

**WORKERS' COMPENSATION RELATED
AMENDMENTS**

2008 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Mike Dmitrich

House Sponsor: Brad King

LONG TITLE

General Description:

This bill modifies the Workers' Compensation Act to address issues related to benefits.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ imposes penalties if an employer unlawfully, directly pays workers' compensation benefits;
- ▶ addresses benefits paid a dependent; and
- ▶ makes technical amendments.

Monies Appropriated in this Bill:

None

Other Special Clauses:

§→ [None] This bill coordinates with S.B. 108, Offset of Workers' Compensation and Social Security, to make technical changes. ←§

Utah Code Sections Affected:

AMENDS:

- 34A-2-102**, as last amended by Laws of Utah 2000, Chapter 222
- 34A-2-403**, as renumbered and amended by Laws of Utah 1997, Chapter 375
- 34A-2-414**, as renumbered and amended by Laws of Utah 1997, Chapter 375
- 34A-2-415**, as last amended by Laws of Utah 1998, Chapter 13

S.B. 58



28 34A-2-416, as renumbered and amended by Laws of Utah 1997, Chapter 375

29 34A-2-702, as renumbered and amended by Laws of Utah 1997, Chapter 375

30 34A-2-801, as last amended by Laws of Utah 2006, Chapter 295

31 ENACTS:

32 34A-2-201.3, Utah Code Annotated 1953



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

35 Section 1. Section 34A-2-102 is amended to read:

36 **34A-2-102. Definition of terms.**

37 (1) As used in this chapter:

38 [(+)] (a) "Average weekly wages" means the average weekly wages as determined
39 under Section 34A-2-409.

40 [(2)] (b) "Award" means a final order of the commission as to the amount of
41 compensation due:

42 [(a) any] (i) an injured employee; or

43 [(b) the dependents] (ii) a dependent of [~~any~~] a deceased employee.

44 [(3)] (c) "Compensation" means the payments and benefits provided for in this chapter
45 or Chapter 3, Utah Occupational Disease Act.

46 [(4)] (d) (i) "Decision" means [~~the~~] a ruling of:

47 (A) an administrative law judge; or²

48 (B) in accordance with Section 34A-2-801²;

49 (I) the commissioner; or

50 (II) the Appeals Board [~~and may include~~].

51 (ii) "Decision" includes:

52 [(a)] (A) an award or denial of a medical, disability, death, or other related [~~benefits~~]
53 benefit under this chapter or Chapter 3, Utah Occupational Disease Act; or

54 [(b)] (B) another adjudicative ruling in accordance with this chapter or Chapter 3, Utah
55 Occupational Disease Act.

56 [(5)] (e) "Director" means the director of the division, unless the context requires
57 otherwise.

58 [(6)] (f) "Disability" means an administrative determination that may result in an

59 entitlement to compensation as a consequence of becoming medically impaired as to function.
 60 Disability can be total or partial, temporary or permanent, industrial or nonindustrial.

61 ~~[(7)]~~ (g) "Division" means the Division of Industrial Accidents.

62 ~~[(8)]~~ (h) "Impairment" is a purely medical condition reflecting ~~[any]~~ an anatomical or
 63 functional abnormality or loss. Impairment may be either temporary or permanent, industrial
 64 or nonindustrial.

65 ~~[(9)]~~ (i) "Order" means an action of the commission that determines the legal rights,
 66 duties, privileges, immunities, or other interests of one or more specific persons, but not a class
 67 of persons.

68 ~~[(10)]~~ ~~(a)~~ (j) (i) "Personal injury by accident arising out of and in the course of
 69 employment" includes ~~[any]~~ an injury caused by the willful act of a third person directed
 70 against an employee because of the employee's employment.

71 ~~[(b)]~~ (ii) "Personal injury by accident arising out of and in the course of employment"
 72 does not include a disease, except as the disease results from the injury.

73 ~~[(11)]~~ (k) "Safe" and "safety," as applied to ~~[any]~~ employment or a place of
 74 employment, means the freedom from danger to the life or health of employees reasonably
 75 permitted by the nature of the employment.

76 ~~[(12)]~~ (l) "Workers' Compensation Fund" means the nonprofit, quasi-public
 77 corporation created in Title 31A, Chapter 33, Workers' Compensation Fund.

78 (2) As used in this chapter and Chapter 3, Utah Occupational Disease Act:

79 (a) "Brother or sister" includes a half brother or sister.

80 (b) "Child" includes:

81 (i) a posthumous child; or

82 (ii) a child legally adopted prior to an injury.

83 Section 2. Section **34A-2-201.3** is enacted to read:

84 **34A-2-201.3. Direct payments prohibited except by self-insured employer.**

85 (1) An employer who is not a self-insured employer, as defined in Section
 86 34A-2-201.5, may not pay a benefit provided for under this chapter and Chapter 3, Utah
 87 Occupational Disease Act, directly:

88 (a) to an employee; or

89 (b) for the employee.

90 (2) (a) ~~§~~ **[H]** Subject to Title 63, Chapter 46b, Administrative Procedures Act, if ~~←§~~
 90a the division ~~§~~ **[believes]** finds ~~←§~~ that an employer is violating or has violated Subsection
 91 (1), the division shall send written notice to the employer of the requirements of this section
 92 and Section 34A-2-201.

93 (b) The division shall send the notice described in Subsection (2)(a) to the last address
 94 on the records of the commission for the employer.

95 (3) (a) If, after the division mails the notice required by Subsection (2) to an employer,
 96 the employer ~~§~~ **again** ~~←§~~ violates Subsection (1), the division ~~§~~ **[shall]** may ~~←§~~ impose a
 96a penalty against the employer
 97 of ~~§~~ **up to** ~~←§~~ \$1,000 for each violation.

98 (b) If, after the division imposes a penalty under Subsection (3)(a) against the
 99 employer, the employer ~~§~~ **again** ~~←§~~ violates Subsection (1), the division ~~§~~ **[shall]** may ~~←§~~
 99a impose a penalty of up to
 100 \$5,000 for each violation.

101 (4) The division shall deposit a penalty imposed under Subsection (3) into the
 102 Uninsured Employers' Fund created by Section 34A-2-704 to be used for the purposes of that
 103 fund.

104 (5) A penalty under this section is in addition to any other penalty imposed under this
 105 chapter or Chapter 3 against an employer who fails to comply with Section 34A-2-201.

106 (6) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
 107 commission shall adopt rules to implement this section.

108 Section 3. Section **34A-2-403** is amended to read:

109 **34A-2-403. Dependents -- Presumption.**

110 (1) (a) The following persons ~~[shall be]~~ are presumed to be wholly dependent for
 111 support upon a deceased employee:

112 ~~[(a)]~~ (i) a child under 18 years of age, [or over] subject to the conditions of Subsections
 113 (1)(b) and (2) ~~§~~ **[re]** (b) ~~←§~~ ;

114 (ii) a child who is 18 years of age or older:

115 (A) if the child is:

116 (I) physically or mentally incapacitated; and

117 (II) dependent upon the parent ~~[, with whom the child is living at the time of the death~~
 118 of the parent, or who is legally bound for the child's support] who is the deceased employee;

119 and

120 (B) subject to the conditions of Subsections (1)(b) and (2)(b); and

121 ~~[(b)]~~ (iii) for purposes of ~~[payments]~~ a payment to be made under Subsection
 122 34A-2-702(5)~~[(a)]~~ (b)(i), a surviving spouse with whom the deceased employee lived at the
 123 time of the employee's death.

124 (b) Subsections (1)(a)(i) and (ii) require that:

125 (i) the deceased employee be ~~§~~ → [;

126 ~~(A)] ← §~~ the parent of the child; or

127 ~~§~~ → ~~[(B)]~~ (ii)(A) the deceased employee be ← § legally bound to support the child; and

128 ~~§~~ → ~~[(ii)]~~ (B) ← § the child be living with the deceased employee at the time of the death of

128a the

129 employee.

130 (2) (a) In a case not provided for in Subsection (1), the question of dependency, in
 131 whole or in part, shall be determined in accordance with the facts in each particular case
 132 existing at the time of the injury or death of an employee[;];

133 (i) except for purposes of a dependency [reviews] review under Subsection

134 34A-2-702(5)~~[(a)]~~ (b)(iv)[;]; and

135 (ii) subject to the other provisions of this section.

136 (b) A person may not be considered ~~[as]~~ a dependent unless that person is:

137 (i) a member of the family of the deceased employee;

138 (ii) the spouse of the deceased employee;

139 (iii) a lineal descendant or ancestor of the deceased employee; or

140 (iv) a brother or sister of the deceased employee.

141 ~~[(3) As used in this chapter and Chapter 3, Utah Occupational Disease Act:]~~

142 ~~[(a) "brother or sister" includes a half brother or sister; and]~~

143 ~~[(b) "child" includes:]~~

144 ~~[(i) a posthumous child; or]~~

145 ~~[(ii) a child legally adopted prior to the injury.]~~

146 Section 4. Section **34A-2-414** is amended to read:

147 **34A-2-414. Benefits in case of death -- Distribution of award to dependents --**

148 **Death of dependents -- Remarriage of surviving spouse.**

149 (1) (a) ~~[The]~~ Subject to the other provisions of this section, benefits in case of death of
 150 an employee shall be paid to one or more of the dependents of the decedent employee for the
 151 benefit of all the dependents~~[-as may be determined by an administrative law judge].~~

152 (b) ~~[The administrative law judge may apportion the]~~ Unless another apportionment is
153 determined by the commission, benefits in case of death of an employee shall be apportioned
154 among the dependents [in the manner that the administrative law judge considers just and
155 equitable.] by:

156 ~~[(c) Payment to a dependent subsequent in right may be made, if the administrative law~~
157 ~~judge considers it proper, and shall operate to discharge all other claims.]~~

158 (i) dividing the amount of benefits by the number of dependents; and

159 (ii) allotting each dependent an equal share.

160 (c) If one or more of the dependents described in Subsection (1)(a) is partly dependent,
161 the commission may apportion the benefits in a manner different than Subsection (1)(b).

162 (d) In the case of a minor child who is a dependent, a benefit shall be paid to:

163 (i) the minor child's surviving parent; or

164 (ii) if there is no surviving parent, a court appointed custodian or guardian.

165 (2) ~~[The dependents, or persons]~~ A dependent or a person to whom [benefits are] a
166 benefit is paid for a dependent, shall apply the [same] benefit to the use of the [several] one or
167 more beneficiaries [thereof in compliance with the finding and direction of the administrative
168 law judge].

169 (3) In all cases of death ~~[when], if:~~

170 (a) the dependents are a surviving spouse and one or more minor children, it ~~[shall be]~~
171 is sufficient for the surviving spouse to [make application to the Division of Adjudication]
172 apply for benefits on behalf of [that individual] the surviving spouse and the minor children;
173 and

174 (b) all of the dependents are ~~[minors] minor children,~~ ~~[the application shall be made by~~
175 ~~the] a guardian or next friend of the minor dependents shall apply for the benefits.~~

176 (4) ~~[The] (a)~~ An administrative law judge may, for the purpose of protecting the rights
177 and interests of [any minor dependents the administrative law judge considers incapable of
178 doing so, provide a method of safeguarding any payments] a minor dependent who does not
179 have a surviving parent or court appointed custodian or guardian, direct that the benefits be
180 deposited into an interest bearing account for the purpose of receiving a payment due the minor
181 [dependents] dependent.

182 (b) Monies deposited into an interest bearing account under Subsection (4)(a) shall be

183 released to:

184 (i) a court appointed custodian or guardian of the minor dependent when the custodian
 185 or guardian is appointed; or

186 (ii) a minor dependent when the minor dependent becomes 18 years of age.

187 (c) The commission, in accordance with Title 63, Chapter 46a, Utah Administrative
 188 Rulemaking Act, may make rules related to the requirements of an interest bearing account
 189 described in Subsection (4)(a).

190 (5) [~~Should any~~] If a dependent of a deceased employee [die] dies during the period
 191 covered by weekly payments authorized by this section, the right of the deceased dependent to
 192 compensation under this chapter or Chapter 3, Utah Occupational Disease Act, [shall cease]
 193 ceases.

194 (6) (a) If a surviving spouse, who is a dependent of a deceased employee and who is
 195 receiving the benefits of this chapter or Chapter 3, remarries, [~~that individual's~~] the surviving
 196 spouse's sole right after the remarriage to further [~~payments of compensation shall be~~] benefits
 197 is the right to receive in a lump sum the lesser of:

198 (i) the balance of the weekly compensation payments unpaid;

199 (A) from the [~~time of remarriage~~] day on which the surviving spouse remarries; and

200 (B) to the end of [~~six years or~~] 312 weeks from the date of the injury from which death
 201 resulted; or

202 (ii) an amount equal to 52 weeks of compensation at the weekly compensation rate the
 203 surviving spouse [~~was~~] is receiving at the time of [~~such~~] the remarriage.

204 (b) [(†)] If there are other dependents remaining [~~at the time of remarriage~~] as of the
 205 day on which a surviving spouse remarries, benefits payable under this chapter or Chapter 3,
 206 [~~Utah Occupational Disease Act,~~] shall be paid [~~to such person as an administrative law judge~~
 207 ~~may determine,~~] for the use and benefit of the other dependents.

208 [~~(ii) The weekly~~] (7) Weekly benefits to be paid under [~~Subsection (6)(b)(i)] this
 209 section shall be paid at intervals of not less than four weeks.~~

210 Section 5. Section **34A-2-415** is amended to read:

211 **34A-2-415. Increase of benefits to a dependent -- Effect of death, marriage,**
 212 **majority, or termination of dependency of children -- Death, divorce, or remarriage of**
 213 **spouse.**

214 If [~~an award~~] a benefit is made to, or increased because of a dependent spouse or
 215 dependent minor child [~~or children~~], as provided in this chapter or Chapter 3, Utah
 216 Occupational Disease Act, the [~~award~~] benefit or increase in amount of the [~~award~~] benefit
 217 shall cease [~~at~~] on the day on which:

218 [~~(1) the death, marriage, attainment of the age of 18 years, or termination of~~
 219 ~~dependency of the minor child or children; or~~]

220 (1) a minor child:

221 (a) dies;

222 (b) marries;

223 (c) becomes 18 years of age; or

224 (d) is no longer dependent; or

225 (2) [~~upon the death, divorce, or remarriage of~~] the spouse of the employee[~~;~~];

226 (a) dies;

227 (b) divorces the employee; or

228 (c) subject to [~~the provisions in~~] Section 34A-2-414 relative to the remarriage of a
 229 spouse, remarries.

230 Section 6. Section **34A-2-416** is amended to read:

231 **34A-2-416. Additional benefits in special cases.**

232 (1) [~~An administrative law judge may extend indefinitely benefits~~] Benefits received by
 233 a wholly dependent person under this chapter or Chapter 3, Utah Occupational Disease Act,
 234 extend indefinitely if at the termination of the benefits:

235 (a) the wholly dependent person is still in a dependent condition; and

236 (b) under all reasonable circumstances the wholly dependent person should be entitled
 237 to additional benefits.

238 (2) If benefits are extended under Subsection (1):

239 (a) the liability of the employer or insurance carrier involved may not be extended; and

240 (b) the additional benefits allowed shall be paid out of the Employers' Reinsurance
 241 Fund created in Subsection 34A-2-702(1).

242 Section 7. Section **34A-2-702** is amended to read:

243 **34A-2-702. Employers' Reinsurance Fund -- Injury causing death -- Burial**
 244 **expenses -- Payments to dependents.**

245 (1) (a) There is created an Employers' Reinsurance Fund for the purpose of making
 246 [~~payments for~~] a payment for an industrial [accidents] accident or occupational [diseases]
 247 disease occurring on or before June 30, 1994. [~~The payments~~] A payment made under this
 248 section shall be made in accordance with this chapter or Chapter 3, Utah Occupational Disease
 249 Act. The Employers' Reinsurance Fund [~~shall have~~] has no liability for an industrial
 250 [accidents] accident or occupational [diseases] disease occurring on or after July 1, 1994.

251 (b) The Employers' Reinsurance Fund [~~shall succeed~~] succeeds to all monies
 252 previously held in the "Special Fund," the "Combined Injury Fund," or the "Second Injury
 253 Fund."

254 (c) The commissioner shall appoint an administrator of the Employers' Reinsurance
 255 Fund.

256 (d) The state treasurer shall be the custodian of the Employers' Reinsurance Fund[~~, and~~
 257 ~~the~~].

258 (e) The administrator shall make provisions for and direct [~~its~~] a distribution from the
 259 Employers' Reinsurance Fund.

260 [~~(e)~~] (f) Reasonable costs of administering the Employers' Reinsurance Fund or other
 261 fees may be paid from the [~~fund~~] Employers' Reinsurance Fund.

262 (2) The state treasurer shall:

263 (a) receive workers' compensation premium assessments from the State Tax
 264 Commission; and

265 (b) invest the Employers' Reinsurance Fund to ensure maximum investment return for
 266 both long and short term investments in accordance with Section 51-7-12.5.

267 (3) (a) The administrator may employ, retain, or appoint counsel to represent the
 268 Employers' Reinsurance Fund in [~~proceedings~~] a proceeding brought to enforce [~~claims~~] a
 269 claim against or on behalf of the [~~fund~~] Employers' Reinsurance Fund.

270 (b) If requested by the commission, the attorney general shall aid in representation of
 271 the [~~fund~~] Employers' Reinsurance Fund.

272 (4) The liability of the state, its departments, agencies, instrumentalities, elected or
 273 appointed officials, or other duly authorized agents, with respect to payment of [~~any~~]
 274 compensation benefits, expenses, fees, medical expenses, or disbursement properly chargeable
 275 against the Employers' Reinsurance Fund, is limited to the cash or assets in the Employers'

276 Reinsurance Fund, and they are not otherwise, in any way, liable for the operation, debts, or
 277 obligations of the Employers' Reinsurance Fund.

278 (5) (a) If injury causes death within a period of 312 weeks from the date of the
 279 accident, the employer or insurance carrier shall pay:

280 (i) the burial expenses of the deceased as provided in Section 34A-2-418~~[-]~~; and
 281 ~~[further]~~

282 (ii) benefits in the ~~[amounts]~~ amount and to ~~[the persons in accordance with~~
 283 ~~Subsections (5)(a) through (c)]~~ a person provided for in this Subsection (5).

284 ~~[(a)]~~ (b) (i) If there ~~[are]~~ is a wholly dependent ~~[persons]~~ person at the time of the
 285 death, the payment by the employer or its insurance carrier shall be:

286 (A) subject to Subsections (5)(b)(i)(B) and (C), 66-2/3% of the decedent's average
 287 weekly wage at the time of the injury~~[-but]~~;

288 (B) not more than a maximum of 85% of the state average weekly wage at the time of
 289 the injury per week; and

290 (C) (I) not less than a minimum of \$45 per week, plus:

291 (Aa) \$5 for a dependent spouse~~[-plus]~~; and

292 (Bb) \$5 for each dependent minor child under the age of 18 years, up to a maximum of
 293 four such dependent minor children~~[-but]~~; and

294 (II) not exceeding:

295 (Aa) the average weekly wage of the employee at the time of the injury~~[-]~~; and ~~[not~~
 296 ~~exceeding]~~

297 (Bb) 85% of the state average weekly wage at the time of the injury per week.

298 (ii) Compensation shall continue during dependency for the remainder of the period
 299 between the date of the death and the expiration of 312 weeks after the date of the injury.

300 (iii) The payment by the employer or its insurance carrier to a wholly dependent
 301 ~~[persons]~~ person during dependency following the expiration of the first 312-week period
 302 described in Subsection (5)(a)(i) shall be an amount equal to the weekly benefits paid to ~~[those]~~
 303 the wholly dependent ~~[persons]~~ person during that initial 312-week period, reduced by 50% of
 304 any weekly federal Social Security death benefits paid to ~~[those]~~ the wholly dependent
 305 ~~[persons]~~ person.

306 (iv) The issue of dependency ~~[shall be]~~ is subject to review ~~[by an administrative law~~

307 ~~judge~~] at the end of the initial 312-week period and annually after the initial 312-week period.

308 If in ~~[any]~~ a review it is determined that, under the facts and circumstances existing at that

309 time, the applicant is no longer a wholly dependent person, the applicant:

310 (A) may be considered a partly dependent or nondependent person; and

311 (B) shall be paid ~~[such]~~ the benefits as ~~[the administrative law judge may determine]~~

312 may be determined under Subsection (5)~~(b)(iii)~~ (d)(iii).

313 ~~(v)~~ (c)(i) For purposes of ~~[any]~~ a dependency determination, a surviving spouse of a
314 deceased employee ~~[shall be]~~ is conclusively presumed to be wholly dependent for a 312-week
315 period from the date of death of the employee. This presumption ~~[shall]~~ does not apply after
316 the initial 312-week period ~~[and, in]~~.

317 (ii) In determining the ~~[then existing]~~ annual income of the surviving spouse after the
318 initial 312-week period, ~~[the administrative law judge shall exclude]~~ 50% of any federal Social
319 Security death benefits received by that surviving spouse shall be excluded.

320 ~~(b)~~ (d) (i) If there ~~[are]~~ is a partly dependent ~~[persons]~~ person at the time of the death,
321 the payment shall be:

322 (A) subject to Subsection (5)(d)(i)(B) and (C), 66-2/3% of the decedent's average
323 weekly wage at the time of the injury~~[-but]~~;

324 (B) not more than a maximum of 85% of the state average weekly wage at the time of
325 the injury per week; and

326 (C) not less than a minimum of \$45 per week.

327 (ii) Compensation shall continue during dependency for the remainder of the period
328 between the date of death and the expiration of 312 weeks after the date of injury ~~[as the~~
329 ~~administrative law judge in each case may determine]~~. Compensation may not amount to more
330 than a maximum of \$30,000.

331 (iii) The benefits provided for in this Subsection (5)(d) shall be in keeping with the
332 circumstances and conditions of dependency existing at the date of injury, and any amount
333 ~~[awarded by the administrative law judge]~~ paid under this Subsection (5)(d) shall be consistent
334 with the general provisions of this chapter and Chapter 3, Utah Occupational Disease Act.

335 (iv) Benefits to ~~[persons]~~ a person determined to be partly dependent under Subsection
336 (5)~~(a)(v)~~ (c):

337 (A) shall be determined ~~[by the administrative law judge]~~ in keeping with the

338 circumstances and conditions of dependency existing at the time of the dependency review; and

339 (B) may be paid in an amount not exceeding the maximum weekly rate that a partly
 340 dependent ~~[persons]~~ person would receive if wholly dependent.

341 ~~(v)~~ [Payments] A payment under this section shall be paid to ~~[such persons]~~ a person
 342 during ~~[their]~~ the person's dependency by the employer or its insurance carrier.

343 ~~[(c) If]~~ (e) (i) Subject to Subsection (5)(e)(ii), if there ~~[are]~~ is a wholly dependent
 344 ~~[persons]~~ person and also a partly dependent ~~[persons]~~ person at the time of death, ~~[the~~
 345 ~~administrative law judge may apportion]~~ the benefits ~~[as the administrative law judge considers~~
 346 ~~just and equitable; provided, that the]~~ may be apportioned in a manner consistent with Section
 347 34A-2-414.

348 (ii) The total benefits awarded to all parties concerned ~~[do]~~ may not exceed the
 349 maximum provided for by law.

350 (6) The Employers' Reinsurance Fund:

351 (a) shall be:

352 (i) used only in accordance with Subsection (1) for:

353 (A) the purpose of making ~~[payments]~~ a payment for an industrial ~~[accidents]~~ accident
 354 or occupational ~~[diseases]~~ disease occurring on or before June 30, 1994, in accordance with
 355 this section and Section 34A-2-703; and

356 (B) payment of:

357 (I) reasonable costs of administering the Employers' Reinsurance Fund; or

358 (II) fees required to be paid by the Employers' Reinsurance Fund;

359 (ii) expended according to processes that can be verified by audit; and

360 (b) may not be used for:

361 (i) administrative costs unrelated to the ~~[fund]~~ Employers' Reinsurance Fund; or

362 (ii) ~~[any]~~ an activity of the commission other than an activity described in Subsection

363 (6)(a).

364 Section 8. Section **34A-2-801** is amended to read:

365 **34A-2-801. Initiating adjudicative proceedings -- Procedure for review of**
 366 **administrative action.**

367 (1) (a) To contest an action of the employee's employer or its insurance carrier
 368 concerning a compensable industrial accident or occupational disease alleged by the

369 employee[;] or a dependent any of the following shall file an application for hearing with the
370 Division of Adjudication:

371 (i) the employee; [~~or~~]

372 (ii) a representative of the employee, the qualifications of whom are defined in rule by
373 the commission[;]; or

374 (iii) a dependent as described in Section 34A-2-403.

375 (b) To appeal the imposition of a penalty or other administrative act imposed by the
376 division on the employer or its insurance carrier for failure to comply with this chapter or
377 Chapter 3, Utah Occupational Disease Act, any of the following shall file an application for
378 hearing with the Division of Adjudication:

379 (i) the employer;

380 (ii) the insurance carrier; or

381 (iii) a representative of either the employer or the insurance carrier, the qualifications
382 of whom are defined in rule by the commission.

383 (c) A person providing goods or services described in Subsections 34A-2-407(12) and
384 34A-3-108(12) may file an application for hearing in accordance with Section 34A-2-407 or
385 34A-3-108.

386 (d) An attorney may file an application for hearing in accordance with Section
387 34A-1-309.

388 (2) Unless a party in interest appeals the decision of an administrative law judge in
389 accordance with Subsection (3), the decision of an administrative law judge on an application
390 for hearing filed under Subsection (1) is a final order of the commission 30 days after the [~~date~~]
391 day on which the decision is issued.

392 (3) (a) A party in interest may appeal the decision of an administrative law judge by
393 filing a motion for review with the Division of Adjudication within 30 days of the date the
394 decision is issued.

395 (b) Unless a party in interest to the appeal requests under Subsection (3)(c) that the
396 appeal be heard by the Appeals Board, the commissioner shall hear the review.

397 (c) A party in interest may request that an appeal be heard by the Appeals Board by
398 filing the request with the Division of Adjudication:

399 (i) as part of the motion for review; or

400 (ii) if requested by a party in interest who did not file a motion for review, within 20
 401 days of the ~~[date]~~ day on which the motion for review is filed with the Division of
 402 Adjudication.

403 (d) A case appealed to the Appeals Board shall be decided by the majority vote of the
 404 Appeals Board.

405 (4) All records on appeals shall be maintained by the Division of Adjudication. Those
 406 records shall include an appeal docket showing the receipt and disposition of the appeals on
 407 review.

408 (5) Upon appeal, the commissioner or Appeals Board shall make its decision in
 409 accordance with Section 34A-1-303.

410 (6) The commissioner or Appeals Board shall promptly notify the parties to ~~[any~~
 411 ~~proceedings]~~ a proceeding before it of its decision, including its findings and conclusions.

412 (7) The decision of the commissioner or Appeals Board is final unless within 30 days
 413 after the date the decision is issued further appeal is initiated under the provisions of this
 414 section or Title 63, Chapter 46b, Administrative Procedures Act.

415 (8) (a) Within 30 days after the ~~[date]~~ day on which the decision of the commissioner
 416 or Appeals Board is issued, ~~[any]~~ an aggrieved party may secure judicial review by
 417 commencing an action in the court of appeals against the commissioner or Appeals Board for
 418 the review of the decision of the commissioner or Appeals Board.

419 (b) In an action filed under Subsection (8)(a):

420 (i) any other party to the proceeding before the commissioner or Appeals Board shall
 421 be made a party; and

422 (ii) the commission shall be made a party.

423 (c) A party claiming to be aggrieved may seek judicial review only if the party ~~[has~~
 424 ~~exhausted]~~ exhausts the party's remedies before the commission as provided by this section.

425 (d) At the request of the court of appeals, the commission shall certify and file with the
 426 court all documents and papers and a transcript of all testimony taken in the matter together
 427 with the decision of the commissioner or Appeals Board.

427a **§→ Section 9. S.B. 58 coordinating with S.B. 108 -- Technical amendments.**

427b **If this S.B. 58 and S.B. 108, Offset of Workers' Compensation and Social Security, both pass, it**
 427c **is the intent of the Legislature that the Office of Legislative Research and General Counsel in**
 427d **preparing the Utah Code database for publication coordinate the bills as follows:**

427e **(1) the amendments to Subsection 34A-2-702(5)(b)(i) in this bill supersede the amendments to**
 427f **that subsection in S.B. 108; ←§**

427g **§→ (2) the amendments to Subsection 34A-2-702(5)(b)(iii) in S.B. 108 supercede the**
427h **amendments**
427i **to that subsection in this bill;**
427j **(3) the amendments to Subsections 34A-2-702(5)(b)(iv) and (5)(c)(i) in this bill supersede the**
427k **amendments to those subsections in S.B. 108;**
427l **(4) the amendments to Subsection 34A-2-702(5)(c)(ii) in S.B. 108 supersede the amendments to**
427m **that subsection in this bill, except that the introductory phrase in Subsection**
427n **34A-2-702(5)(c)(ii)(A) is deleted and replaced with the following:**
427o **"(ii)(A) In determining the annual income of the surviving spouse after the initial 312-week**
427p **period, there shall be excluded 50% of a federal Social Security death benefit that the**
427q **surviving spouse:"; and**
427r **(5) the amendments to Subsection 34A-2-702(5)(d) and (e) in this bill supersede the**
amendments to those subsections in S.B. 108. ←§

Legislative Review Note
as of 1-3-08 1:46 PM

Office of Legislative Research and General Counsel

S.B. 58 - Workers' Compensation Related Amendments

Fiscal Note

2008 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations. It is anticipated that enactment of this bill may generate additional revenue from penalty provisions for the Uninsured Employers Fund in the amount of \$20,000 in FY 2009 and \$38,000 in FY 2010.

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals or local governments. Businesses may be affected due to penalties under the terms of the proposed legislation.
