

30 34A-2-203, as last amended by Chapter 222, Laws of Utah 2000

31 63A-4-101, as last amended by Chapter 135, Laws of Utah 1997



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

34 Section 1. Section 31A-33-106 is amended to read:

35 **31A-33-106. Board of directors -- Status of the fund in relationship to the state.**

36 (1) There is created a board of directors of the Workers' Compensation Fund.

37 (2) The board shall consist of seven directors.

38 (3) ~~One~~ Subject to Subsection (8), one director:

39 (a) (i) shall be the executive director of the Department of Administrative Services or
40 the executive director's designee; and

41 ~~(b)~~ (ii) acts as the representative of the state as a policyholder of the Workers'
42 Compensation Fund~~[-]; or~~

43 (b) is a public director appointed in accordance with Subsection (8)(b).

44 (4) One director shall be the chief executive officer of the fund.

45 (5) (a) In accordance with a plan that meets the requirements of this section, the
46 governor, with the consent of the Senate, shall appoint five public directors as follows:

47 (i) three directors who are owners, officers, or employees of policyholders other than
48 the state, each of whom is an owner, officer, or employee of a policyholder that has been
49 insured by the Workers' Compensation Fund for at least one year before the appointment of the
50 director representing the policyholder; and

51 (ii) two directors from the public in general.

52 (b) The plan described in Subsection (5)(a) shall comply with Section 31A-5-409 to the
53 extent that Section 31A-5-409 does not conflict with this section.

54 (6) No two directors may represent or be employed by the same policyholder.

55 (7) At least four directors appointed by the governor shall have had previous
56 experience in:

57 (a) the actuarial profession;

- 58 (b) accounting;
- 59 (c) investments;
- 60 (d) risk management;
- 61 (e) occupational safety;
- 62 (f) casualty insurance; or
- 63 (g) the legal profession.

64 (8) (a) Any director who represents a policyholder that fails to maintain workers'
65 compensation insurance through the Workers' Compensation Fund shall immediately resign
66 from the board, including the executive director of the Department of Administrative Services
67 or the executive director's designee if the state is no longer insured by the Workers'
68 Compensation Fund pursuant to Section 34A-2-203.

69 (b) (i) If the state is no longer insured by the Workers' Compensation Fund pursuant to
70 Section 34A-2-203, the governor with the consent of the Senate, shall appoint a public director
71 to replace the executive director of the Department of Administrative Services or the executive
72 director's designee.

73 (ii) The public director appointed under this Subsection (8)(b) shall:

74 (A) be an owner, officer, or employee of a policyholder that has been insured by the
75 Workers' Compensation Fund for at least one year before the appointment of the director
76 representing the policyholder;

77 (B) have previous experience described in Subsection (7); or

78 (C) be the director of the Governor's Office of Economic Development.

79 (c) Once the executive director of the Department of Administrative Services or the
80 executive director's designee is not a member of the board under Subsection (3), the state shall
81 have a member on the board to represent the state as a policyholder only if the member is
82 appointed in accordance with Subsection (5) or (8)(b).

83 (9) A person may not be a director if that person:

84 (a) has any interest as a stockholder, employee, attorney, or contractor of a competing
85 insurance carrier providing workers' compensation insurance in Utah;

86 (b) fails to meet or comply with the conflict of interest policies established by the
87 board; or

88 (c) is not bondable.

89 (10) After notice and a hearing, the governor may remove any director for cause which
90 includes:

91 (a) neglect of duty; or

92 (b) malfeasance.

93 (11) (a) Except as required by Subsection (11)(b), the term of office of the directors
94 appointed by the governor shall be four years, beginning July 1 of the year of appointment.

95 (b) Notwithstanding the requirements of Subsection (11)(a), the governor shall, at the
96 time of appointment or reappointment, adjust the length of terms to ensure that the terms of
97 directors are staggered so that approximately half of the board is appointed every two years.

98 (12) Each director shall hold office until the director's successor is appointed and
99 qualified.

100 (13) When a vacancy occurs in the membership of the board for any reason, the
101 replacement shall be appointed for the unexpired term.

102 (14) The board shall annually elect a chair and other officers as needed from its
103 membership.

104 (15) (a) The board shall meet at least quarterly at a time and place designated by the
105 chair.

106 (b) The chair:

107 (i) may call board meetings more frequently than quarterly; and

108 (ii) shall call additional board meetings if requested to do so by a majority of the board.

109 (16) Four directors are a quorum for the purpose of transacting all business of the
110 board.

111 (17) Each decision of the board requires the affirmative vote of at least four directors
112 for approval.

113 (18) (a) Directors shall receive no compensation or benefits for their services, but may

114 receive per diem and expenses incurred in the performance of the director's official duties at the
115 rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

116 (b) Directors may decline to receive per diem and expenses for their service.

117 (c) The fund shall pay the per diem allowance and expenses from the Injury Fund upon
118 vouchers drawn in the same manner as the Workers' Compensation Fund pays its normal
119 operating expenses.

120 (d) ~~[The executive director of the Department of Administrative Services, or the~~
121 ~~executive director's designee, and the chief executive officer of the Workers' Compensation~~
122 ~~Fund]~~ The following shall serve on the board without a per diem allowance[-]:

123 (i) the executive director of the Department of Administrative Services, or the
124 executive director's designee;

125 (ii) the chief executive officer of the Workers' Compensation Fund; and

126 (iii) the director of the Governor's Office of Economic Development if appointed under
127 Subsection (8).

128 (19) The requirement that the governor, with the consent of the Senate, appoint the
129 directors of the Workers' Compensation Fund specified in Subsection (5) or (8), does not:

130 (a) remove from the board of directors the managerial, financial, or operational control
131 of the Workers' Compensation Fund;

132 (b) give to the state or the governor managerial, financial, or operational control of the
133 Workers' Compensation Fund;

134 (c) consistent with Section 31A-33-105, cause the state to be liable for any:

135 (i) obligation of the Workers' Compensation Fund; or

136 (ii) expense, liability, or debt described in Section 31A-33-105;

137 (d) alter the legal status of the Workers' Compensation Fund as:

138 (i) a nonprofit, self-supporting, quasi-public corporation; and

139 (ii) an insurer:

140 (A) regulated under this title;

141 (B) that is structured to operate in perpetuity; and

142 (C) domiciled in the state; or
143 (e) alter the requirement that the Workers' Compensation Fund provide workers'
144 compensation:

- 145 (i) for the purposes set forth in Section 31A-33-102;
- 146 (ii) consistent with Section 34A-2-201; and
- 147 (iii) as provided in Section 31A-22-1001.

148 Section 2. Section **34A-2-202** is amended to read:

149 **34A-2-202. Assessment on self-insured employers including the state, counties,**
150 **cities, towns, or school districts paying compensation direct.**

151 (1) (a) (i) A self-insured employer, including a county, city, town, or school district,
152 [~~who by authority of the division under Sections 34A-2-201 and 34A-2-201.5 is authorized to~~
153 ~~pay compensation direct~~] shall pay annually, on or before March 31, an assessment in
154 accordance with this section and rules made by the commission under this section.

155 (ii) For purposes of this section, "self-insured employer" is as defined in Section
156 34A-2-201.5, except it includes the state if the state self-insures under Section 34A-2-203.

157 (b) The assessment required by Subsection (1)(a) is:

- 158 (i) to be collected by the State Tax Commission;
- 159 (ii) paid by the State Tax Commission into the state treasury as provided in Subsection
160 59-9-101(2); and
- 161 (iii) subject to the offset provided in Section 34A-2-202.5.

162 (c) The assessment under Subsection (1)(a) shall be based on a total calculated
163 premium multiplied by the premium assessment rate established pursuant to Subsection
164 59-9-101(2).

165 (d) The total calculated premium, for purposes of calculating the assessment under
166 Subsection (1)(a), shall be calculated by:

- 167 (i) multiplying the total of the standard premium for each class code calculated in
168 Subsection (1)(e) by the self-insured employer's experience modification factor; and
- 169 (ii) multiplying the total under Subsection (1)(d)(i) by a safety factor determined under

170 Subsection (1)(g).

171 (e) A standard premium shall be calculated by:

172 (i) multiplying the prospective loss cost for the year being considered, as filed with the
173 insurance department pursuant to Section 31A-19a-406, for each applicable class code by 1.10
174 to determine the manual rate for each class code; and

175 (ii) multiplying the manual rate for each class code under Subsection (1)(e)(i) by each
176 \$100 of the self-insured employer's covered payroll for each class code.

177 (f) (i) Each self-insured employer paying compensation direct shall annually obtain the
178 experience modification factor required in Subsection (1)(d)(i) by using:

179 (A) the rate service organization designated by the insurance commissioner in Section
180 31A-19a-404; or

181 (B) for a self-insured employer that is a public agency insurance mutual, an actuary
182 approved by the commission.

183 (ii) If a self-insured employer's experience modification factor under Subsection
184 (1)(f)(i) is less than 0.50, the self-insured employer shall use an experience modification factor
185 of 0.50 in determining the total calculated premium.

186 (g) To provide incentive for improved safety, the safety factor required in Subsection
187 (1)(d)(ii) shall be determined based on the self-insured employer's experience modification
188 factor as follows:

189	EXPERIENCE	
190	MODIFICATION FACTOR	SAFETY FACTOR
191	Less than or equal to 0.90	0.56
192	Greater than 0.90 but less than or equal to 1.00	0.78
193	Greater than 1.00 but less than or equal to 1.10	1.00
194	Greater than 1.10 but less than or equal to 1.20	1.22
195	Greater than 1.20	1.44

196 (h) (i) A premium or premium assessment modification other than a premium or
197 premium assessment modification under this section may not be allowed.

198 (ii) If a self-insured employer paying compensation direct fails to obtain an experience
199 modification factor as required in Subsection (1)(f)(i) within the reasonable time period
200 established by rule by the State Tax Commission, the State Tax Commission shall use an
201 experience modification factor of 2.00 and a safety factor of 2.00 to calculate the total
202 calculated premium for purposes of determining the assessment.

203 (iii) Prior to calculating the total calculated premium under Subsection (1)(h)(ii), the
204 State Tax Commission shall provide the self-insured employer with written notice that failure
205 to obtain an experience modification factor within a reasonable time period, as established by
206 rule by the State Tax Commission:

207 (A) shall result in the State Tax Commission using an experience modification factor
208 of 2.00 and a safety factor of 2.00 in calculating the total calculated premium for purposes of
209 determining the assessment; and

210 (B) may result in the division revoking the self-insured employer's right to pay
211 compensation direct.

212 (i) The division may immediately revoke a self-insured employer's certificate issued
213 under Sections 34A-2-201 and 34A-2-201.5 that permits the self-insured employer to pay
214 compensation direct if the State Tax Commission assigns an experience modification factor
215 and a safety factor under Subsection (1)(h) because the self-insured employer failed to obtain
216 an experience modification factor.

217 (2) Notwithstanding the annual payment requirement in Subsection (1)(a), a
218 self-insured employer whose total assessment obligation under Subsection (1)(a) for the
219 preceding year was \$10,000 or more shall pay the assessment in quarterly installments in the
220 same manner provided in Section 59-9-104 and subject to the same penalty provided in Section
221 59-9-104 for not paying or underpaying an installment.

222 (3) (a) The State Tax Commission shall have access to all the records of the division
223 for the purpose of auditing and collecting any amounts described in this section.

224 (b) Time periods for the State Tax Commission to allow a refund or make an
225 assessment shall be determined in accordance with Section 59-9-106.

226 (4) (a) A review of appropriate use of job class assignment and calculation
227 methodology may be conducted as directed by the division at any reasonable time as a
228 condition of the self-insured employer's certification of paying compensation direct.

229 (b) The State Tax Commission shall make any records necessary for the review
230 available to the commission.

231 (c) The commission shall make the results of any review available to the State Tax
232 Commission.

233 Section 3. Section **34A-2-203** is amended to read:

234 **34A-2-203. Payment of premiums for workers' compensation.**

235 [Each] (1) Until June 30, 2007, a department, commission, board, or other agency of
236 the state shall pay the insurance premium on its employees direct to the Workers'
237 Compensation Fund.

238 (2) Beginning July 1, 2007, the state shall secure the payment of workers'
239 compensation benefits for its employees:

240 (a) by:

241 (i) insuring, and keeping insured, the payment of this compensation with the Workers'
242 Compensation Fund;

243 (ii) insuring, and keeping insured, the payment of this compensation with any stock
244 corporation or mutual association authorized to transact the business of workers' compensation
245 insurance in this state; or

246 (iii) paying direct compensation as a self-insured employer in the amount, in the
247 manner, and when due as provided for in this chapter or Chapter 3, Utah Occupational Disease
248 Act;

249 (b) in accordance with Title 63A, Chapter 4, Risk Management; and

250 (c) subject to Subsection (3).

251 (3) (a) If the state determines to secure the payment of workers' compensation benefits
252 for its employees by paying direct compensation as a self-insured employer in the amount, in
253 the manner, and due as provided for in this chapter or Chapter 3, Utah Occupational Disease

254 Act, the state is:

255 (i) exempt from Section 34A-2-202.5 and Subsection 34A-2-704(14); and

256 (ii) required to pay a premium assessment as provided in Section 34A-2-202.

257 (b) If the state chooses to pay workers' compensation benefits for its employees
258 through insuring under Subsection (2)(a)(i) or (ii), the state shall obtain that insurance in
259 accordance with Title 63, Chapter 56, Utah Procurement Code.

260 Section 4. Section **63A-4-101** is amended to read:

261 **63A-4-101. Risk manager -- Appointment -- Duties.**

262 (1) The executive director shall appoint a risk manager, who shall be qualified by
263 education and experience in the management of general property and casualty insurance.

264 (2) The risk manager shall:

265 (a) acquire and administer the following purchased by the state:

266 (i) all property, casualty insurance[-]; and

267 (ii) subject to Section 34A-2-203, workers' compensation insurance [~~purchased by the~~
268 state];

269 (b) recommend that the executive director make rules:

270 (i) prescribing reasonable and objective underwriting and risk control standards for
271 state agencies;

272 (ii) prescribing the risks to be covered by the Risk Management Fund and the extent to
273 which these risks will be covered;

274 (iii) prescribing the properties, risks, deductibles, and amount limits eligible for
275 payment out of the fund;

276 (iv) prescribing procedures for making claims and proof of loss; and

277 (v) establishing procedures for the resolution of disputes relating to coverage or claims,
278 which may include binding arbitration;

279 (c) implement a risk management and loss prevention program for state agencies for
280 the purpose of reducing risks, accidents, and losses to assist state officers and employees in
281 fulfilling their responsibilities for risk control and safety;

282 (d) coordinate and cooperate with any state agency having responsibility to manage and
283 protect state properties, including:

284 (i) the state fire marshal[;];

285 (ii) the director of the Division of Facilities Construction and Management[;];

286 (iii) the Department of Public Safety[;]; and

287 (iv) institutions of higher education;

288 (e) maintain records necessary to fulfill the requirements of this section;

289 (f) manage the fund in accordance with economically and actuarially sound principles
290 to produce adequate reserves for the payment of contingencies, including unpaid and
291 unreported claims, and may purchase any insurance or reinsurance considered necessary to
292 accomplish this objective; and

293 (g) inform the agency's governing body and the governor when any agency fails or
294 refuses to comply with reasonable risk control recommendations made by the risk manager.

295 (3) Before the effective date of any rule, the risk manager shall provide a copy of the
296 rule to each agency affected by it.