

1                                   **WORKERS' COMPENSATION COVERAGE**

2   **AMENDMENTS**

3   1999 GENERAL SESSION

4   STATE OF UTAH

5   **Sponsor: Gerry A. Adair**

6 AN ACT RELATING TO LABOR; AMENDING WORKERS' COMPENSATION COVERAGE  
7 REQUIREMENTS; AMENDING PROVISIONS RELATED TO EMPLOYERS WHO ARE  
8 SELF-INSURED FOR PURPOSES OF WORKERS' COMPENSATION; AND MAKING  
9 TECHNICAL CORRECTIONS.

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

11 AMENDS:

12           **31A-15-103**, as last amended by Chapter 375, Laws of Utah 1997

13           **34A-2-103 (Effective 07/01/99)**, as last amended by Chapter 277, Laws of Utah 1998

14           **34A-2-103 (Superseded 07/01/99)**, as last amended by Chapter 277, Laws of Utah 1998

15           **34A-2-201**, as renumbered and amended by Chapter 375, Laws of Utah 1997

16           **34A-2-401**, as renumbered and amended by Chapter 375, Laws of Utah 1997

17 ENACTS:

18           **34A-2-201.5**, Utah Code Annotated 1953

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

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

21           **31A-15-103. Surplus lines insurance -- Unauthorized insurers.**

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

26           (2) For contracts made under this section, the insurer may, in this state, inspect the risks  
27 to be insured, collect premiums and adjust losses, and do all other acts reasonably incidental to the

28 contract, through employees or through independent contractors.

29 (3) (a) Subsections (1) and (2) do not permit any person to solicit business in this state on  
30 behalf of an insurer that has no certificate of authority.

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

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

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

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

39 (4) For contracts made under this section, nonadmitted insurers are subject to Sections  
40 31A-23-302 and 31A-26-303 and the rules adopted under those sections.

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

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

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

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

54 (i) the insurer has willfully violated this section, Section 31A-4-102, 31A-23-302, or  
55 31A-26-303, or any rule adopted under any of these sections;

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

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

59 domicile.

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

68 (i) has delivered a request to the commissioner to be on the list;

69 (ii) has established satisfactory evidence of good reputation and financial integrity;

70 (iii) has delivered to the commissioner a copy of its current annual statement certified by  
71 the insurer and continues each subsequent year to file its annual statements with the commissioner  
72 within 60 days of its filing with the insurance regulatory authority where it is domiciled; and

73 (iv) (A) is in substantial compliance with the solvency standards in Chapter 17, Part [6]  
74 VI, Risk-Based Capital, or maintains capital and surplus of at least \$5,000,000, whichever is  
75 greater, and maintains in the United States an irrevocable trust fund in either a national bank or a  
76 member of the Federal Reserve System, or maintains a deposit meeting the statutory deposit  
77 requirements for insurers in the state where it is made, which trust fund or deposit:

78 (I) shall be in an amount not less than \$1,500,000 for the protection of all of the insurer's  
79 policyholders in the United States;

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

82 (III) may include as part of the trust arrangement a letter of credit that qualifies as  
83 acceptable security under Subsection 31A-17-404(3)(c)(iii); or

84 (B) in the case of any "Lloyd's" or other similar incorporated or unincorporated group of  
85 alien individual insurers, maintains a trust fund that:

86 (I) shall be in an amount not less than \$50,000,000 as security to its full amount for all  
87 policyholders and creditors in the United States of each member of the group;

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

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

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

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

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

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

120 (11) (a) Each surplus lines transaction in this state shall be examined to determine whether

121 it complies with:

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

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

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

138 (d) The person conducting the examination described in Subsection (11)(a) shall collect  
139 a stamping fee of an amount not to exceed 1% of the policy premium payable in connection with  
140 the transaction. Stamping fees collected by the commissioner shall be deposited in the General  
141 Fund. The commissioner shall establish this fee by rule. Stamping fees collected by an advisory  
142 organization are the property of the advisory organization to be used in paying the expenses of the  
143 advisory organization. Liability for paying the stamping fee is as required under Subsection  
144 31A-3-303(1) for taxes imposed under Section 31A-3-301. The commissioner shall adopt a rule  
145 dealing with the payment of stamping fees. If stamping fees are not paid when due, the  
146 commissioner or advisory organization may impose a penalty of 25% of the fee due, plus 1-1/2%  
147 per month from the time of default until full payment of the fee. Fees relative to policies covering  
148 risks located partially in this state shall be allocated in the same manner as under Subsection  
149 31A-3-303(4).

150 (e) The commissioner, representatives of the department, advisory organizations,  
151 representatives and members of advisory organizations, authorized insurers, and surplus lines

152 insurers are not liable for damages on account of statements, comments, or recommendations made  
153 in good faith in connection with their duties under this subsection or under Section 31A-15-111.

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

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

157 **34A-2-103 (Effective 07/01/99). Employers enumerated and defined -- Regularly**  
158 **employed -- Statutory employers.**

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

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

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

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

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

173 (ii) not subject to the routine rule or control of the employer;

174 (iii) engaged only in the performance of a definite job or piece of work; and

175 (iv) subordinate to the employer only in effecting a result in accordance with the  
176 employer's design.

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

180 (3) (a) The client company in an employee leasing arrangement under Title 58, Chapter  
181 59, Employee Leasing Company Licensing Act, is considered the employer of leased employees  
182 and shall secure workers' compensation benefits for them by complying with Subsection

183 34A-2-201(1)[(a)] or [(b)] (2) and commission rules.

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

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

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

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

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

196 (i) (A) "agricultural employer" means a person who employs agricultural labor as defined  
197 in Subsections 35A-4-206(1) and (2) and does not include employment as provided in Subsection  
198 35A-4-206(3); and

199 (B) notwithstanding Subsection (5)(a)(i)(A), only for purposes of determining who is a  
200 member of the employer's immediate family under Subsection (5)(a)(ii), if the agricultural  
201 employer is a corporation, partnership, or other business entity, "agricultural employer" means an  
202 officer, director, or partner of the business entity;

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

204 (A) an agricultural employer's:

205 (I) spouse;

206 (II) grandparent;

207 (III) parent;

208 (IV) sibling;

209 (V) child;

210 (VI) grandchild;

211 (VII) nephew; or

212 (VIII) niece;

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

214 (C) an individual who is similar to those listed in Subsections (4)(a)(ii)(A) or (B) as  
215 defined by rules of the commission; and

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

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

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

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

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

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

229 (I) \$300,000 liability insurance, as defined in Section 31A-1-301; and

230 (II) \$5,000 for medical, hospital, and surgical benefits as described in Subsection  
231 31A-1-301(50)(a)(ii).

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

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

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

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

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

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

244 (b) the rules of the commission.

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

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

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

257 (i) a valid certification of the partnership's or sole proprietorship's compliance with Section  
258 34A-2-201 indicating that the partnership or sole proprietorship secured the payment of workers'  
259 compensation benefits pursuant to Section 34A-2-201; or

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

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

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

268 (d) A director or officer of a corporation may not be considered an employee under  
269 Subsection (7)(a) if the director or officer is excluded from coverage under Subsection  
270 34A-2-104(4).

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

274 (i) a valid certification of the contractor's or subcontractor's compliance with Section  
275 34A-2-201; or

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

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

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

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

286 **34A-2-103 (Superseded 07/01/99). Employers enumerated and defined -- Regularly**  
287 **employed -- Statutory employers.**

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

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

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

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

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

307 (3) (a) The client company in an employee leasing arrangement under Title 58, Chapter  
308 59, Employee Leasing Company Licensing Act, is considered the employer of leased employees  
309 and shall secure workers' compensation benefits for them by complying with Subsection  
310 34A-2-201(1)[~~(a)~~] or [~~(b)~~] (2) and commission rules.

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

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

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

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

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

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

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

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

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

333 (6) (a) If any person who is an employer procures any work to be done wholly or in part  
334 for the employer by a contractor over whose work the employer retains supervision or control, and  
335 this work is a part or process in the trade or business of the employer, the contractor, all persons  
336 employed by the contractor, all subcontractors under the contractor, and all persons employed by  
337 any of these subcontractors, are considered employees of the original employer for the purposes

338 of this chapter and Chapter 3, Utah Occupational Disease Act.

339 (b) Any person who is engaged in constructing, improving, repairing, or remodelling a  
340 residence that the person owns or is in the process of acquiring as the person's personal residence  
341 may not be considered an employee or employer solely by operation of Subsection (6)(a).

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

345 (i) a valid certification of the partnership's or sole proprietorship's compliance with Section  
346 34A-2-201 indicating that the partnership or sole proprietorship secured the payment of workers'  
347 compensation benefits pursuant to Section 34A-2-201; or

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

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

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

356 (d) A director or officer of a corporation may not be considered an employee under  
357 Subsection (6)(a) if the director or officer is excluded from coverage under Subsection  
358 34A-2-104(4).

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

362 (i) a valid certification of the contractor's or subcontractor's compliance with Section  
363 34A-2-201; or

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

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

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

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

374 **34A-2-201. Employers to secure workers' compensation benefits for employees --**  
375 **Methods -- Self-insured status.**

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

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

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

385 [~~(c) by furnishing annually to the division satisfactory proof of financial ability to]~~

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

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

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

394 [(ii) at any time change or modify the requirement to deposit acceptable security,  
395 indemnity, or bond, if in its judgment this action is necessary or desirable to secure or assure a  
396 strict compliance with all the provisions of law relating to the payment of compensation and the  
397 furnishing of medical, nurse, and hospital services, medicines, and burial expenses to injured  
398 employees and to the dependents of killed employees.]

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

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

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

404 **34A-2-201.5. Self-insured employer -- Acceptable security -- Procedures.**

405 (1) As used in this section:

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

407 (i) cash;

408 (ii) a surety bond issued:

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

410 (B) in a form approved by the division;

411 (iii) an irrevocable letter of credit issued:

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

413 (B) in a form approved by the division;

414 (iv) a United States Treasury Bill;

415 (v) a deposit in a depository institution that:

416 (A) has an office located in Utah; and

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

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

419 (A) has an office located in Utah; and

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

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

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

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

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

429 (b) If an employer's application to directly pay compensation as a self-insured employer  
430 is approved by the division, the application of the employer is acceptance by the employer of the

431 conditions, liabilities, and responsibilities imposed by this chapter and Chapter 3, Utah  
432 Occupational Disease Act, including the liability imposed pursuant to Subsection 34A-2-704(14).  
433 (c) The division's denial under this Subsection (2) of an employer's application to directly  
434 pay compensation as a self-insured employer becomes a final order of the commission 30 calendar  
435 days from the date of the denial unless with that 30-days the employer files an application for a  
436 hearing in accordance with Part 8, Adjudication.  
437 (3) To qualify as a self-insured employer, the employer shall:  
438 (a) submit a written application requesting to directly pay compensation as a self-insured  
439 employer;  
440 (b) annually provide the division proof of the employer's ability to directly pay  
441 compensation in the amount, manner, and time provided by this chapter and Chapter 3, Utah  
442 Occupational Disease Act; and  
443 (c) if requested by the division, deposit acceptable security in the amounts determined by  
444 the division to be sufficient to secure the employer's liabilities under this chapter and Chapter 3,  
445 Utah Occupational Disease Act.  
446 (4) (a) Acceptable security deposited by a self-insured employer in accordance with  
447 Subsection (3)(c) shall be:  
448 (i) deposited on behalf of the division by the employer with the state treasurer; and  
449 (ii) withdrawn only upon written order of the division.  
450 (b) The self-insured employer has no right, title, interest in, or control over acceptable  
451 security that is deposited in accordance with this section.  
452 (c) If the division determines that the amount of acceptable security deposited in  
453 accordance with this section is in excess of that needed to secure payment of the self-insured  
454 employer's liability under this chapter and Chapter 3, Utah Occupational Disease Act, the division  
455 shall return the amount that is determined to be excess to the self-insured employer.  
456 (5) (a) The division may at any time require a self-insured employer to:  
457 (i) increase or decrease the amount of acceptable security required to be deposited under  
458 Subsection (3)(c); or  
459 (ii) modify the type of acceptable security to be deposited under Subsection (3)(c).  
460 (b) (i) If the division requires a self-insured employer to take an action described in  
461 Subsection (5)(a), a perfected security interest is created in favor of the division in the assets of the

462 self-insured employer to the extent necessary to pay any amount owed by the self-insured employer  
463 under this chapter and Chapter 3, Utah Occupational Disease Act, that cannot be paid by  
464 acceptable security deposited in accordance with this section.

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

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

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

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

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

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

480 (i) the division;

481 (ii) a surety;

482 (iii) an adjusting agency; or

483 (iv) the Uninsured Employers' Fund.

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

487 (i) determine the method of claims administration, which may include administration by:

488 (A) a surety;

489 (B) an adjusting agency;

490 (C) the Uninsured Employers' Fund; or

491 (D) any combination of Subsections (8)(a)(i)(A) through (C); and

492 (ii) audit the self-insured employer's liabilities under this chapter and Chapter 3, Utah

493 Occupational Disease Act.

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

496 (i) the self-insured employer;

497 (ii) any excess insurer;

498 (iii) any adjusting agency;

499 (iv) a surety; and

500 (v) an employee of a self-insured employer if the employee makes a claim for

501 compensation under this chapter or Chapter 3, Utah Occupational Disease Act.

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

505 (i) necessary attorney's fees; and

506 (ii) other costs and expenses.

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

510 (i) (A) the surety;

511 (B) adjusting agency;

512 (C) the Uninsured Employers' Fund; or

513 (D) the division; and

514 (ii) the self-insured employer.

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

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

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

519 (iii) the adequacy of the acceptable security; or

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

522 (b) The division's decision under Subsection (10)(a) becomes a final order of the  
523 commission 30 calendar days of the date of the decision, unless with that 30-days the employer

524 files an application for hearing in accordance with Part 8, Adjudication.

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

526 **34A-2-401. Compensation for industrial accidents to be paid.**

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

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

532 (b) the amount provided in this chapter for:

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

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

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

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

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

539 (b) not on the employee.

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

**Legislative Review Note**  
**as of 1-25-99 10:18 AM**

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

**Office of Legislative Research and General Counsel**