

## SB0099S01 compared with SB0099

~~{deleted text}~~ shows text that was in SB0099 but was deleted in SB0099S01.

inserted text shows text that was not in SB0099 but was inserted into SB0099S01.

**DISCLAIMER:** This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will NOT be completely accurate. Therefore, you need to read the actual bills. This automatically generated document could contain inaccuracies caused by: limitations of the compare program; bad input data; or other causes.

Senator Wayne A. Harper proposes the following substitute bill:

### LABOR AMENDMENTS

2013 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Wayne A. Harper**

House Sponsor: \_\_\_\_\_

---

#### LONG TITLE

##### General Description:

This bill modifies the Utah Labor Code to address procedures followed by the Labor Commission and persons subject to the jurisdiction of the Labor Commission.

##### Highlighted Provisions:

This bill:

- ▶ ~~{eliminates}~~ modifies requirements of the Appeals Board;
- ▶ authorizes the ~~{commissioner's role in hearing motions for review;~~
- ▶ ~~addresses the payment of attorney fees}~~ commissioner to recuse from hearing a motion for review;
- ▶ imposes time frames for decisions of administrative law judges and the commissioner or Appeals Board;
- ▶ requires rulemaking to facilitate timely completion of certain administrative actions;

## SB0099S01 compared with SB0099

- ▶ requires monitoring and reporting regarding the time it takes to complete a workers' compensation related administrative hearing;
- ▶ authorizes the commission to hire a medical panel director;
- ▶ addresses the assignment of administrative law judges and the appointment of medical panels; and
- ▶ makes technical and conforming amendments.

### Money Appropriated in this Bill:

None

### Other Special Clauses:

This bill takes effect on July 1, 2013.

### Utah Code Sections Affected:

AMENDS:

34A-1-205, as last amended by Laws of Utah 2002, Chapter 176

34A-1-303, as last amended by Laws of Utah 2008, Chapter 382

~~{34A-1-309}~~34A-2-601, as last amended by Laws of Utah 2009, Chapter ~~{216~~

~~34A-2-102, as last amended by Laws of Utah 2008, Chapter 90~~

~~34A-2-112, as enacted by Laws of Utah 1997, Chapter 375~~

~~34A-2-208, as renumbered and amended by Laws of Utah 1997, Chapter 375~~

~~34A-2-420, as renumbered and amended by Laws of Utah 1997, Chapter 375~~

~~34A-2-602, as renumbered and amended by Laws of Utah 1997, Chapter 375~~

~~{~~215

34A-2-801, as last amended by Laws of Utah 2009, Chapter 347

~~{~~~~34A-2-802, as last amended by Laws of Utah 2011, Chapter 297~~

~~34A-5-107, as last amended by Laws of Utah 2008, Chapter 382~~

~~34A-6-304, as last amended by Laws of Utah 2008, Chapter 382~~

~~}~~

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

Section 1. Section 34A-1-205 is amended to read:

**34A-1-205. Appeals Board -- Chair -- Appointment -- Compensation --**

### Qualifications.

(1) There is created the Appeals Board within the commission consisting of three

## SB0099S01 compared with SB0099

members. The board may call and preside at adjudicative proceedings to review an order or decision that is subject to review by the Appeals Board under this title.

(2) (a) The governor shall appoint the members with the consent of the Senate and in accordance with this section.

(b) One member of the board shall be appointed to represent employers, in making this appointment, the governor shall consider nominations from employer organizations.

(c) One member of the board shall be appointed to represent employees, in making this appointment, the governor shall consider nominations from employee organizations.

(d) No more than two members may belong to the same political party.

(e) The governor shall, at the time of appointment or reappointment, make appointments to the board so that at least two of the members of the board are members of the Utah State Bar in good standing or resigned from the Utah State Bar in good standing.

(3) (a) The term of a member shall be six years beginning on March 1 of the year the member is appointed, except that the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of members are staggered so that one member is appointed every two years.

(b) The governor may remove a member only for inefficiency, neglect of duty, malfeasance or misfeasance in office, or other good and sufficient cause.

(c) A member shall hold office until a successor is appointed and has qualified.

(4) A member shall be part-time and receive compensation as provided by Title 67, Chapter 19, State Personnel Management Act.

(5) (a) The chief officer of the board shall be the chair, who shall serve as the executive and administrative head of the board.

(b) The governor shall appoint and may remove at will the chair from the position of chair.

(6) A majority of the board shall constitute a quorum to transact business.

(7) (a) The commission shall provide the Appeals Board necessary staff support, except as provided in Subsection (7)(b).

(b) At the request of the Appeals Board, the attorney general shall act as an impartial aid to the Appeals Board in outlining the facts and the issues.

Section ~~41~~2. Section **34A-1-303** is amended to read:

## SB0099S01 compared with SB0099

### 34A-1-303. Review of administrative decision.

(1) A decision entered by an administrative law judge under this title is the final order of the commission unless a further appeal is initiated:

- (a) under this title; and
- (b) in accordance with the rules of the commission governing the review.

(2) (a) Unless otherwise provided, a person who is entitled to appeal a decision of an administrative law judge under this title may appeal the decision by filing a motion for review with the Division of Adjudication.

~~§§~~(b) (i) Unless a party in interest to the appeal requests in accordance with Subsection (3) that the appeal be heard by the Appeals Board, the commissioner shall hear the review in accordance with Title 63G, Chapter 4, Administrative Procedures Act. ~~§§~~

~~§§~~(ii) A decision of the commissioner is a final order of the commission unless set aside by the court of appeals. ~~§§~~

~~§§~~(c) (i) If in accordance with Subsection (3) a party in interest to the appeal requests that the appeal be heard by the Appeals Board, the ~~§§~~

~~§§~~ ~~(b) (i) The~~ Appeals Board shall hear the ~~{ motion for }~~ review in accordance with:

- (A) Section 34A-1-205; and
- (B) Title 63G, Chapter 4, Administrative Procedures Act.

(ii) A decision of the Appeals Board is a final order of the commission unless set aside by the court of appeals.

~~(d) The commissioner may transfer a motion for review to the Appeals Board for decision if the commissioner determines that the commissioner's ability to impartially decide the motion for review might reasonably be questioned.~~

~~§§~~(3) A party in interest may request that an appeal be heard by the Appeals Board by filing the request with the Division of Adjudication: ~~§§~~

~~§§~~(a) as part of the motion for review; or ~~§§~~

~~§§~~(b) if requested by a party in interest who did not file a motion for review, within 20 days of the date the motion for review is filed with the Division of Adjudication. ~~§§~~

~~§§~~(4) ~~§§~~ (a) On appeal, ~~§§~~ the commissioner or ~~§§~~ the Appeals Board may:

- (i) affirm the decision of an administrative law judge;
- (ii) modify the decision of an administrative law judge;

## SB0099S01 compared with SB0099

- (iii) return the case to an administrative law judge for further action as directed; or
- (iv) reverse the findings, conclusions, and decision of an administrative law judge.

(b) The ~~the~~ commissioner or ~~the~~ Appeals Board may not conduct a trial de novo of the case.

(c) The ~~the~~ commissioner or ~~the~~ Appeals Board may base its decision on:

- (i) the evidence previously submitted in the case; or
- (ii) ~~on~~ written argument or written supplemental evidence requested by the

~~the~~ commissioner or ~~the~~ Appeals Board.

(d) The ~~the~~ commissioner or ~~the~~ Appeals Board may permit the parties to:

- (i) file briefs or other papers; or
- (ii) conduct oral argument.

(e) The ~~the~~ commissioner or ~~the~~ Appeals Board shall promptly notify the parties to any proceedings before the ~~the~~ commissioner or ~~the~~ Appeals Board of its decision, including its findings and conclusions.

~~(5)(4)~~ (a) Each decision of a member of the Appeals Board shall represent the member's independent judgment.

(b) A member of the Appeals Board may not participate in any case in which the member is an interested party.

(c) If a member of the Appeals Board may not participate in a case because the member is an interested party, the two members of the Appeals Board that may hear the case shall assign an individual to participate as a member of the board in that case if the individual:

- (i) is not an interested party in the case;
- (ii) was not previously assigned to:
  - (A) preside over any proceeding related to the case; or
  - (B) take any administrative action related to the case; and
- (iii) is representative of the following group that was represented by the member that

may not hear the case under Subsection ~~(5)(4)~~(b):

- (A) employers;
  - (B) employees; or
  - (C) the public.
- (d) The two members of the Appeals Board may appoint an individual to participate as

## SB0099S01 compared with SB0099

a member of the Appeals Board in a case if:

(i) there is a vacancy on the board at the time the Appeals Board hears the review of the case;

(ii) the individual appointed meets the conditions described in Subsections ~~§§(5)~~ ~~§(4)~~(c)(i) and (ii); and

(iii) the individual appointed is representative of the following group that was represented by the member for which there is a vacancy:

(A) employers;

(B) employees; or

(C) the public.

~~§§(6)~~ ~~§(5)~~ If an order is appealed to the court of appeals after the party appealing the order has exhausted all administrative appeals, the court of appeals has jurisdiction to:

(a) review, reverse, remand, or annul any order of the ~~§~~ commissioner or ~~§~~ Appeals Board; or

(b) suspend or delay the operation or execution of the order of the ~~§~~ commissioner or ~~§~~ Appeals Board being appealed.

Section ~~§2~~3. Section ~~§34A-1-309~~34A-2-601 is amended to read:

~~§~~ ~~34A-1-309. Attorney fees.~~

~~—— (1) In a case before the commission in which an attorney is employed, the commission has full power to regulate and fix the fees of the attorney.~~

~~—— (2) In accordance with Title 63G, Chapter 4, Administrative Procedures Act, an attorney may file an application for hearing with the Division of Adjudication to obtain an award of attorney fees as authorized by this section and commission rules.~~

~~—— (3) (a) The commission may award reasonable attorney fees on a contingency basis when there is generated:~~

~~—— (i) disability or death benefits; or~~

~~—— (ii) interest on disability or death benefits.~~

~~—— (b) An employer or its insurance carrier shall pay attorney fees awarded under Subsection (3)(a) out of the award of:~~

~~—— (i) disability or death benefits; or~~

~~—— (ii) interest on disability or death benefits.~~

## SB0099S01 compared with SB0099

~~———— (4) (a) In addition to the attorney fees ordered under Subsection (3), the commission may award reasonable attorney fees on a contingency basis for medical benefits ordered paid in the same percentages for an award under Subsection (3) provided for in rule made by the commission in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, if:~~

~~———— (i) medical benefits are not approved by:~~

~~———— (A) the employer or its insurance carrier; or~~

~~———— (B) the Uninsured Employer's Fund created in Section 34A-2-704;~~

~~———— (ii) after the employee employs an attorney, medical benefits are paid or ordered to be paid;~~

~~———— (iii) the commission's informal dispute resolution mechanisms are reasonably used by the parties before adjudication; and~~

~~———— (iv) the sum of the following at issue in the adjudication of the medical benefit claim is less than \$4,000:~~

~~———— (A) disability or death benefits; and~~

~~———— (B) interest on disability or death benefits.~~

~~———— (b) An employer or its insurance carrier shall pay attorney fees awarded under Subsection (4)(a) in addition to the payment of medical benefits ordered.~~

~~———— (5) Notwithstanding the other provisions of this section, in a case brought under Chapter 2, Workers' Compensation Act, or Chapter 3, Utah Occupational Disease Act, the commission shall order that an employer or its workers' compensation insurance carrier pay the attorney fees from its own money and not from the compensation awarded to the employee if the employer or its workers' compensation insurance carrier:~~

~~———— (a) files a motion for review of the decision of an administrative law judge; and~~

~~———— (b) does not prevail once a final order of the commission is issued.~~

~~———— Section 3. Section **34A-2-102** is amended to read:~~

~~———— **34A-2-102. Definition of terms.**~~

~~———— (1) As used in this chapter:~~

~~———— (a) "Average weekly wages" means the average weekly wages as determined under Section 34A-2-409.~~

~~———— (b) "Award" means a final order of the commission as to the amount of compensation due.~~

## SB0099S01 compared with SB0099

- ~~—— (i) an injured employee; or~~
- ~~—— (ii) a dependent of a deceased employee.~~
- ~~—— (c) "Compensation" means the payments and benefits provided for in this chapter or Chapter 3, Utah Occupational Disease Act.~~
- ~~—— (d) (i) "Decision" means a ruling of:~~
  - ~~—— (A) an administrative law judge; or~~
  - ~~—— (B) in accordance with Section 34A-2-801[- (F) the commissioner; or (H)]<sub>2</sub> the Appeals Board.~~
- ~~—— (ii) "Decision" includes:~~
  - ~~—— (A) an award or denial of a medical, disability, death, or other related benefit under this chapter or Chapter 3, Utah Occupational Disease Act; or~~
  - ~~—— (B) another adjudicative ruling in accordance with this chapter or Chapter 3, Utah Occupational Disease Act.~~
- ~~—— (e) "Director" means the director of the division, unless the context requires otherwise.~~
- ~~—— (f) "Disability" means an administrative determination that may result in an entitlement to compensation as a consequence of becoming medically impaired as to function. Disability can be total or partial, temporary or permanent, industrial or nonindustrial.~~
- ~~—— (g) "Division" means the Division of Industrial Accidents.~~
- ~~—— (h) "Impairment" is a purely medical condition reflecting an anatomical or functional abnormality or loss. Impairment may be either temporary or permanent, industrial or nonindustrial.~~
- ~~—— (i) "Order" means an action of the commission that determines the legal rights, duties, privileges, immunities, or other interests of one or more specific persons, but not a class of persons.~~
- ~~—— (j) (i) "Personal injury by accident arising out of and in the course of employment" includes an injury caused by the willful act of a third person directed against an employee because of the employee's employment.~~
- ~~—— (ii) "Personal injury by accident arising out of and in the course of employment" does not include a disease, except as the disease results from the injury.~~
- ~~—— (k) "Safe" and "safety," as applied to employment or a place of employment, means the freedom from danger to the life or health of employees reasonably permitted by the nature of~~



## SB0099S01 compared with SB0099

~~the employment.~~

~~—— (1) "Workers' Compensation Fund" means the nonprofit, quasi-public corporation created in Title 31A, Chapter 33, Workers' Compensation Fund.~~

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

~~—— (a) "Brother or sister" includes a half brother or sister.~~

~~—— (b) "Child" includes:~~

~~—— (i) a posthumous child; or~~

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

~~—— Section 4. Section 34A-2-112 is amended to read:~~

~~—— **34A-2-112. Administration of this chapter and Chapter 3.**~~

~~—— (1) Administration of this chapter and Chapter 3, Utah Occupational Disease Act, is vested in the commission to be administered through the division, the Division of Adjudication, and for administrative appeals through the [commissioner and the] Appeals Board.~~

~~—— (2) The commission:~~

~~—— (a) has jurisdiction over every workplace in the state and may administer this chapter and Chapter 3, Utah Occupational Disease Act, and any rule or order issued under these chapters, to ensure that every employee in this state has a safe workplace in which employers have secured the payment of workers' compensation benefits for their employees in accordance with this chapter and Chapter 3, Utah Occupational Disease Act;~~

~~—— (b) through the division under the supervision of the director, has the duty and full authority to take any administrative action authorized under this chapter or Chapter 3, Utah Occupational Disease Act; and~~

~~—— (c) through the Division of Adjudication[, commissioner,] and Appeals Board, provide for the adjudication and review of an administrative action, decision, or order of the commission in accordance with this title.~~

~~—— Section 5. Section 34A-2-208 is amended to read:~~

~~—— **34A-2-208. Right to compensation when employer fails to comply.**~~

~~—— (1) Any employee, or the employee's dependents if death has ensued, may, in lieu of proceeding against the employee's employer by civil action in the courts as provided in Section 34A-2-207, file an application with the Division of Adjudication for compensation in~~

## SB0099S01 compared with SB0099

~~accordance with this chapter or Chapter 3, Utah Occupational Disease Act, when:~~

~~—— (a) the employee's employer failed to comply with Section 34A-2-201;~~  
~~—— (b) the employee has been injured by accident arising out of or in the course of the employee's employment, wherever the injury occurred; and~~

~~—— (c) the injury described in Subsection (1)(b) was not purposely self-inflicted.~~

~~—— (2) An application for compensation filed under Subsection (1) shall be treated by the commission, including for purposes of appeal to the [commissioner or] Appeals Board, as an application for hearing under Section 34A-2-801.~~

~~—— (3) (a) If an application for compensation is filed under Subsection (1), in accordance with Part 8, Adjudication, the commission shall determine the award due to:~~

~~—— (i) the injured employee; or~~

~~—— (ii) the employee's dependents in case death has ensued.~~

~~—— (b) The employer shall pay the award determined under Subsection (3)(a) to the persons entitled to the compensation within 10 days after receiving notice from the commission of the amount of the award determined under Subsection (3)(a):~~

~~—— Section 6. Section 34A-2-420 is amended to read:~~

~~—— **34A-2-420. Continuing jurisdiction of commission -- No authority to change statutes of limitation -- Authority to destroy records -- Interest on award -- Authority to approve final settlement claims.**~~

~~—— (1) (a) The powers and jurisdiction of the commission over each case shall be continuing:~~

~~—— (b) After notice and hearing, the Division of Adjudication[, commissioner,] or Appeals Board in accordance with Part 8, Adjudication, may from time to time modify or change a former finding or order of the commission:~~

~~—— (c) This section may not be interpreted as modifying in any respect the statutes of limitations contained in other sections of this chapter or Chapter 3, Utah Occupational Disease Act.~~

~~—— (d) The commission may not in any respect change the statutes of limitation referred to in Subsection (1)(c):~~

~~—— (2) Records pertaining to cases that have been closed and inactive for 10 years, other than cases of total permanent disability or cases in which a claim has been filed as in Section~~

## SB0099S01 compared with SB0099

~~34A-2-417, may be destroyed at the discretion of the commission:~~

~~—— (3) Awards made by a final order of the commission shall include interest at the rate of 8% per annum from the date when each benefit payment would have otherwise become due and payable:~~

~~—— (4) Notwithstanding Subsection (1) and Section 34A-2-108, an administrative law judge shall review and may approve the agreement of the parties to enter into a full and final:~~

~~—— (a) compromise settlement of disputed medical, disability, or death benefit entitlements under this chapter or Chapter 3, Utah Occupational Disease Act; or~~

~~—— (b) commutation and settlement of reasonable future medical, disability, or death benefit entitlements under this chapter or Chapter 3 by means of a lump sum payment, structured settlement, or other appropriate payout:~~

‡ **34A-2-601. Medical panel, director, or consultant -- Findings and reports -- Objections to report -- Hearing -- Expenses.**

(1) (a) The Division of Adjudication may refer the medical aspects of a case described in this Subsection (1)(a) to a medical panel appointed by an administrative law judge:

(i) upon the filing of a claim for compensation arising out of and in the course of employment for:

(A) disability by accident; or

(B) death by accident; and

(ii) if the employer or the employer's insurance carrier denies liability.

(b) An administrative law judge may appoint a medical panel upon the filing of a claim for compensation based upon disability or death due to an occupational disease.

(c) A medical panel appointed under this section shall consist of one or more physicians specializing in the treatment of the disease or condition involved in the claim.

(d) As an alternative method of obtaining an impartial medical evaluation of the medical aspects of a controverted case, the division may employ a medical director or one or more medical consultants:

(i) on a full-time or part-time basis; and

(ii) for the purpose of:

(A) evaluating medical evidence; and

(B) advising an administrative law judge with respect to the administrative law judge's

## **SB0099S01 compared with SB0099**

ultimate fact-finding responsibility.

(e) If all parties agree to the use of a medical director or one or more medical consultants, the medical director or one or more medical consultants is allowed to function in the same manner and under the same procedures as required of a medical panel.

(2) (a) A medical panel, medical director, or medical consultant may do the following to the extent the medical panel, medical director, or medical consultant determines that it is necessary or desirable:

- (i) conduct a study;
- (ii) take an x-ray;
- (iii) perform a test; or
- (iv) if authorized by an administrative law judge, conduct a post-mortem examination.

(b) A medical panel, medical director, or medical consultant shall make:

(i) a report in writing to the administrative law judge in a form prescribed by the Division of Adjudication; and

(ii) additional findings as the administrative law judge may require.

(c) In an occupational disease case, in addition to the requirements of Subsection (2)(b), a medical panel, medical director, or medical consultant shall certify to the administrative law judge:

(i) the extent, if any, of the disability of the claimant from performing work for remuneration or profit;

(ii) whether the sole cause of the disability or death, in the opinion of the medical panel, medical director, or medical consultant results from the occupational disease; and

(iii) (A) whether any other cause aggravated, prolonged, accelerated, or in any way contributed to the disability or death; and

(B) if another cause contributed to the disability or death, the extent in percentage to which the other cause contributed to the disability or death.

(d) (i) An administrative law judge shall promptly distribute full copies of a report submitted to the administrative law judge under this Subsection (2) by mail to:

- (A) the applicant;
- (B) the employer;
- (C) the employer's insurance carrier; and

## **SB0099S01 compared with SB0099**

(D) an attorney employed by a person listed in Subsections (2)(d)(i)(A) through (C).

(ii) Within 20 days after the report described in Subsection (2)(d)(i) is deposited in the United States post office, the following may file with the administrative law judge a written objection to the report:

(A) the applicant;

(B) the employer; or

(C) the employer's insurance carrier.

(iii) If no written objection is filed within the period described in Subsection (2)(d)(ii), the report is considered admitted in evidence.

(e) (i) An administrative law judge may base the administrative law judge's finding and decision on the report of:

(A) a medical panel;

(B) the medical director; or

(C) one or more medical consultants.

(ii) Notwithstanding Subsection (2)(e)(i), an administrative law judge is not bound by a report described in Subsection (2)(e)(i) if other substantial conflicting evidence in the case supports a contrary finding.

(f) (i) If a written objection to a report is filed under Subsection (2)(d), the administrative law judge may set the case for hearing to determine the facts and issues involved.

(ii) At a hearing held pursuant to this Subsection (2)(f), any party may request the administrative law judge to have any of the following present at the hearing for examination and cross-examination:

(A) the chair of the medical panel;

(B) the medical director; or

(C) the one or more medical consultants.

(iii) For good cause shown, an administrative law judge may order the following to be present at the hearing for examination and cross-examination:

(A) a member of a medical panel, with or without the chair of the medical panel;

(B) the medical director; or

(C) a medical consultant.

## SB0099S01 compared with SB0099

(g) (i) A written report of a medical panel, medical director, or one or more medical consultants may be received as an exhibit at a hearing described in Subsection (2)(f).

(ii) Notwithstanding Subsection (2)(g)(i), a report received as an exhibit under Subsection (2)(g)(i) may not be considered as evidence in the case except as far as the report is sustained by the testimony admitted.

(h) For a claim referred under Subsection (1) to a medical panel, medical director, or medical consultant before July 1, 1997, the commission shall pay out of the Employers' Reinsurance Fund established in Section 34A-2-702:

(i) expenses of a study or report of the medical panel, medical director, or medical consultant; and

(ii) the expenses of the medical panel's, medical director's, or medical consultant's appearance before an administrative law judge.

(i) (i) For a claim referred under Subsection (1) to a medical panel, medical director, or medical consultant on or after July 1, 1997, the commission shall pay out of the Uninsured Employers' Fund established in Section 34A-2-704 the expenses of:

(A) a study or report of the medical panel, medical director, or medical consultant; and

(B) the medical panel's, medical director's, or medical consultant's appearance before an administrative law judge.

(ii) Notwithstanding Section 34A-2-704, the expenses described in Subsection (2)(i)(i) shall be paid from the Uninsured Employers' Fund whether or not the employment relationship during which the industrial accident or occupational disease occurred is localized in Utah as described in Subsection 34A-2-704(20).

~~{Section 7. Section 34A-2-602 is amended to read:~~

~~34A-2-602. Physical examinations:~~

~~(1) The division or an administrative law judge may require an employee claiming the right to receive compensation under this chapter to submit to a medical examination at any time, and from time to time, at a place reasonably convenient for the employee, and as may be provided by the rules of the commission.~~

~~(2) If an employee refuses to submit to an examination under Subsection (1), or obstructs the examination, the employee's right to have the employee's claim for compensation considered, if the employee's claim is pending before an administrative law judge[;~~

## SB0099S01 compared with SB0099

~~commissioner,] or the Appeals Board, or to receive any payments for compensation theretofore granted by a final order of the commission, shall be suspended during the period of the refusal or obstruction.~~

~~Section 8}(3) (a) The commission may employ a qualified physician as medical panel director who, in addition to the other duties outlined in this section for a medical director, is responsible for:~~

~~(i) assisting the commission in creating and enforcing standards for medical panels and medical consultants;~~

~~(ii) training members of medical panels or medical consultants;~~

~~(iii) increasing the number of physicians who participate on medical panels;~~

~~(iv) ensuring medical panels include appropriate specialists; and~~

~~(v) monitoring the quality of medical panel and medical consultant reports.~~

~~(b) The commission shall pay the expenses of employing a medical panel director described in this Subsection (3) out of the Uninsured Employers' Fund established in Section 34A-2-704.~~

Section 4. Section **34A-2-801** is amended to read:

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

(1) (a) To contest an action of the employee's employer or its insurance carrier concerning a compensable industrial accident or occupational disease alleged by the employee or a dependent any of the following shall file an application for hearing with the Division of Adjudication:

(i) the employee;

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

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

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

(i) the employer;

## SB0099S01 compared with SB0099

(ii) the insurance carrier; or

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

(c) A person providing goods or services described in Subsections 34A-2-407(11) and 34A-3-108(12) may file an application for hearing in accordance with Section 34A-2-407 or 34A-3-108.

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

(2) (a) Unless all parties agree to the assignment in writing, the Division of Adjudication may not assign the same administrative law judge to hear a claim under this section by an injured employee if the administrative law judge previously heard a claim by the same injured employee for a different injury or occupational disease.

(b) Unless all parties agree to the appointment in writing, an administrative law judge may not appoint the same medical panel or individual panel member to evaluate a claim by an injured employee if the medical panel or individual panel member previously evaluated a claim by the same injured employee for a different injury or occupational disease.

~~(2)~~ (3) Unless a party in interest appeals the decision of an administrative law judge in accordance with Subsection ~~(3)~~ (4), the decision of an administrative law judge on an application for hearing filed under Subsection (1) is a final order of the commission 30 days after the day on which the decision is issued. An administrative law judge shall issue a decision by no later than 60 days from the day on which the hearing is held under this part unless:

(a) the parties agree to a longer period of time; or

(b) a decision within the 60-day period is impracticable.

~~(3)~~ (4) (a) A party in interest may appeal the decision of an administrative law judge by filing a motion for review with the Division of Adjudication within 30 days of the date the decision is issued.

~~(b)~~ (b) Unless a party in interest to the appeal requests under Subsection ~~(3)~~ (4)(c) that the appeal be heard by the Appeals Board, the commissioner shall hear the review. ~~(b)~~

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



## SB0099S01 compared with SB0099

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

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

~~§§~~(d) ~~§§~~(b) A case appealed to the Appeals Board shall be decided by the majority vote of the Appeals Board.

~~§§~~(4) §§(5) All records on appeals shall be maintained by the Division of Adjudication. Those records shall include an appeal docket showing the receipt and disposition of the appeals on review.

~~§§~~(5) §§(6) Upon appeal, the ~~§§~~ commissioner or ~~§§~~ Appeals Board shall make its decision in accordance with Section 34A-1-303. The commissioner or Appeals Board shall issue a decision under this part by no later than 90 days from the day on which the motion for review is filed unless:

- (a) the parties agree to a longer period of time; or
- (b) a decision within the 90-day period is impracticable.

~~§§~~(6) §§(7) The ~~§§~~ commissioner or ~~§§~~ Appeals Board shall promptly notify the parties to a proceeding before it of its decision, including its findings and conclusions.

~~§§~~(7) §§(8) The decision of the ~~§§~~ commissioner or ~~§§~~ Appeals Board is final unless within 30 days after the date the decision is issued further appeal is initiated under the provisions of this section or Title 63G, Chapter 4, Administrative Procedures Act.

~~§§~~(8) §§(9) (a) Within 30 days after the day on which the decision of the ~~§§~~ commissioner or ~~§§~~ Appeals Board is issued, an aggrieved party may secure judicial review by commencing an action in the court of appeals against the ~~§§~~ commissioner or ~~§§~~ Appeals Board for the review of the decision of the ~~§§~~ commissioner or ~~§§~~ Appeals Board.

(b) In an action filed under Subsection ~~§§~~(8) §§(9)(a):

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

(ii) the commission shall be made a party.

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

(d) At the request of the court of appeals, the commission shall certify and file with the court all documents and papers and a transcript of all testimony taken in the matter together

## SB0099S01 compared with SB0099

with the decision of the ~~the~~ commissioner or ~~the~~ Appeals Board.

~~(9)10~~ (a) The commission shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to facilitate timely completion of administrative actions under this part.

(b) The commission shall monitor the time from filing of an application for a hearing to issuance of a final order of the commission for cases brought under this part.

(c) The commission shall annually report to the Business and Labor Interim Committee:

(i) the number of cases for which an application for hearing is filed under this part in the previous calendar year;

(ii) the number of cases described in Subsection ~~(9)10~~(c)(i) for which the decision of the administrative law judge was not issued within the 60-day period required by Subsection ~~(2)3~~;

(iii) the number of cases described in Subsection ~~(9)10~~(c)(i) that are appealed to the ~~commissioner or~~ Appeals Board for which the decision of the ~~commissioner or~~ Appeals Board was not issued within the 90-day period required by Subsection ~~(5)6~~;

(iv) the number of cases described in Subsection ~~(9)10~~(c)(i) for which a final order of the commission is issued within 18 months of the day on which the application for hearing is filed;

(v) the number of cases for which a final order of the commission is not issued within 18 months of the day on which the application for a hearing is filed; and

(vi) the reasons the cases described in Subsection ~~(9)10~~(c)(v) were not resolved within 18 months of the day on which the application for a hearing is filed.

Section ~~9. Section 34A-2-802 is amended to read:~~

~~—————34A-2-802. Rules of evidence and procedure before commission— Admissible evidence.~~

~~—————(1) The commission, [the commissioner,] an administrative law judge, or the Appeals Board, is not bound by the usual common law or statutory rules of evidence, or by any technical or formal rules or procedure, other than as provided in this section or as adopted by the commission pursuant to this chapter and Chapter 3, Utah Occupational Disease Act. The commission may make its investigation in such manner as in its judgment is best calculated to~~

## SB0099S01 compared with SB0099

~~ascertain the substantial rights of the parties and to carry out justly the spirit of the chapter.~~

~~—— (2) The commission may receive as evidence and use as proof of any fact in dispute all evidence considered material and relevant including the following:~~

~~—— (a) depositions and sworn testimony presented in open hearings;~~

~~—— (b) reports of attending or examining physicians, or of pathologists;~~

~~—— (c) reports of investigators appointed by the commission;~~

~~—— (d) reports of employers, including copies of time sheets, book accounts, or other records; or~~

~~—— (e) hospital records in the case of an injured or diseased employee.~~

~~—— Section 10. Section **34A-5-107** is amended to read:~~

~~—— **34A-5-107. Procedure for aggrieved person to file claim -- Investigations -- Adjudicative proceedings -- Settlement -- Reconsideration -- Determination.**~~

~~—— (1) (a) Any person claiming to be aggrieved by a discriminatory or prohibited employment practice may, or that person's attorney or agent may, make, sign, and file with the division a request for agency action:~~

~~—— (b) Every request for agency action shall be verified under oath or affirmation.~~

~~—— (c) A request for agency action made under this section shall be filed within 180 days after the alleged discriminatory or prohibited employment practice occurred.~~

~~—— (d) The division may transfer a request for agency action filed with the division pursuant to this section to the federal Equal Employment Opportunity Commission in accordance with the provisions of any work-share agreement that is:~~

~~—— (i) between the division and the Equal Employment Opportunity Commission; and~~

~~—— (ii) in effect on the day on which the request for agency action is transferred.~~

~~—— (2) Any employer, labor organization, joint apprenticeship committee, or vocational school who has an employee or member who refuses or threatens to refuse to comply with this chapter may file with the division a request for agency action asking the division for assistance to obtain the employee's or member's compliance by conciliation or other remedial action.~~

~~—— (3) (a) Before a hearing is set or held as part of any adjudicative proceeding, the division shall promptly assign an investigator to attempt a settlement between the parties by conference, conciliation, or persuasion.~~

~~—— (b) If no settlement is reached, the investigator shall make a prompt impartial~~

## SB0099S01 compared with SB0099

~~investigation of all allegations made in the request for agency action:~~

~~—— (c) The division and its staff, agents, and employees:~~

~~—— (i) shall conduct every investigation in fairness to all parties and agencies involved;~~

~~and~~

~~—— (ii) may not attempt a settlement between the parties if it is clear that no discriminatory or prohibited employment practice has occurred:~~

~~—— (d) An aggrieved party may withdraw the request for agency action prior to the issuance of a final order:~~

~~—— (4) (a) If the initial attempts at settlement are unsuccessful, and the investigator uncovers insufficient evidence during the investigation to support the allegations of a discriminatory or prohibited employment practice set out in the request for agency action, the investigator shall formally report these findings to the director or the director's designee:~~

~~—— (b) Upon receipt of the investigator's report described in Subsection (4)(a), the director or the director's designee may issue a determination and order for dismissal of the adjudicative proceeding:~~

~~—— (c) A party may make a written request to the Division of Adjudication for an evidentiary hearing to review de novo the director's or the director's designee's determination and order within 30 days of the date the determination and order for dismissal is issued:~~

~~—— (d) If the director or the director's designee receives no timely request for a hearing, the determination and order issued by the director or the director's designee becomes the final order of the commission:~~

~~—— (5) (a) If the initial attempts at settlement are unsuccessful and the investigator uncovers sufficient evidence during the investigation to support the allegations of a discriminatory or prohibited employment practice set out in the request for agency action, the investigator shall formally report these findings to the director or the director's designee:~~

~~—— (b) (i) Upon receipt of the investigator's report described in Subsection (5)(a), the director or the director's designee may issue a determination and order based on the investigator's report:~~

~~—— (ii) A determination and order issued under this Subsection (5)(b) shall:~~

~~—— (A) direct the respondent to cease any discriminatory or prohibited employment practice; and~~

## SB0099S01 compared with SB0099

~~—— (B) provide relief to the aggrieved party as the director or the director's designee determines is appropriate.~~

~~—— (c) A party may file a written request to the Division of Adjudication for an evidentiary hearing to review de novo the director's or the director's designee's determination and order within 30 days of the date the determination and order is issued.~~

~~—— (d) If the director or the director's designee receives no timely request for a hearing, the determination and order issued by the director or the director's designee in accordance with Subsection (5)(b) becomes the final order of the commission.~~

~~—— (6) In any adjudicative proceeding to review the director's or the director's designee's determination that a prohibited employment practice has occurred, the division shall present the factual and legal basis of the determination or order issued under Subsection (5).~~

~~—— (7) (a) Prior to commencement of an evidentiary hearing:~~

~~—— (i) the party filing the request for agency action may reasonably and fairly amend any allegation; and~~

~~—— (ii) the respondent may amend its answer.~~

~~—— (b) An amendment permitted under this Subsection (7) may be made:~~

~~—— (i) during or after a hearing; and~~

~~—— (ii) only with permission of the presiding officer.~~

~~—— (8) (a) If, upon all the evidence at a hearing, the presiding officer finds that a respondent has not engaged in a discriminatory or prohibited employment practice, the presiding officer shall issue an order dismissing the request for agency action containing the allegation of a discriminatory or prohibited employment practice.~~

~~—— (b) The presiding officer may order that the respondent be reimbursed by the complaining party for the respondent's attorneys' fees and costs.~~

~~—— (9) If upon all the evidence at the hearing, the presiding officer finds that a respondent has engaged in a discriminatory or prohibited employment practice, the presiding officer shall issue an order requiring the respondent to:~~

~~—— (a) cease any discriminatory or prohibited employment practice; and~~

~~—— (b) provide relief to the complaining party, including:~~

~~—— (i) reinstatement;~~

~~—— (ii) back pay and benefits;~~

## SB0099S01 compared with SB0099

~~—— (iii) attorneys' fees; and~~

~~—— (iv) costs.~~

~~—— (10) Conciliation between the parties is to be urged and facilitated at all stages of the adjudicative process.~~

~~—— (11) (a) Either party may file with the Division of Adjudication a written request for review before the [commissioner or] Appeals Board of the order issued by the presiding officer in accordance with:~~

~~—— (i) Section 63G-4-301; and~~

~~—— (ii) Chapter 1, Part 3, Adjudicative Proceedings.~~

~~—— (b) If there is no timely request for review, the order issued by the presiding officer becomes the final order of the commission.~~

~~—— (12) An order of the commission under Subsection (11)(a) is subject to judicial review as provided in:~~

~~—— (a) Section 63G-4-403; and~~

~~—— (b) Chapter 1, Part 3, Adjudicative Proceedings.~~

~~—— (13) The commission shall have authority to make rules concerning procedures under this chapter in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.~~

~~—— (14) The commission and its staff may not divulge or make public any information gained from any investigation, settlement negotiation, or proceeding before the commission except as provided in Subsections (14)(a) through (d):~~

~~—— (a) Information used by the director or the director's designee in making any determination may be provided to all interested parties for the purpose of preparation for and participation in proceedings before the commission.~~

~~—— (b) General statistical information may be disclosed provided the identities of the individuals or parties are not disclosed.~~

~~—— (c) Information may be disclosed for inspection by the attorney general or other legal representatives of the state or the commission.~~

~~—— (d) Information may be disclosed for information and reporting requirements of the federal government.~~

~~—— (15) The procedures contained in this section are the exclusive remedy under state law for employment discrimination based upon:~~

## SB0099S01 compared with SB0099

~~—— (a) race;~~

~~—— (b) color;~~

~~—— (c) sex;~~

~~—— (d) retaliation;~~

~~—— (e) pregnancy, childbirth, or pregnancy-related conditions;~~

~~—— (f) age;~~

~~—— (g) religion;~~

~~—— (h) national origin; or~~

~~—— (i) disability.~~

~~—— (16) (a) The commencement of an action under federal law for relief based upon any act prohibited by this chapter bars the commencement or continuation of any adjudicative proceeding before the commission in connection with the same claims under this chapter.~~

~~—— (b) The transfer of a request for agency action to the Equal Employment Opportunity Commission in accordance with Subsection (1)(d) is considered the commencement of an action under federal law for purposes of Subsection (16)(a).~~

~~—— (c) Nothing in this Subsection (16) is intended to alter, amend, modify, or impair the exclusive remedy provision set forth in Subsection (15).~~

~~—— Section 11. Section ~~34A-6-304~~ is amended to read:~~

~~—— **34A-6-304. Procedure for review of order entered by administrative law judge --**~~  
**Continuing jurisdiction of commission:**

~~—— (1) (a) Administrative law judges assigned by the director of the Division of Adjudication shall hear and determine any proceeding assigned to them by the Division of Adjudication.~~

~~—— (b) The administrative law judge shall enter the administrative law judge's findings of fact, conclusions of law, and order not later than 30 days after final receipt of all matters concerned in the hearing.~~

~~—— (c) The findings of fact, conclusions of law, and order of the administrative law judge shall become the final order of the commission unless objections are made in accordance with Subsection (2).~~

~~—— (2) (a) Any party of interest who is dissatisfied with the order entered by an administrative law judge may obtain a review by appealing the decision in accordance with~~

## SB0099S01 compared with SB0099

~~Section 63G-4-301 and Chapter 1, Part 3, Adjudicative Proceedings.~~

~~—— (b) The [commissioner or] Appeals Board shall make its decision in accordance with Section 34A-1-303.~~

~~—— (c) The decision of the commission is final unless judicial review is requested in accordance with Chapter 1, Part 3, Adjudicative Proceedings.~~

~~—— (d) To the extent that new facts are provided, the commission has continuing jurisdiction to amend, reverse, or enhance prior orders.~~

~~—— Section 12}5. **Effective date.**~~

~~This bill takes effect on July 1, 2013.~~

~~†~~

~~**Legislative Review Note**~~

~~—— as of 1-31-13 7:13 PM~~

~~————— Office of Legislative Research and General Counsel}~~