

1                                   **WORKERS' COMPENSATION - UNINSURED**

2                                   **EMPLOYERS' FUND**

3                                   2009 GENERAL SESSION

4                                   STATE OF UTAH

5                                   **Chief Sponsor: Michael T. Morley**

6                                   Senate Sponsor: Karen Mayne

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8                                   **LONG TITLE**

9                                   **General Description:**

10                                  This bill modifies the Workers' Compensation Act to address collection practices for  
11 monies required to be deposited into the Uninsured Employers' Fund.

12                                  **Highlighted Provisions:**

13                                  This bill:

14                                  ▶ requires that the administrator of the Uninsured Employers' Fund collect monies  
15 required to be deposited into the Uninsured Employers' Fund in accordance with  
16 the provision creating the fund;

17                                  ▶ exempts the collection of monies required to be deposited into the Uninsured  
18 Employers' Fund from collection by the Office of State Debt Collection;

19                                  ▶ modifies related collection procedures; and

20                                  ▶ makes technical changes.

21                                  **Monies Appropriated in this Bill:**

22                                  None

23                                  **Other Special Clauses:**

24                                  This bill takes effect on July 1, 2010.

25                                  This bill coordinates with H.B. 39, Utah Injured Worker Reemployment Act, to merge  
26 substantive amendments.

27                                  **Utah Code Sections Affected:**

28                                  AMENDS:

29                                  **34A-1-405**, as renumbered and amended by Laws of Utah 1997, Chapter 375

- 30           **34A-2-201.3**, as enacted by Laws of Utah 2008, Chapter 90
- 31           **34A-2-205**, as last amended by Laws of Utah 2008, Chapter 382
- 32           **34A-2-209**, as renumbered and amended by Laws of Utah 1997, Chapter 375
- 33           **34A-2-211**, as last amended by Laws of Utah 2008, Chapter 382
- 34           **34A-2-407**, as last amended by Laws of Utah 2008, Chapter 382
- 35           **34A-2-704**, as last amended by Laws of Utah 2008, Chapter 382
- 36           **34A-3-108**, as last amended by Laws of Utah 2006, Chapter 295
- 37           **63A-8-101**, as last amended by Laws of Utah 2005, Chapter 23

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

40           Section 1. Section **34A-1-405** is amended to read:

41           **34A-1-405. Employer's records subject to examination -- Penalty.**

42           (1) [~~All books, records, and payrolls~~] A book, record, or payroll of an employer  
43 showing, or reflecting in any way upon[;] the amount of the employer's wage expenditure shall  
44 always be open for inspection by the commission, or any of [its] the commission's auditors,  
45 inspectors, or assistants, for the purpose of ascertaining:

- 46           (a) the correctness of the wage expenditure;
  - 47           (b) the number of individuals employed; and
  - 48           (c) other information as may be necessary for the uses and purposes of the commission
- 49 in its administration of the law.

50           (2) (a) If an employer refuses to submit [~~any books, records, or payrolls~~] a book,  
51 record, or payroll for inspection, after being presented with written authority from the  
52 commission, the employer is liable for a penalty of \$100 for each offense. [~~This~~]

53           (b) A penalty imposed under this section shall be [~~collected by~~]:

- 54           (i) ordered under a civil action [~~and paid~~];
- 55           (ii) deposited into the Uninsured Employers' Fund[;] created in Section 34A-2-704 to  
56 be used for a purpose specified in Section 34A-2-704; and
- 57           (iii) collected by the administrator of the Uninsured Employers' Fund in accordance

58 with Section 34A-2-704.

59 Section 2. Section **34A-2-201.3** is amended to read:

60 **34A-2-201.3. Direct payments prohibited except by self-insured employer.**

61 (1) An employer who is not a self-insured employer, as defined in Section  
62 34A-2-201.5, may not pay a benefit provided for under this chapter and Chapter 3, Utah  
63 Occupational Disease Act, directly:

64 (a) to an employee; or

65 (b) for the employee.

66 (2) (a) Subject to Title 63G, Chapter 4, Administrative Procedures Act, if the division  
67 finds that an employer is violating or has violated Subsection (1), the division shall send  
68 written notice to the employer of the requirements of this section and Section 34A-2-201.

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

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

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

77 (4) (a) The division shall deposit a penalty imposed under Subsection (3) into the  
78 Uninsured Employers' Fund created by Section 34A-2-704 to be used for the purposes of [~~that~~  
79 ~~fund.~~] the Uninsured Employers' Fund specified in Section 34A-2-704.

80 (b) The administrator of the Uninsured Employers' Fund shall collect monies required  
81 to be deposited into the Uninsured Employers' Fund under this Subsection (4) in accordance  
82 with Section 34A-2-704.

83 (5) A penalty under this section is in addition to any other penalty imposed under this  
84 chapter or Chapter 3, Utah Occupational Disease Act, against an employer who fails to  
85 comply with Section 34A-2-201.

86 (6) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,  
87 the commission shall adopt rules to implement this section.

88 Section 3. Section 34A-2-205 is amended to read:

89 **34A-2-205. Notification of workers' compensation insurance coverage to division**  
90 **-- Cancellation requirements -- Penalty for violation.**

91 (1) (a) ~~Every~~ An insurance carrier writing workers' compensation insurance coverage  
92 in this state or for this state, regardless of the state in which the policy is written, shall file  
93 notification of that coverage with the division or ~~its~~ the division's designee within 30 days  
94 after the inception date of the policy in the form prescribed by the division.

95 (b) A policy described in Subsection (1)(a) is in effect from inception until canceled  
96 by filing with the division or ~~its~~ the division's designee a notification of cancellation in the  
97 form prescribed by the division within ten days after the cancellation of a policy.

98 (c) Failure to notify the division or its designee under Subsection (1)(b) ~~will result~~  
99 results in the continued liability of the carrier until the date that notice of cancellation is  
100 received by the division or ~~its~~ the division's designee.

101 (d) ~~Filings shall be made~~ An insurance carrier described in this Subsection (1) shall  
102 make a filing within 30 days of:

- 103 (i) the reinstatement of a policy;
- 104 (ii) the changing or addition of a name or address of the insured; or
- 105 (iii) the merger of an insured with another entity.

106 (e) ~~All filings~~ A filing under this section shall include:

- 107 (i) the name of the insured;
- 108 (ii) the principal business address;
- 109 (iii) any and all assumed name designations;
- 110 (iv) the address of all locations within this state where business is conducted; and
- 111 (v) all federal employer identification numbers or federal tax identification numbers.

112 (2) Noncompliance with this section is grounds for revocation of an insurance carrier's  
113 certificate of authority in addition to the grounds specified in Title 31A, Insurance Code.

114 (3) (a) The division may assess an insurer up to \$150[~~payable to the Uninsured~~  
115 ~~Employers' Fund;~~] if the insurer fails to comply with this section.

116 (b) The division shall deposit an amount assessed under Subsection (3)(a) into the  
117 Uninsured Employers' Fund created in Section 34A-2-704 to be used for the purposes of the  
118 Uninsured Employer's Fund specified in Section 34A-2-704.

119 (c) The administrator of the Uninsured Employers' Fund shall collect monies required  
120 to be deposited into the Uninsured Employers' Fund under this Subsection (3) in accordance  
121 with Section 34A-2-704.

122 (4) (a) The notification of workers' compensation insurance coverage required to be  
123 filed under Subsection (1) is a protected record under Section 63G-2-305.

124 (b) The commission or any of its divisions may not disclose the information described  
125 in Subsection (4)(a) except as provided in:

126 (i) Title 63G, Chapter 2, Government Records Access and Management Act, for a  
127 protected record; or

128 (ii) Subsection (4)(c), notwithstanding whether Title 63G, Chapter 2, Government  
129 Records Access and Management Act, permits disclosure.

130 (c) The commission may disclose the information described in Subsection (4)(a) if:

131 (i) the information is disclosed on an individual case basis related to a single  
132 employer;

133 (ii) the information facilitates the:

134 (A) coverage of subcontractors by identifying the insurance carrier providing workers'  
135 compensation coverage for an employer;

136 (B) filing of a claim by an employee; or

137 (C) payment of services rendered on an employee's claim by a medical practitioner;

138 and

139 (iii) promotes the purposes of this chapter or Chapter 3, Utah Occupational Disease  
140 Act.

141 (d) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,

142 the commission shall make rules concerning when information may be disclosed under  
143 Subsection (4)(c).

144 Section 4. Section 34A-2-209 is amended to read:

145 **34A-2-209. Employer's penalty for violation -- Notice of noncompliance -- Proof**  
146 **required -- Admissible evidence -- Criminal prosecution.**

147 (1) (a) (i) ~~[Any]~~ An employer who fails to comply, and every officer of a corporation  
148 or association that fails to comply, with Section 34A-2-201 is guilty of a class B misdemeanor.

149 (ii) Each day's failure to comply with Subsection (1)(a)(i) is a separate offense.

150 ~~[(b) All funds, fines, or penalties collected or assessed under Subsection (1)(a) shall be~~  
151 ~~deposited in the Uninsured Employers' Fund created by Section 34A-2-704 and used for the~~  
152 ~~purposes of that fund.]~~

153 ~~[(c)]~~ (b) If the division sends written notice of noncompliance by certified mail to the  
154 last-known address of ~~[the]~~ an employer, a corporation, or ~~[officers]~~ an officer of a corporation  
155 or association, and the employer, corporation, or ~~[officers do]~~ officer does not within ten days  
156 of the day on which the notice is delivered provide to the division proof of compliance, the  
157 notice and failure to provide proof constitutes prima facie evidence that the employer,  
158 corporation, or ~~[officers are]~~ officer is in violation of this section.

159 (2) (a) ~~[(+)]~~ If the division has reason to believe that an employer is conducting  
160 business without securing the payment of compensation in ~~[one of the three ways]~~ a manner  
161 provided in Section 34A-2-201, the division may give ~~[the employer, or in the case of an~~  
162 ~~employer corporation, the corporation or the officers of the corporation,]~~ notice of  
163 noncompliance by certified mail to the following at the last-known address of the ~~[employer;~~  
164 ~~corporation, or officers, and if the]~~ following:

165 (i) the employer; or

166 (ii) if the employer is a corporation or association:

167 (A) the corporation or association; or

168 (B) the officers of the corporation or association.

169 (b) If an employer, corporation, or [officers do] officer described in Subsection (2)(a)

170 does not, within ten days of the day on which the notice is delivered, provide to the division  
171 proof of compliance, the employer and every officer of an employer corporation or association  
172 is guilty of a class B misdemeanor.

173 ~~[(ii)]~~ (c) Each day's failure to comply with Subsection (2)(a)~~[(i)]~~ is a separate offense.

174 ~~[(b) All funds, fines, or penalties]~~

175 (3) A fine, penalty, or money collected or assessed under ~~[Subsection (2)(a)]~~ this  
176 section shall be:

177 (a) deposited in the Uninsured Employers' Fund created by Section 34A-2-704 ~~[and]~~;

178 (b) used for the purposes of ~~[that fund.]~~ the Uninsured Employers' Fund specified in  
179 Section 34A-2-704; and

180 (c) collected by the Uninsured Employers' Fund administrator in accordance with  
181 Section 34A-2-704.

182 ~~[(3) All forms and records]~~

183 (4) A form or record kept by the division or its designee pursuant to Section  
184 34A-2-205 ~~[are]~~ is admissible as evidence to establish noncompliance under this section.

185 ~~[(4)]~~ (5) The commission or division on behalf of the commission ~~[is authorized to]~~  
186 may prosecute or request the attorney general or district attorney to prosecute a criminal action  
187 in the name of the state to enforce ~~[the provisions of]~~ this chapter or Chapter 3, Utah  
188 Occupational Disease Act.

189 Section 5. Section **34A-2-211** is amended to read:

190 **34A-2-211. Notice of noncompliance to employer -- Enforcement power of**  
191 **division -- Penalty.**

192 (1) (a) In addition to the remedies specified in Section 34A-2-210, if the division has  
193 reason to believe that an employer is conducting business without securing the payment of  
194 benefits in ~~[one of the three ways]~~ a manner provided in Section 34A-2-201, the division may  
195 give that employer written notice of the noncompliance by certified mail to the last-known  
196 address of the employer.

197 (b) If the employer does not remedy the default within 15 days after ~~[delivery of the~~

198 ~~notice]~~ the day on which the notice is delivered, the division may issue an order requiring the  
199 employer to appear before the division and show cause why the employer should not be  
200 ordered to comply with Section 34A-2-201.

201 (c) If ~~[it is found]~~ the division finds that ~~[the]~~ an employer has failed to provide for the  
202 payment of benefits in ~~[one of the three ways]~~ a manner provided in Section 34A-2-201, the  
203 division may require ~~[any]~~ the employer to comply with Section 34A-2-201.

204 (2) (a) Notwithstanding Subsection (1), the division may impose a penalty against the  
205 employer under this Subsection (2):

206 (i) subject to ~~[the notice and other requirements of]~~ Title 63G, Chapter 4,  
207 Administrative Procedures Act; and

208 (ii) if the division believes that an employer of one or more employees is conducting  
209 business without securing the payment of benefits in ~~[one of the three ways]~~ a manner  
210 provided in Section 34A-2-201.

211 (b) The penalty imposed under Subsection (2)(a) shall be the greater of:

212 (i) \$1,000; or

213 (ii) three times the amount of the premium the employer would have paid for workers'  
214 compensation insurance based on the rate filing of the Workers' Compensation Fund, during  
215 the period of noncompliance.

216 (c) For purposes of Subsection (2)(b)(ii)~~;~~:

217 (i) the premium is calculated by applying rates and rate multipliers to the payroll basis  
218 under Subsection (2)~~(d)~~(c)(ii), using the highest rated employee class code applicable to the  
219 employer's operations~~;~~ and

220 ~~[(d) The]~~ (ii) the payroll basis ~~[for the purpose of calculating the premium penalty~~  
221 ~~shall be]~~ is 150% of the state's average weekly wage multiplied by the highest number of  
222 workers employed by the employer during the period of the employer's noncompliance  
223 multiplied by the number of weeks of the employer's noncompliance up to a maximum of 156  
224 weeks.

225 (3) ~~[The]~~ A penalty imposed under Subsection (2) shall be:

226 (a) deposited in the Uninsured Employers' Fund created by Section 34A-2-704 ~~[and];~~

227 (b) used for the purposes of ~~[that fund.]~~ the Uninsured Employers' Fund specified in  
228 Section 34A-2-704; and

229 (c) collected by the Uninsured Employers' Fund administrator in accordance with  
230 Section 34A-2-704.

231 (4) (a) An employer who disputes ~~[the]~~ a determination, imposition, or amount of a  
232 penalty imposed under Subsection (2) shall request a hearing before an administrative law  
233 judge within 30 days of the date of issuance of the administrative action imposing the penalty  
234 or the administrative action becomes a final order of the commission.

235 (b) ~~[The]~~ An employer's request for a hearing under Subsection (4)(a) shall specify the  
236 facts and grounds that are the basis of the employer's objection to the determination,  
237 imposition, or amount of the penalty.

238 (c) An administrative law judge's decision under this Subsection (4) may be reviewed  
239 pursuant to Part 8, Adjudication.

240 ~~[(5)(a) After a penalty has been issued and becomes a final order of the commission~~  
241 ~~the division on behalf of the commission may file an abstract for any uncollected penalty in~~  
242 ~~the district court.]~~

243 ~~[(b) The abstract filed under Subsection (5)(a) shall state:]~~

244 ~~[(i) the amount of the uncollected penalty;]~~

245 ~~[(ii) reasonable attorney fees;]~~

246 ~~[(iii) costs of collection; and]~~

247 ~~[(iv) court costs.]~~

248 ~~[(c) The filed abstract shall have the effect of a judgment of that court.]~~

249 ~~[(6) Any]~~ (5) An administrative action issued by the division under this section shall:

250 (a) be in writing;

251 (b) be sent by certified mail to the last-known address of the employer;

252 (c) state the findings and administrative action of the division; and

253 (d) specify its effective date, which may be;

254 (i) immediate; or ~~[may be]~~

255 (ii) at a later date.

256 ~~[(7) The]~~ (6) A final order of the commission under this section, upon application by  
257 ~~[the division on behalf of]~~ the commission made on or after the effective date of the order to a  
258 court of general jurisdiction in any county in this state, may be enforced by an order to  
259 comply;

260 (a) entered ex parte; and

261 (b) without notice by the court.

262 Section 6. Section 34A-2-407 is amended to read:

263 **34A-2-407. Reporting of industrial injuries -- Regulation of health care**  
264 **providers -- Funeral expenses.**

265 (1) As used in this section, "physician" is as defined in Section 34A-2-111.

266 (2) (a) ~~[Any]~~ An employee sustaining an injury arising out of and in the course of  
267 employment shall provide notification to the employee's employer promptly of the injury.

268 (b) If the employee is unable to provide the notification required by Subsection (2)(a),  
269 the following may provide notification of the injury to the employee's employer:

270 (i) the employee's next-of-kin; or

271 (ii) the employee's attorney.

272 (c) An employee claiming benefits under this chapter, or Chapter 3, Utah  
273 Occupational Disease Act, shall comply with rules adopted by the commission regarding  
274 disclosure of medical records of the employee medically relevant to the industrial accident or  
275 occupational disease claim.

276 (3) (a) An employee is barred for any claim of benefits arising from an injury if the  
277 employee fails to notify within the time period described in Subsection (3)(b):

278 (i) the employee's employer in accordance with Subsection (2); or

279 (ii) the division.

280 (b) The notice required by Subsection (3)(a) shall be made within:

281 (i) 180 days of the day on which the injury occurs; or

282 (ii) in the case of an occupational hearing loss, the time period specified in Section  
283 34A-2-506.

284 (4) The following constitute notification of injury required by Subsection (2):

285 (a) an employer's or physician's injury report filed with:

286 (i) the division;

287 (ii) the employer; or

288 (iii) the employer's insurance carrier; or

289 (b) the payment of any medical or disability benefits by:

290 (i) the employer; or

291 (ii) the employer's insurance carrier.

292 (5) (a) In the form prescribed by the division, [~~each~~] an employer shall file a report  
293 with the division of [~~any~~] a:

294 (i) work-related fatality; or

295 (ii) work-related injury resulting in:

296 (A) medical treatment;

297 (B) loss of consciousness;

298 (C) loss of work;

299 (D) restriction of work; or

300 (E) transfer to another job.

301 (b) The employer shall file the report required by Subsection (5)(a) within seven days  
302 after:

303 (i) the occurrence of a fatality or injury;

304 (ii) the employer's first knowledge of [~~the~~] a fatality or injury; or

305 (iii) the employee's notification of [~~the~~] a fatality or injury.

306 (c) (i) An employer shall file a subsequent report with the division of [~~any~~] a  
307 previously reported injury that later results in death.

308 (ii) The subsequent report required by this Subsection (5)(c) shall be filed with the  
309 division within seven days following:

- 310 (A) the death; or
- 311 (B) the employer's first knowledge or notification of the death.
- 312 (d) A report is not required to be filed under this Subsection (5) for a minor [injuries]
- 313 injury, such as [~~cuts or scratches that require~~] a cut or scratch that requires first-aid treatment
- 314 only, unless:
- 315 (i) a treating physician files a report with the division in accordance with Subsection
- 316 (9); or
- 317 (ii) a treating physician is required to file a report with the division in accordance with
- 318 Subsection (9).
- 319 (6) An employer required to file a report under Subsection (5) shall provide the
- 320 employee with:
- 321 (a) a copy of the report submitted to the division; and
- 322 (b) a statement, as prepared by the division, of the employee's rights and
- 323 responsibilities related to the industrial injury.
- 324 (7) [~~Each~~] An employer shall maintain a record in a manner prescribed by the division
- 325 of all:
- 326 (a) work-related fatalities; or
- 327 (b) work-related injuries resulting in:
- 328 (i) medical treatment;
- 329 (ii) loss of consciousness;
- 330 (iii) loss of work;
- 331 (iv) restriction of work; or
- 332 (v) transfer to another job.
- 333 (8) (a) Except as provided in Subsection (8)(b), an employer who refuses or neglects to
- 334 make [~~reports, to maintain records, or to file reports~~] a report, maintain a record, or file a
- 335 report with the division as required by this section is:
- 336 (i) guilty of a class C misdemeanor; and
- 337 (ii) subject to a civil assessment:

338 (A) imposed by the division, subject to the requirements of Title 63G, Chapter 4,  
339 Administrative Procedures Act; and

340 (B) that may not exceed \$500.

341 (b) An employer is not subject to the civil assessment or guilty of a class C  
342 misdemeanor under this Subsection (8) if:

343 (i) the employer submits a report later than required by this section; and

344 (ii) the division finds that the employer has shown good cause for submitting a report  
345 later than required by this section.

346 (c) (i) A civil assessment collected under this Subsection (8) shall be deposited into  
347 the Uninsured Employers' Fund created in Section 34A-2-704 to be used for a purpose  
348 specified in Section 34A-2-704.

349 (ii) The administrator of the Uninsured Employers' Fund shall collect monies required  
350 to be deposited into the Uninsured Employers' Fund under this Subsection (8)(c) in  
351 accordance with Section 34A-2-704.

352 (9) (a) A physician attending an injured employee shall comply with rules established  
353 by the commission regarding:

354 (i) fees for physician's services;

355 (ii) disclosure of medical records of the employee medically relevant to the employee's  
356 industrial accident or occupational disease claim; and

357 (iii) reports to the division regarding:

358 (A) the condition and treatment of an injured employee; or

359 (B) any other matter concerning industrial cases that the physician is treating.

360 (b) A physician who is associated with, employed by, or bills through a hospital is  
361 subject to Subsection (9)(a).

362 (c) A hospital providing services for an injured employee is not subject to the  
363 requirements of Subsection (9)(a) except for rules made by the commission that are described  
364 in Subsection (9)(a)(ii) or (iii).

365 (d) The commission's schedule of fees may reasonably differentiate remuneration to be

366 paid to providers of health services based on:

- 367 (i) the severity of the employee's condition;
- 368 (ii) the nature of the treatment necessary; and
- 369 (iii) the facilities or equipment specially required to deliver that treatment.

370 (e) This Subsection (9) does not prohibit a contract with a provider of health services  
371 relating to the pricing of goods and services.

372 (10) A copy of the initial report filed under Subsection (9)(a)(iii) shall be furnished to:

- 373 (a) the division;
- 374 (b) the employee; and
- 375 (c) (i) the employer; or
- 376 (ii) the employer's insurance carrier.

377 (11) (a) Except as provided in Subsection (11)(b), a person subject to Subsection  
378 (9)(a)(iii) who fails to comply with Subsection (9)(a)(iii) is guilty of a class C misdemeanor  
379 for each offense.

380 (b) A person subject to Subsection (9)(a)(iii) is not guilty of a class C misdemeanor  
381 under this Subsection (11), if:

- 382 (i) the person files a late report; and
- 383 (ii) the division finds that there is good cause for submitting a late report.

384 (12) (a) Subject to appellate review under Section 34A-1-303, the commission has  
385 exclusive jurisdiction to hear and determine:

386 (i) whether goods provided to or services rendered to an employee are compensable  
387 pursuant to this chapter or Chapter 3, Utah Occupational Disease Act, including:

- 388 (A) medical, nurse, or hospital services;
- 389 (B) medicines; and
- 390 (C) artificial means, appliances, or prosthesis;

391 (ii) the reasonableness of the amounts charged or paid for a good or service described  
392 in Subsection (12)(a)(i); and

393 (iii) collection issues related to a good or service described in Subsection (12)(a)(i).

394 (b) Except as provided in Subsection (12)(a), Subsection 34A-2-211[~~(7)~~] (6), or  
395 Section 34A-2-212, a person may not maintain a cause of action in any forum within this state  
396 other than the commission for collection or payment for goods or services described in  
397 Subsection (12)(a) that are compensable under this chapter or Chapter 3, Utah Occupational  
398 Disease Act.

399 Section 7. Section **34A-2-704** is amended to read:

400 **34A-2-704. Uninsured Employers' Fund.**

401 (1) (a) There is created an Uninsured Employers' Fund. The Uninsured Employers'  
402 Fund has the purpose of assisting in the payment of workers' compensation benefits to [~~any~~] a  
403 person entitled to the benefits, if:

404 (i) that person's employer:

405 (A) is individually, jointly, or severally liable to pay the benefits; and

406 (B) (I) becomes or is insolvent;

407 (II) appoints or has appointed a receiver; or

408 (III) otherwise does not have sufficient funds, insurance, sureties, or other security to  
409 cover workers' compensation liabilities; and

410 (ii) the employment relationship between that person and the person's employer is  
411 localized within the state as provided in Subsection (20).

412 (b) The Uninsured Employers' Fund succeeds to [~~all~~] monies previously held in the  
413 Default Indemnity Fund.

414 (c) If it becomes necessary to pay benefits, the Uninsured Employers' Fund is liable for  
415 [~~all~~] the obligations of the employer [~~as~~] set forth in this chapter and Chapter 3, Utah  
416 Occupational Disease Act, with the exception of [~~penalties~~] a penalty on those obligations.

417 (2) (a) Monies for the Uninsured Employers' Fund shall be deposited into the  
418 Uninsured Employers' Fund in accordance with this chapter and Subsection 59-9-101(2).

419 (b) The commissioner shall appoint an administrator of the Uninsured Employers'  
420 Fund.

421 (c) (i) The state treasurer is the custodian of the Uninsured Employers' Fund.

422 (ii) The administrator shall make provisions for and direct distribution from the  
423 Uninsured Employers' Fund.

424 (3) Reasonable costs of administering the Uninsured Employers' Fund or other fees  
425 required to be paid by the Uninsured Employers' Fund may be paid from the Uninsured  
426 Employers' Fund.

427 (4) The state treasurer shall:

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

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

432 (5) (a) The administrator may employ, retain, or appoint counsel to represent the  
433 Uninsured Employers' Fund in [~~all proceedings~~] a proceeding brought to enforce [~~claims~~] a  
434 claim against or on behalf of the Uninsured Employers' Fund.

435 (b) If requested by the commission, the following shall aid in the representation of the  
436 Uninsured Employers' Fund:

437 (i) the attorney general; or

438 (ii) the city attorney, or county attorney of the locality in which:

439 (A) [~~any~~] an investigation, hearing, or trial under this chapter or Chapter 3, Utah  
440 Occupational Disease Act, is pending;

441 (B) the employee resides; or

442 (C) an employer:

443 (I) resides; or

444 (II) is doing business.

445 (c) (i) Notwithstanding Title 63A, Chapter 8, Office of State Debt Collection, the  
446 administrator shall provide for the collection of monies required to be deposited in the  
447 Uninsured Employers' Fund under this chapter and Chapter 3, Utah Occupational Disease Act.

448 (ii) To comply with Subsection (5)(c)(i), the administrator may:

449 (A) take appropriate action, including docketing an award in a manner consistent with

450 Section 34A-2-212; and

451 (B) employ counsel and other personnel necessary to collect the monies described in  
452 Subsection (5)(c)(i).

453 (6) To the extent of the compensation and other benefits paid or payable to or on  
454 behalf of an employee or the employee's dependents from the Uninsured Employers' Fund, the  
455 Uninsured Employers' Fund, by subrogation, has ~~all~~ the rights, powers, and benefits of the  
456 employee or the employee's dependents against the employer failing to make the compensation  
457 payments.

458 (7) (a) The receiver, trustee, liquidator, or statutory successor of an employer meeting  
459 a condition listed in Subsection (1)(a)(i)(B) is bound by ~~settlements of covered claims~~ a  
460 settlement of a covered claim by the Uninsured Employers' Fund.

461 (b) ~~The~~ A court with jurisdiction shall grant ~~all payments~~ a payment made under  
462 this section a priority equal to that to which the claimant would have been entitled in the  
463 absence of this section against the assets of the employer meeting a condition listed in  
464 Subsection (1)(a)(i)(B).

465 (c) The expenses of the Uninsured Employers' Fund in handling ~~claims~~ a claim shall  
466 be accorded the same priority as the liquidator's expenses.

467 (8) (a) The administrator shall periodically file the information described in  
468 Subsection (8)(b) with the receiver, trustee, or liquidator of:

469 (i) an employer that meets a condition listed in Subsection (1)(a)(i)(B);

470 (ii) a public agency insurance mutual, as defined in Section 31A-1-103, that meets a  
471 condition listed in Subsection (1)(a)(i)(B); or

472 (iii) an insolvent insurance carrier.

473 (b) The information required to be filed under Subsection (8)(a) is:

474 (i) ~~statements~~ a statement of the covered claims paid by the Uninsured Employers'  
475 Fund; and

476 (ii) ~~estimates~~ an estimate of anticipated claims against the Uninsured Employers'  
477 Fund.

478 (c) ~~[The filings]~~ A filing under this Subsection (8) ~~[shall preserve]~~ preserves the rights  
479 of the Uninsured Employers' Fund for claims against the assets of the employer that meets a  
480 condition listed in Subsection (1)(a)(i)(B).

481 (9) When ~~[any]~~ an injury or death for which compensation is payable from the  
482 Uninsured Employers' Fund has been caused by the wrongful act or neglect of another person  
483 not in the same employment, the Uninsured Employers' Fund has the same rights as allowed  
484 under Section 34A-2-106.

485 (10) The Uninsured Employers' Fund, subject to approval of the administrator, shall  
486 discharge its obligations by:

487 (a) adjusting its own claims; or

488 (b) contracting with an adjusting company, risk management company, insurance  
489 company, or other company that has expertise and capabilities in adjusting and paying  
490 workers' compensation claims.

491 (11) (a) For the purpose of maintaining the Uninsured Employers' Fund, an  
492 administrative law judge, upon rendering a decision with respect to ~~[any]~~ a claim for workers'  
493 compensation benefits in which an employer that meets a condition listed in Subsection  
494 (1)(a)(i)(B) ~~[was]~~ is duly joined as a party, shall:

495 (i) order the employer that meets a condition listed in Subsection (1)(a)(i)(B) to  
496 reimburse the Uninsured Employers' Fund for ~~[all]~~ the benefits paid to or on behalf of an  
497 injured employee by the Uninsured Employers' Fund along with interest, costs, and ~~[attorneys']~~  
498 attorney fees; and

499 (ii) impose a penalty against the employer that meets a condition listed in Subsection  
500 (1)(a)(i)(B);

501 (A) of 15% of the value of the total award in connection with the claim; and

502 (B) that shall be ~~[paid]~~ deposited into the Uninsured Employers' Fund.

503 ~~[(b) Awards may be docketed as other awards under this chapter and Chapter 3, Utah~~  
504 ~~Occupational Disease Act.]~~

505 (b) An award under this Subsection (11) shall be collected by the administrator in

506 accordance with Subsection (5)(c).

507 (12) The ~~[liability of the]~~ state, the commission, and the state treasurer, with respect to  
508 payment of ~~[any]~~ compensation benefits, expenses, fees, or disbursement properly chargeable  
509 against the Uninsured Employers' Fund~~[, is limited]~~:

510 (a) are liable only to the assets in the Uninsured Employers' Fund~~[-]~~; and ~~[they]~~

511 (b) are not otherwise in any way liable for the making of ~~[any]~~ a payment.

512 (13) The commission may make reasonable rules for the processing and payment of  
513 ~~[claims]~~ a claim for compensation from the Uninsured Employers' Fund.

514 (14) (a) (i) If it becomes necessary for the Uninsured Employers' Fund to pay benefits  
515 under this section to an employee described in Subsection (14)(a)(ii), the Uninsured  
516 Employers' Fund may assess all other self-insured employers amounts necessary to pay:

517 (A) the obligations of the Uninsured Employers' Fund subsequent to a condition listed  
518 in Subsection (1)(a)(i)(B) occurring;

519 (B) the expenses of handling covered ~~[claims]~~ a claim subsequent to a condition listed  
520 in Subsection (1)(a)(i)(B) occurring;

521 (C) the cost of ~~[examinations]~~ an examination under Subsection (15); and

522 (D) other expenses authorized by this section.

523 (ii) This Subsection (14) applies to benefits paid to an employee of:

524 (A) a self-insured employer, as defined in Section 34A-2-201.5, that meets a condition  
525 listed in Subsection (1)(a)(i)(B); or

526 (B) if the self-insured employer that meets a condition described in Subsection  
527 (1)(a)(i)(B) is a public agency insurance mutual, a member of the public agency insurance  
528 mutual.

529 (b) The assessments of ~~[each]~~ a self-insured employer shall be in the proportion that  
530 the manual premium of the self-insured employer for the preceding calendar year bears to the  
531 manual premium of all self-insured employers for the preceding calendar year.

532 (c) ~~[Each]~~ A self-insured employer shall be notified of the self-insured employer's  
533 assessment not later than 30 days before the day on which the assessment is due.

534 (d) (i) A self-insured employer may not be assessed in any year an amount greater than  
535 2% of that self-insured employer's manual premium for the preceding calendar year.

536 (ii) If the maximum assessment does not provide in ~~[any one]~~ a year an amount  
537 sufficient to make all necessary payments from the Uninsured Employers' Fund for one or  
538 more self-insured employers that meet a condition listed in Subsection (1)(a)(i)(B), the unpaid  
539 portion shall be paid as soon as ~~[funds]~~ monies become available.

540 (e) ~~[AH]~~ A self-insured ~~[employers are]~~ employer is liable under this section for a  
541 period not to exceed three years after the day on which the Uninsured Employers' Fund first  
542 pays benefits to an employee described in Subsection (14)(a)(ii) for the self-insured employer  
543 that meets a condition listed in Subsection (1)(a)(i)(B).

544 (f) This Subsection (14) does not apply to ~~[claims]~~ a claim made against a self-insured  
545 employer that meets a condition listed in Subsection (1)(a)(i)(B) if the condition listed in  
546 Subsection (1)(a)(i)(B) occurred ~~[prior to]~~ before July 1, 1986.

547 (15) (a) The following shall notify the division of any information indicating that any  
548 of the following may be insolvent or in a financial condition hazardous to its employees or the  
549 public:

550 (i) a self-insured employer; or

551 (ii) if the self-insured employer is a public agency insurance mutual, a member of the  
552 public agency insurance mutual.

553 (b) Upon receipt of the notification described in Subsection (15)(a) and with good  
554 cause appearing, the division may order an examination of:

555 (i) that self-insured employer; or

556 (ii) if the self-insured employer is a public agency insurance mutual, a member of the  
557 public agency mutual.

558 (c) The cost of the examination ordered under Subsection (15)(b) shall be assessed  
559 against all self-insured employers as provided in Subsection (14).

560 (d) The results of the examination ordered under Subsection (15)(b) shall be kept  
561 confidential.

562           (16) (a) In ~~[any]~~ a claim against an employer by the Uninsured Employers' Fund, or by  
563 or on behalf of the employee to whom or to whose dependents compensation and other  
564 benefits are paid or payable from the Uninsured Employers' Fund, the burden of proof is on  
565 the employer or other party in interest objecting to the claim.

566           (b) ~~[The]~~ A claim described in Subsection (16)(a) is presumed to be valid up to the  
567 full amount of workers' compensation benefits claimed by the employee or the employee's  
568 dependents.

569           (c) This Subsection (16) applies whether the claim is filed in court or in an  
570 adjudicative proceeding under the authority of the commission.

571           (17) A partner in a partnership or an owner of a sole proprietorship may not recover  
572 compensation or other benefits from the Uninsured Employers' Fund if:

573           (a) the person is not included as an employee under Subsection 34A-2-104(3); or

574           (b) the person is included as an employee under Subsection 34A-2-104(3), but:

575           (i) the person's employer fails to insure or otherwise provide adequate payment of  
576 direct compensation; and

577           (ii) the failure described in Subsection (17)(b)(i) is attributable to an act or omission  
578 over which the person had or shared control or responsibility.

579           (18) A director or officer of a corporation may not recover compensation or other  
580 benefits from the Uninsured Employers' Fund if the director or officer is excluded from  
581 coverage under Subsection 34A-2-104(4).

582           (19) The Uninsured Employers' Fund:

583           (a) shall be:

584           (i) used in accordance with this section only for:

585           (A) the purpose of assisting in the payment of workers' compensation benefits in  
586 accordance with Subsection (1); and

587           (B) in accordance with Subsection (3), payment of:

588           (I) reasonable costs of administering the Uninsured Employers' Fund; or

589           (II) fees required to be paid by the Uninsured Employers' Fund; and

590 (ii) expended according to processes that can be verified by audit; and  
 591 (b) may not be used for:  
 592 (i) administrative costs unrelated to the Uninsured Employers' Fund; or  
 593 (ii) [~~any~~] an activity of the commission other than an activity described in Subsection  
 594 (19)(a).

595 (20) (a) For purposes of Subsection (1), an employment relationship is localized in the  
 596 state if:

597 (i) (A) the employer who is liable for the benefits has a business premise in the state;  
 598 and

599 (B) (I) the contract for hire is entered into in the state; or

600 (II) the employee regularly performs work duties in the state for the employer who is  
 601 liable for the benefits; or

602 (ii) the employee is:

603 (A) a resident of the state; and

604 (B) regularly performs work duties in the state for the employer who is liable for the  
 605 benefits.

606 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,  
 607 the commission shall by rule define what constitutes regularly performing work duties in the  
 608 state.

609 Section 8. Section **34A-3-108** is amended to read:

610 **34A-3-108. Reporting of occupational diseases -- Regulation of health care**  
 611 **providers.**

612 (1) [~~Any~~] An employee sustaining an occupational disease, as defined in this chapter,  
 613 arising out of and in the course of employment shall provide notification to the employee's  
 614 employer promptly of the occupational disease. If the employee is unable to provide  
 615 notification, the employee's next-of-kin or attorney may provide notification of the  
 616 occupational disease to the employee's employer.

617 (2) (a) [~~Any~~] An employee who fails to notify the employee's employer or the division

618 within 180 days after the cause of action arises is barred from [~~any~~] a claim of benefits arising  
619 from the occupational disease.

620 (b) The cause of action is considered to arise on the date the employee first [~~suffered~~];

621 (i) suffers disability from the occupational disease; and [~~knew~~];

622 (ii) knows or in the exercise of reasonable diligence should have known, that the  
623 occupational disease [~~was~~] is caused by employment.

624 (3) The following constitute notification of an occupational disease:

625 (a) an employer's or physician's injury report filed with the:

626 (i) division;

627 (ii) employer; or

628 (iii) insurance carrier; or

629 (b) the payment of any medical or disability [~~benefits~~] benefit by the employer or the  
630 employer's insurance carrier.

631 (4) (a) In the form prescribed by the division, [~~each~~] an employer shall file a report  
632 with the division of any occupational disease resulting in:

633 (i) medical treatment;

634 (ii) loss of consciousness;

635 (iii) loss of work;

636 (iv) restriction of work; or

637 (v) transfer to another job.

638 (b) The report required under Subsection (4)(a), shall be filed within seven days after:

639 (i) the occurrence of an occupational disease;

640 (ii) the employer's first knowledge of [~~the~~] an occupational disease; or

641 (iii) the employee's notification of [~~the~~] an occupational disease.

642 (c) [~~Each~~] An employer shall file a subsequent report with the division of [~~any~~] a  
643 previously reported occupational disease that later resulted in death. The subsequent report  
644 shall be filed with the division within seven days following:

645 (i) the death; or

- 646 (ii) the employer's first knowledge or notification of the death.
- 647 (d) A report is not required for:
- 648 (i) ~~a minor [injuries]~~ injury that ~~[require]~~ requires first-aid treatment only, unless a
- 649 treating physician files, or is required to file, the Physician's Initial Report of Work Injury or
- 650 Occupational Disease with the division;
- 651 (ii) occupational diseases that manifest after the employee is no longer employed by
- 652 the employer with which the exposure occurred; or
- 653 (iii) when the employer is not aware of an exposure occasioned by the employment
- 654 that results in an occupational disease as defined by Section 34A-3-103.
- 655 (5) ~~[Each]~~ An employer shall provide the employee with:
- 656 (a) a copy of the report submitted to the division; and
- 657 (b) a statement, as prepared by the division, of the employee's rights and
- 658 responsibilities related to the occupational disease.
- 659 (6) ~~[Each]~~ An employer shall maintain a record in a manner prescribed by the division
- 660 of ~~[all]~~ occupational diseases resulting in:
- 661 (a) medical treatment;
- 662 (b) loss of consciousness;
- 663 (c) loss of work;
- 664 (d) restriction of work; or
- 665 (e) transfer to another job.
- 666 (7) ~~[Any]~~ An employer who refuses or neglects to make ~~[reports, to maintain records,~~
- 667 ~~or to file reports]~~ a report, maintain a record, or file a report with the division as required by
- 668 this section is guilty of a class C misdemeanor and subject to citation under Section
- 669 34A-6-302 and a civil assessment as provided under Section 34A-6-307, unless the division
- 670 finds that the employer has shown good cause for submitting a report later than required by
- 671 this section.
- 672 (8) (a) Except as provided in Subsection (8)(c), ~~[all physicians, surgeons, and other~~
- 673 ~~health providers]~~ a physician, surgeon, or other health care provider attending an

674 occupationally diseased [~~employees~~] employee shall:

675 (i) comply with [~~all~~] the rules, including the schedule of fees, for [~~their~~] services as  
676 adopted by the commission; and

677 (ii) make reports to the division at any and all times as required as to the condition and  
678 treatment of an occupationally diseased employee or as to any other matter concerning  
679 industrial cases [~~they are treating~~] being treated.

680 (b) A physician, as defined in Section 34A-2-111, who is associated with, employed  
681 by, or bills through a hospital is subject to Subsection (8)(a).

682 (c) A hospital is not subject to the requirements of Subsection (8)(a) except a hospital  
683 is subject to rules made by the commission under Subsections 34A-2-407(9)(a)(ii) and (iii).

684 (d) The commission's schedule of fees may reasonably differentiate remuneration to be  
685 paid to providers of health services based on:

686 (i) the severity of the employee's condition;

687 (ii) the nature of the treatment necessary; and

688 (iii) the facilities or equipment specially required to deliver that treatment.

689 (e) This Subsection (8) does not prohibit a contract with a provider of health services  
690 relating to the pricing of goods and services.

691 (9) A copy of the physician's initial report shall be furnished to the:

692 (a) division;

693 (b) employee; and

694 (c) employer or its insurance carrier.

695 (10) [~~Any~~] A person subject to reporting under Subsection (8)(a)(ii) or Subsection  
696 34A-2-407(9)(a)(iii) who refuses or neglects to make [~~any~~] a report or comply with this  
697 section is guilty of a class C misdemeanor for each offense, unless the division finds that there  
698 is good cause for submitting a late report.

699 (11) (a) [~~Applications~~] An application for a hearing to resolve [~~disputes~~] a dispute  
700 regarding an occupational disease [~~claims~~] claim shall be filed with the Division of  
701 Adjudication.

702 (b) After the filing, a copy shall be forwarded by mail to:

703 (i) (A) the employer; or [to]

704 (B) the employer's insurance carrier;

705 (ii) the applicant; and

706 (iii) the attorneys for the parties.

707 (12) (a) Subject to appellate review under Section 34A-1-303, the commission has  
708 exclusive jurisdiction to hear and determine:

709 (i) whether goods provided to or services rendered to an employee is compensable  
710 pursuant to this chapter and Chapter 2, Workers' Compensation Act, including the following:

711 (A) medical, nurse, or hospital services;

712 (B) medicines; and

713 (C) artificial means, appliances, or prosthesis;

714 (ii) the reasonableness of the amounts charged or paid for a good or service described  
715 in Subsection (12)(a)(i); and

716 (iii) collection issues related to a good or service described in Subsection (12)(a)(i).

717 (b) Except as provided in Subsection (12)(a), Subsection 34A-2-211[~~(7)~~] (6), or  
718 Section 34A-2-212, a person may not maintain a cause of action in any forum within this state  
719 other than the commission for collection or payment of goods or services described in  
720 Subsection (12)(a) that are compensable under this chapter or Chapter 2, Workers'  
721 Compensation Act.

722 Section 9. Section **63A-8-101** is amended to read:

723 **63A-8-101. Definitions.**

724 As used in this chapter:

725 (1) (a) "Accounts receivable" or "receivables" means any amount due the state from an  
726 entity for which payment has not been received by the state agency that is servicing the debt.

727 (b) "Accounts receivable" includes unpaid fees, licenses, taxes, loans, overpayments,  
728 fines, forfeitures, surcharges, costs, contracts, interest, penalties, restitution to victims,  
729 third-party claims, sale of goods, sale of services, claims, and damages.

730 (2) "Administrative offset" means:  
731 (a) a reduction of an individual's tax refund or other payments due to the individual to  
732 reduce or eliminate accounts receivable that the individual owes to the state; and  
733 (b) a reduction of an entity's tax refund or other payments due to the entity to reduce  
734 or eliminate accounts receivable that the entity owes to the state.

735 (3) "Entity" means an individual, a corporation, partnership, or other organization that  
736 pays taxes to or does business with the state.

737 (4) "Office" means the Office of State Debt Collection established by this chapter.

738 (5) "Past due" means any accounts receivable that the state has not received by the  
739 payment due date.

740 (6) (a) "State agency" includes any department, division, commission, council, board,  
741 bureau, committee, office, or other administrative subunit of Utah state government, including  
742 the legislative and judicial branches of state government.

743 (b) "State agency" does not include:

744 (i) any institution of higher education; [~~or~~]

745 (ii) except in Subsection 63A-8-201(7)(g), the State Tax Commission[-]; or

746 (iii) the administrator of the Uninsured Employers' Fund appointed by the Labor  
747 Commissioner under Section 34A-2-704, solely for the purposes of collecting monies required  
748 to be deposited into the Uninsured Employers' Fund under:

749 (A) Section 34A-1-405;

750 (B) Title 34A, Chapter 2, Workers' Compensation Act; or

751 (C) Title 34A, Chapter 3, Occupational Disease Act.

752 (7) "Writing-off" means the removal of an accounts receivable from an agency's  
753 accounts receivable records but does not necessarily eliminate further collection efforts.

754 **Section 10. Effective date.**

755 This bill takes effect on July 1, 2010.

756 **Section 11. Coordinating H.B. 271 with H.B. 39 -- Merging substantive**  
757 **amendments.**

758 If this H.B. 271 and H.B. 39, Utah Injured Worker Reemployment Act, both pass, it is  
759 the intent of the Legislature that the Office of Legislative Research and General Counsel, in  
760 preparing for publication the Utah Code database that takes effect on July 1, 2010:

761 (1) modify the language in Subsection 34A-8a-203(4)(b) to read:

762 "(b) (i) The commission shall deposit a civil assessment imposed under this Subsection  
763 (4) into the Uninsured Employers' Fund created by Section 34A-2-704 to be used for the  
764 purposes of the Uninsured Employers' Fund specified in Section 34A-2-704.

765 (ii) The administrator of the Uninsured Employers' Fund shall collect monies required  
766 to be deposited into the Uninsured Employers' Fund under this Subsection (4) in accordance  
767 with Section 34A-2-704."; and

768 (2) modify the language in Subsection 63A-8-101(6)(b)(iii) to read:

769 "(iii) the administrator of the Uninsured Employers' Fund appointed by the Labor  
770 Commissioner under Section 34A-2-704, solely for the purposes of collecting monies required  
771 to be deposited into the Uninsured Employers' Fund under:

772 (A) Section 34A-1-405;

773 (B) Title 34A, Chapter 2, Workers' Compensation Act;

774 (C) Title 34A, Chapter 3, Occupational Disease Act; or

775 (D) Title 34A, Chapter 8a, Utah Injured Worker Reemployment Act."