership's, corporation's, or sole proprietorship's enterprise under a contract of hire for services.

Section 3. Section **34A-2-103 (Superseded 07/01/99)** is amended to read:

**34A-2-103 (Superseded 07/01/99). Employers enumerated and defined -- Regularly employed -- Statutory employers.**

(1) (a) The state, and each county, city, town, and school district in the state are considered employers under this chapter and Chapter 3, Utah Occupational Disease Act.

(b) For the purposes of the exclusive remedy in this chapter and Chapter 3, Utah Occupational Disease Act prescribed in Sections 34A-2-105 and 34A-3-102, the state is considered to be a single employer and includes any office, department, agency, authority, commission, board, institution, hospital, college, university, or other instrumentality of the state.

(2) Except as provided in Subsection (4), each person, including each public utility and each independent contractor, who regularly employs one or more workers or operatives in the same business, or in or about the same establishment, under any contract of hire, express or implied, oral or written, is considered an employer under this chapter and Chapter 3, Utah Occupational Disease Act. As used in Subsection (2):

(a) "Regularly" includes all employments in the usual course of the trade, business, profession, or occupation of the employer, whether continuous throughout the year or for only a portion of the year.

(b) "Independent contractor" means any person engaged in the performance of any work for another who, while so engaged, is independent of the employer in all that pertains to the execution of the work, is not subject to the routine rule or control of the employer, is engaged only in the performance of a definite job or piece of work, and is subordinate to the employer only in effecting a result in accordance with the employer's design.

(3) (a) The client company in an employee leasing arrangement under Title 58, Chapter 59, Employee Leasing Company Licensing Act, is considered the employer of leased employees and shall secure workers' compensation benefits for them by complying with Subsection 34A-2-201(1)[(a)] or [(b)] (2) and commission rules.

(b) Insurance carriers may underwrite workers' compensation secured in accordance with Subsection (3)(a) showing the leasing company as the named insured and each client company as

an additional insured by means of individual endorsements.

(c) Endorsements shall be filed with the division as directed by commission rule.

(d) The division shall promptly inform the Division of Occupation and Professional Licensing within the Department of Commerce if the division has reason to believe that an employee leasing company is not in compliance with Subsection 34A-2-201(1)[~~(a)~~] or [~~(b)~~] (2) and commission rules.

(4) (a) An agricultural employer is not considered an employer under this chapter and Chapter 3, Utah Occupational Disease Act, if:

(i) (A) the employer's employees are all members of the employer's immediate family; and

(B) the employer has a proprietary interest in the farm where they work; or

(ii) the employer employed five or fewer persons other than immediate family members for 40 hours or more per week per employee for 13 consecutive weeks during any part of the preceding 12 months.

(b) A domestic employer who does not employ one employee or more than one employee at least 40 hours per week is not considered an employer under this chapter and Chapter 3, Utah Occupational Disease Act.

(5) An employer of agricultural laborers or domestic servants who is not considered an employer under this chapter and Chapter 3, Utah Occupational Disease Act, may come under this chapter and Chapter 3, Utah Occupational Disease Act, by complying with this chapter and Chapter 3, Utah Occupational Disease Act, and the rules of the commission.

(6) (a) If any person who is an employer procures any work to be done wholly or in part for the employer by a contractor over whose work the employer retains supervision or control, and this work is a part or process in the trade or business of the employer, the contractor, all persons employed by the contractor, all subcontractors under the contractor, and all persons employed by any of these subcontractors, are considered employees of the original employer for the purposes of this chapter and Chapter 3, Utah Occupational Disease Act.

(b) Any person who is engaged in constructing, improving, repairing, or remodeling a residence that the person owns or is in the process of acquiring as the person's personal residence

may not be considered an employee or employer solely by operation of Subsection (6)(a).

(c) A partner in a partnership or an owner of a sole proprietorship may not be considered an employee under Subsection (6)(a) if the employer who procures work to be done by the partnership or sole proprietorship obtains and relies on either:

(i) a valid certification of the partnership's or sole proprietorship's compliance with Section 34A-2-201 indicating that the partnership or sole proprietorship secured the payment of workers' compensation benefits pursuant to Section 34A-2-201; or

(ii) if a partnership or sole proprietorship with no employees other than a partner of the partnership or owner of the sole proprietorship, a workers' compensation policy issued by an insurer pursuant to Subsection 31A-21-104(8) stating that:

(A) the partnership or sole proprietorship is customarily engaged in an independently established trade, occupation, profession, or business; and

(B) the partner or owner personally waives the partner's or owner's entitlement to the benefits of this chapter and Chapter 3, Utah Occupational Disease Act, in the operation of the partnership or sole proprietorship.

(d) A director or officer of a corporation may not be considered an employee under Subsection (6)(a) if the director or officer is excluded from coverage under Subsection 34A-2-104(4).

(e) A contractor or subcontractor is not an employee of the employer under Subsection (6)(a), if the employer who procures work to be done by the contractor or subcontractor obtains and relies on either:

(i) a valid certification of the contractor's or subcontractor's compliance with Section 34A-2-201; or

(ii) if a partnership, corporation, or sole proprietorship with no employees other than a partner of the partnership, officer of the corporation, or owner of the sole proprietorship, a workers' compensation policy issued by an insurer pursuant to Subsection 31A-21-104(8) stating that:

(A) the partnership, corporation, or sole proprietorship is customarily engaged in an independently established trade, occupation, profession, or business; and

(B) the partner, corporate officer, or owner personally waives the partner's, corporate officer's, or owner's entitlement to the benefits of this chapter and Chapter 3, Utah Occupational Disease Act, in the operation of the partnership's, corporation's, or sole proprietorship's enterprise under a contract of hire for services.

Section 4. Section **34A-2-201** is amended to read:

**34A-2-201. Employers to secure workers compensation benefits for employees -- Methods.**

~~[(1) Employers, including counties, cities, towns, and school districts,]~~ An employer shall secure the payment of workers' compensation benefits for ~~[their]~~ its employees by:

~~[(a) by]~~ (1) insuring, and keeping insured, the payment of this compensation with the Workers' Compensation Fund of Utah~~[- which payments shall commence within 30 days after any final award by the commission];~~

~~[(b) by]~~ (2) insuring, and keeping insured, the payment of this compensation with any stock corporation or mutual association authorized to transact the business of workers' compensation insurance in this state~~[- which payments shall commence within 30 days after any final award by the commission];~~ or

~~[(c) by]~~ furnishing annually to the division satisfactory proof of financial ability to  
(3) obtaining approval from the division in accordance with Section 34A-2-201.5 to pay direct compensation as a self-insured employer in the amount, in the manner, and when due as provided for in this chapter or Chapter 3, Utah Occupational Disease Act[- which payments shall commence within 30 days after any final award by the commission].

~~[(2) (a) If an employer secures payment of workers' compensation benefits under Subsection (1)(c), the division may:]~~

~~[(i) require the deposit of acceptable security, indemnity, or bond to secure the payment of compensation liabilities as they are incurred; and]~~

~~[(ii) at any time change or modify the requirement to deposit acceptable security, indemnity, or bond, if in its judgment this action is necessary or desirable to secure or assure a strict compliance with all the provisions of law relating to the payment of compensation and the furnishing of medical,~~

~~nurse, and hospital services, medicines, and burial expenses to injured employees and to the dependents of killed employees.]~~

~~[(b) (i) The division may in proper cases revoke any employer's privilege as a self-insurer.]~~

~~[(ii) The revocation under Subsection (2)(b) (i) becomes a final order of the commission effective 30 days from the date the division revokes the privilege, unless within the 30 days the employer files an application for hearing in accordance with Part 8, Adjudication.]~~

Section 5. Section **34A-2-201.5** is enacted to read:

**34A-2-201.5. Self-insured employer -- Acceptable security -- Procedures.**

(1) As used in this section:

(a) "Acceptable security" means one or more of the following:

(i) cash;

(ii) a surety bond issued:

(A) by a person acceptable to the division; and

(B) in a form approved by the division;

(iii) an irrevocable letter of credit issued:

(A) by a depository institution acceptable to the division; and

(B) in a form approved by the division;

(iv) a United States Treasury Bill;

(v) a deposit in a depository institution that:

(A) has an office located in Utah; and

(B) is insured by the Federal Deposit Insurance Corporation; or

(vi) a certificate of deposit in a depository institution that:

(A) has an office located in Utah; and

(B) is insured by the Federal Deposit Insurance Corporation.

(b) "Compensation" is as defined in Section 34A-2-102.

(c) "Depository institution" is as defined in Section 7-1-103.

(d) "Self-insured employer" means an employer that is authorized by the division to pay direct workers compensation benefits under Subsection (2).

(2) (a) An employer may directly pay compensation in the amount, in the manner, and when due as provided for in this chapter and Chapter 3, Utah Occupational Disease Act, as a self-insured employer if the employer is approved by the division as a self-insured employer in accordance with this section.

(b) If an employer's application to directly pay compensation as a self-insured employer is approved by the division, the application of the employer is acceptance by the employer of the conditions, liabilities, and responsibilities imposed by this chapter and Chapter 3, Utah Occupational Disease Act, including the liability imposed pursuant to Subsection 34A-2-704(14).

(c) The division's denial under this Subsection (2) of an employer's application to directly pay compensation as a self-insured employer becomes a final order of the commission 30 calendar days from the date of the denial unless within that 30 days the employer files an application for a hearing in accordance with Part 8, Adjudication.

(3) To qualify as a self-insured employer, the employer shall:

(a) submit a written application requesting to directly pay compensation as a self-insured employer;

(b) annually provide the division proof of the employer's ability to directly pay compensation in the amount, manner, and time provided by this chapter and Chapter 3, Utah Occupational Disease Act; and

(c) if requested by the division, deposit acceptable security in the amounts determined by the division to be sufficient to secure the employer's liabilities under this chapter and Chapter 3, Utah Occupational Disease Act.

(4) (a) Acceptable security deposited by a self-insured employer in accordance with Subsection (3)(c) shall be:

(i) deposited on behalf of the division by the employer with the state treasurer; and

(ii) withdrawn only upon written order of the division.

(b) The self-insured employer has no right, title, interest in, or control over acceptable security that is deposited in accordance with this section.

(c) If the division determines that the amount of acceptable security deposited in accordance



with this section is in excess of that needed to secure payment of the self-insured employer's liability under this chapter and Chapter 3, Utah Occupational Disease Act, the division shall return the amount that is determined to be excess to the self-insured employer.

(5) (a) The division may at any time require a self-insured employer to:

(i) increase or decrease the amount of acceptable security required to be deposited under Subsection (3)(c); or

(ii) modify the type of acceptable security to be deposited under Subsection (3)(c).

(b) (i) If the division requires a self-insured employer to take an action described in Subsection (5)(a), a perfected security interest is created in favor of the division in the assets of the self-insured employer to the extent necessary to pay any amount owed by the self-insured employer under this chapter and Chapter 3, Utah Occupational Disease Act, that cannot be paid by acceptable security deposited in accordance with this section.

(ii) The perfected security interest created in Subsection (5)(b)(i) ends when the self-insured employer complies with the division's request under Subsection (5)(a) to the satisfaction of the division.

(6) (a) If an employer is approved under Subsection (2) to directly pay compensation as a self-insured employer, the division may revoke its approval.

(b) The division's revocation of its approval under Subsection (6)(a) becomes a final order of the commission 30 calendar days from the date of the revocation unless within that 30 days the employer files an application for a hearing in accordance with Part 8, Adjudication.

(7) If the division finds that a self-insured employer has failed to pay compensation it was liable to pay under this chapter or Chapter 3, Utah Occupational Disease Act, the division may use the acceptable security deposited and any interest earned on the acceptable security to pay:

(a) the self-insured employer's liability under this chapter and Chapter 3, Utah Occupational Disease Act; and

(b) any costs, including legal fees, associated with the administration of the compensation incurred by:

(i) the division;

- (ii) a surety;
- (iii) an adjusting agency; or
- (iv) the Uninsured Employers' Fund.

(8) (a) If the division determines that the acceptable security deposited under Subsection (3)(c) should be available for payment of the self-insured employer's liabilities under Subsection (7), the division shall:

- (i) determine the method of claims administration, which may include administration by:
  - (A) a surety;
  - (B) an adjusting agency;
  - (C) the Uninsured Employers' Fund; or
  - (D) any combination of Subsections (8)(a)(i)(A) through (C); and
- (ii) audit the self-insured employer's liabilities under this chapter and Chapter 3, Utah

Occupational Disease Act.

(b) The following shall cooperate in the division's audit under Subsection (8)(a)(ii) and provide any relevant information in its possession:

- (i) the self-insured employer;
- (ii) any excess insurer;
- (iii) any adjusting agency;
- (iv) a surety; and

(v) an employee of a self-insured employer if the employee makes a claim for compensation under this chapter or Chapter 3, Utah Occupational Disease Act.

(9) (a) Payment by a surety is a full release of the surety's liability under the bond to the extent of that payment, and entitles the surety to full reimbursement by the principal or the principal's estate including reimbursement of:

- (i) necessary attorney's fees; and
- (ii) other costs and expenses.

(b) A payment, settlement, or administration of benefits made in good faith pursuant to this section by a surety, an adjusting agency, the Uninsured Employers' Fund, or this division is valid and

binding as between:

(i) (A) the surety;

(B) adjusting agency;

(C) the Uninsured Employers' Fund; or

(D) the division; and

(ii) the self-insured employer.

(10) (a) The division shall resolve any dispute concerning:

(i) the depositing, renewal, termination, exoneration, or return of all or any portion of acceptable security deposited under this section;

(ii) any liability arising out of the depositing or failure to deposit acceptable security;

(iii) the adequacy of the acceptable security; or

(iv) the reasonableness of administrative costs under Subsection (7)(b), including legal fees.

(b) The division's decision under Subsection (10)(a) becomes a final order of the commission 30 calendar days of the date of the decision, unless within that 30 days the employer files an application for hearing in accordance with Part 8, Adjudication.

Section 6. Section **34A-2-401** is amended to read:

**34A-2-401. Compensation for industrial accidents to be paid.**

(1) [Each] An employee described in Section 34A-2-104 who is injured and the dependents of each such employee who is killed, by accident arising out of and in the course of the employee's employment, wherever such injury occurred, if the accident was not purposely self-inflicted, shall be paid:

(a) compensation for loss sustained on account of the injury or death[ ~~and such~~];

(b) the amount provided in this chapter for:

(i) medical, nurse, and hospital services [ ~~and~~];

(ii) medicines[~~;~~]; and[~~;~~]

(iii) in case of death, [ ~~such~~] the amount of funeral expenses[~~, as provided in this chapter~~].

(2) The responsibility for compensation and payment of medical, nursing, and hospital services and medicines, and funeral expenses provided under this chapter shall be:

(a) on the employer and [its] the employer's insurance carrier; and

(b) not on the employee.

(3) Payment of benefits provided by this chapter or Chapter 3, Utah Occupational Disease Act, shall commence within 30 calendar days after any final award by the commission.