

1                                   **WORKERS' COMPENSATION RELATED**

2   **AMENDMENTS**

3   2008 GENERAL SESSION

4   STATE OF UTAH

5   **Chief Sponsor: Mike Dmitrich**

6   House Sponsor: Brad King

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8   **LONG TITLE**

9   **General Description:**

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

11   **Highlighted Provisions:**

12           This bill:

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

18   **Monies Appropriated in this Bill:**

19           None

20   **Other Special Clauses:**

21           This bill coordinates with S.B. 108, Offset of Workers' Compensation and Social  
22           Security, to make technical changes.

23   **Utah Code Sections Affected:**

24   AMENDS:

25           **34A-2-102**, as last amended by Laws of Utah 2000, Chapter 222

26           **34A-2-403**, as renumbered and amended by Laws of Utah 1997, Chapter 375

27           **34A-2-414**, as renumbered and amended by Laws of Utah 1997, Chapter 375

28           **34A-2-415**, as last amended by Laws of Utah 1998, Chapter 13

29           **34A-2-416**, as renumbered and amended by Laws of Utah 1997, Chapter 375

30 34A-2-702, as renumbered and amended by Laws of Utah 1997, Chapter 375

31 34A-2-801, as last amended by Laws of Utah 2006, Chapter 295

32 ENACTS:

33 34A-2-201.3, Utah Code Annotated 1953



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

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

37 **34A-2-102. Definition of terms.**

38 (1) As used in this chapter:

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

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

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

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

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

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

48 (A) an administrative law judge; or[;]

49 (B) in accordance with Section 34A-2-801[;];

50 (I) the commissioner; or

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

52 (ii) "Decision" includes:

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

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

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

58 otherwise.

59 ~~[(6)]~~ (f) "Disability" means an administrative determination that may result in an  
60 entitlement to compensation as a consequence of becoming medically impaired as to function.  
61 Disability can be total or partial, temporary or permanent, industrial or nonindustrial.

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

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

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

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

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

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

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

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

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

81 (b) "Child" includes:

82 (i) a posthumous child; or

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

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

85 **34A-2-201.3. Direct payments prohibited except by self-insured employer.**

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

89 (a) to an employee; or

90 (b) for the employee.

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

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

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

99 (b) If, after the division imposes a penalty under Subsection (3)(a) against the employer,  
100 the employer again violates Subsection (1), the division may impose a penalty of up to \$5,000  
101 for each violation.

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

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

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

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

110 **34A-2-403. Dependents -- Presumption.**

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

113 [~~(a)~~] (i) a child under 18 years of age, [~~or over~~] subject to the conditions of Subsections

114 (1)(b) and (2)(b):

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

116 (A) if the child is:

117 (I) physically or mentally incapacitated; and

118 (II) dependent upon the parent[; with whom the child is living at the time of the death

119 of the parent, or who is legally bound for the child's support] who is the deceased employee;

120 and

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

122 ~~[(b)]~~ (iii) for purposes of [payments] a payment to be made under Subsection

123 34A-2-702(5)~~[(a)]~~ (b)(i), a surviving spouse with whom the deceased employee lived at the

124 time of the employee's death.

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

126 (i) the deceased employee be the parent of the child; or

127 (ii) (A) the deceased employee be legally bound to support the child; and

128 (B) the child be living with the deceased employee at the time of the death of 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 existing

132 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] apply  
172 for benefits on behalf of ~~[that individual]~~ the surviving spouse and the minor children; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

210 **34A-2-415. Increase of benefits to a dependent -- Effect of death, marriage,**  
211 **majority, or termination of dependency of children -- Death, divorce, or remarriage of**  
212 **spouse.**

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

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

219 (1) a minor child:

220 (a) dies;

221 (b) marries;

222 (c) becomes 18 years of age; or

223 (d) is no longer dependent; or

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

225 (a) dies;

226 (b) divorces the employee; or

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

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

230 **34A-2-416. Additional benefits in special cases.**

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

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

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

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

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

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

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

242 **34A-2-702. Employers' Reinsurance Fund -- Injury causing death -- Burial**  
243 **expenses -- Payments to dependents.**

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

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

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

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

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

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

260 (2) The state treasurer shall:

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

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

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

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

270 (4) The liability of the state, its departments, agencies, instrumentalities, elected or  
271 appointed officials, or other duly authorized agents, with respect to payment of ~~[any]~~  
272 compensation benefits, expenses, fees, medical expenses, or disbursement properly chargeable  
273 against the Employers' Reinsurance Fund, is limited to the cash or assets in the Employers'  
274 Reinsurance Fund, and they are not otherwise, in any way, liable for the operation, debts, or  
275 obligations of the Employers' Reinsurance Fund.

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

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

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

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

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

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

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

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

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

292           (II) not exceeding:

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

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

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

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

304           (iv) The issue of dependency ~~shall be~~ is subject to review ~~[by an administrative law~~  
 305 ~~judge]~~ at the end of the initial 312-week period and annually after the initial 312-week period.  
 306 If in ~~[any]~~ a review it is determined that, under the facts and circumstances existing at that time,  
 307 the applicant is no longer a wholly dependent person, the applicant:

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

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

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

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

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

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

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

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

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

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

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

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

335 (A) shall be determined ~~[by the administrative law judge]~~ in keeping with the  
 336 circumstances and conditions of dependency existing at the time of the dependency review; and

337 (B) may be paid in an amount not exceeding the maximum weekly rate that a partly

338 dependent [~~persons~~] person would receive if wholly dependent.

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

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

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

348 (6) The Employers' Reinsurance Fund:

349 (a) shall be:

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

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

354 (B) payment of:

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

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

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

358 (b) may not be used for:

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

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

361 (6)(a).

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

363 **34A-2-801. Initiating adjudicative proceedings -- Procedure for review of**  
364 **administrative action.**

365 (1) (a) To contest an action of the employee's employer or its insurance carrier

366 concerning a compensable industrial accident or occupational disease alleged by the employee[;]  
367 or a dependent any of the following shall file an application for hearing with the Division of  
368 Adjudication:

369 (i) the employee; [~~or~~]  
370 (ii) a representative of the employee, the qualifications of whom are defined in rule by  
371 the commission[;]; or

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

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

377 (i) the employer;  
378 (ii) the insurance carrier; or  
379 (iii) a representative of either the employer or the insurance carrier, the qualifications of  
380 whom are defined in rule by the commission.

381 (c) A person providing goods or services described in Subsections 34A-2-407(12) and  
382 34A-3-108(12) may file an application for hearing in accordance with Section 34A-2-407 or  
383 34A-3-108.

384 (d) An attorney may file an application for hearing in accordance with Section  
385 34A-1-309.

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

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

393 (b) Unless a party in interest to the appeal requests under Subsection (3)(c) that the

394 appeal be heard by the Appeals Board, the commissioner shall hear the review.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

425 Section 9. **Coordinating S.B. 58 with S.B. 108 -- Technical amendments.**

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

429 (1) the amendments to Subsection 34A-2-702(5)(b)(i) in this bill supersede the  
430 amendments to that subsection in S.B. 108;

431 (2) the amendments to Subsection 34A-2-702(5)(b)(iii) in S.B. 108 supercede the  
432 amendments to that subsection in this bill;

433 (3) the amendments to Subsections 34A-2-702(5)(b)(iv) and (5)(c)(i) in this bill  
434 supersede the amendments to those subsections in S.B. 108;

435 (4) the amendments to Subsection 34A-2-702(5)(c)(ii) in S.B. 108 supersede the  
436 amendments to that subsection in this bill, except that the introductory phrase in Subsection  
437 34A-2-702(5)(c)(ii)(A) is deleted and replaced with the following:

438 "(ii)(A) In determining the annual income of the surviving spouse after the initial  
439 312-week period, there shall be excluded 50% of a federal Social Security death benefit that the  
440 surviving spouse:"; and

441 (5) the amendments to Subsections 34A-2-702(5)(d) and (e) in this bill supersede the  
442 amendments to those subsections in S.B. 108.