

WORKERS' COMPENSATION FUND AMENDMENTS

2015 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Curtis S. Bramble

House Sponsor: James A. Dunnigan

LONG TITLE

General Description:

This bill modifies the Insurance Code to address the Workers' Compensation Fund.

Highlighted Provisions:

This bill:

- ▶ modifies the definitions;
- ▶ addresses the powers of the fund and its subsidiaries;
- ▶ changes the method by which board members are selected;
- ▶ removes references to the Governor's Office of Economic Development;
- ▶ addresses compensation of board members; and
- ▶ makes technical and conforming amendments.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:

AMENDS:

31A-33-101, as last amended by Laws of Utah 2000, Chapter 222

31A-33-103.5, as last amended by Laws of Utah 2001, Chapters 33 and 116

31A-33-106, as last amended by Laws of Utah 2007, Chapter 74



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

29 Section 1. Section **31A-33-101** is amended to read:

30 **31A-33-101. Definitions.**

31 As used in this chapter:

- 32 (1) "Board" means the board of directors of the Workers' Compensation Fund.
- 33 (2) "Chief executive officer" means the chief executive officer appointed by the board.
- 34 (3) "Director" means a member of the board.
- 35 (4) "Fund" and "Workers' Compensation Fund" mean the nonprofit, quasi-public

36 corporation established by this chapter.

37 (5) "Injury Fund" means the premiums, reserves, investment income, and any other
38 funds administered by the Workers' Compensation Fund as provided in this chapter.

39 (6) "Joint enterprise" means a joint business activity either for-profit or not-for-profit:

- 40 (a) by which two or more persons provide insurance, products, or services; and
- 41 (b) that is established by contract between the persons providing the insurance,

42 products, or services.

43 (7) (a) "Workers' compensation products and services" means:

- 44 (i) medical or lost time claims management;
- 45 (ii) utilization review;
- 46 (iii) rehabilitation counseling or training;
- 47 (iv) fraud detection for workers' compensation claims;
- 48 (v) loss prevention or safety consultation;
- 49 (vi) data or information reporting or processing involving workers' compensation;

50 [~~and~~]

51 (vii) services related to improved employment practices, procedures, and data security;

52 and

53 [~~(vii)~~] (viii) liability insurance claims management if the claims management is related
54 to or arising out of:

55 (A) the sale of workers' compensation products and services described in Subsections

56 (7)(a)(i) through [~~(vi)~~] (vii) by:

- 57 (I) the Workers' Compensation Fund; or
- 58 (II) a subsidiary of the fund; or

- 59 (B) workers' compensation insurance coverage through:
 60 (I) the Workers' Compensation Fund; or
 61 (II) a subsidiary of the fund in accordance with Section 31A-33-103.5.
 62 (b) "Workers' compensation products and services" does not include the bearing of any
 63 insurance risk associated with insurance coverage.

64 Section 2. Section 31A-33-103.5 is amended to read:

65 **31A-33-103.5. Powers of fund -- Limitations.**

- 66 (1) The fund may form or acquire subsidiaries or enter into a joint enterprise:
 67 (a) in accordance with Section 31A-33-107; and
 68 (b) except as limited by this section and applicable insurance rules and statutes.
 69 (2) Subject to applicable insurance rules and statutes, the fund may only offer:
 70 (a) workers' compensation insurance and, subject to Subsection (5)(b)(ii), reinsurance
 71 in Utah;
 72 (b) workers' compensation insurance and reinsurance in a state other than Utah [~~to the~~
 73 ~~extent necessary to~~];
 74 [~~(i) accomplish its purpose under Subsection 31A-33-102(1)(b); and~~]
 75 [~~(ii) provide workers' compensation or occupational disease insurance coverage to Utah~~
 76 ~~employers and their employees engaged in interstate commerce; and~~]
 77 (c) death, disability, or medical benefits arising from an industrial accident or
 78 occupational disease arising from employment in Utah or other states; and
 79 [~~(e)~~] (d) workers' compensation products and services in Utah or other states.
 80 (3) Subject to applicable law, including insurance rules and statutes, a subsidiary of the
 81 fund [~~may~~] shall operate in Utah or a state other than Utah as a for profit, taxable business
 82 enterprise.
 83 [~~(a) offer workers' compensation insurance coverage only;~~]
 84 [(i) in a state other than Utah; and]
 85 [(ii) (A) to insure the following against liability for compensation based on job-related
 86 accidental injuries and occupational diseases:]
 87 [(f) an employer, as defined in Section 34A-2-103, that has a majority of its employees,
 88 as defined in Section 34A-2-104, hired or regularly employed in Utah;]
 89 [(H) an employer, as defined in Section 34A-2-103, whose principal administrative

90 office is located in Utah;]

91 [~~(H) a subsidiary or affiliate of an employer described in Subsection (3)(a)(ii)(A)(F) or~~
92 ~~(H); or]~~

93 [~~(IV) an employer, as defined in Section 34A-2-103, whose purchase of insurance~~
94 ~~arises solely out of the purchase of workers' compensation products and services from the fund~~
95 ~~or a fund subsidiary; or]~~

96 [~~(B) for a state fund organization that is not an admitted insurer in the other state;]~~

97 [~~(F) on a fee for service basis; and]~~

98 [~~(H) without bearing any insurance risk; and]~~

99 [~~(b) offer workers' compensation products and services in Utah and other states.]~~

100 (4) The fund shall write workers' compensation insurance in accordance with Section
101 31A-22-1001.

102 (5) (a) The fund may enter into a joint enterprise that offers workers' compensation
103 insurance and other coverage [~~only in the state~~], provided:

104 (i) the joint enterprise offers only property or liability insurance in addition to workers'
105 compensation insurance;

106 (ii) the fund may not bear any insurance risk associated with the insurance coverage
107 other than risk associated with workers' compensation insurance; and

108 (iii) the offer of other insurance shall be part of an insurance program that includes
109 workers' compensation insurance coverage that is provided by the fund.

110 (b) [~~The~~] (i) Subject to Subsection (5)(b)(ii), the fund or a subsidiary of the fund may
111 not offer, or enter into a joint enterprise that offers, or otherwise participate in the offering of
112 accident and health insurance.

113 (ii) The fund or a subsidiary of the fund may serve as a reinsurer or reinsurance
114 intermediary for medical or disability costs or exposures assumed by a self-insured employer in
115 Utah.

116 Section 3. Section 31A-33-106 is amended to read:

117 **31A-33-106. Board of directors -- Status of the fund in relationship to the state.**

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

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

120 (3) Subject to Subsection (8), one director:

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

123 (ii) acts as the representative of the state as a policyholder of the Workers'
124 Compensation Fund; or

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

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

127 (5) (a) In accordance with a plan that meets the requirements of this section~~[, the~~
128 ~~governor, with the consent of the Senate, shall appoint]~~ and the fund's articles of incorporation
129 and bylaws, the board shall nominate and the policyholders shall elect five public directors as
130 follows:

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

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

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

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

139 (7) At least four directors ~~[appointed by the governor]~~ elected by the policyholders
140 shall have had previous experience in:

141 (a) the actuarial profession;

142 (b) accounting;

143 (c) investments;

144 (d) risk management;

145 (e) occupational safety;

146 (f) casualty insurance; or

147 (g) the legal profession.

148 (8) (a) ~~[Any]~~ A director who represents a policyholder that fails to maintain workers'
149 compensation insurance through the Workers' Compensation Fund shall immediately resign
150 from the board, including the executive director of the Department of Administrative Services
151 or the executive director's designee if the state is no longer insured by the Workers'

152 Compensation Fund pursuant to Section 34A-2-203.

153 (b) (i) If the state is no longer insured by the Workers' Compensation Fund pursuant to
154 Section 34A-2-203, the [~~governor with the consent of the Senate,~~] board pursuant to
155 Subsections (11) and (13) shall appoint a public director to replace the executive director of the
156 Department of Administrative Services or the executive director's designee.

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

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

161 (B) have previous experience described in Subsection (7); [~~or~~] and

162 [~~(C) be the director of the Governor's Office of Economic Development.~~]

163 (C) receive compensation and be reimbursed for reasonable expenses in accordance
164 with Subsection (18), except that aggregate amount described in Subsection (18)(a)(ii)(B) shall
165 be adjusted by an amount equal to dividing the most recent amount described in Subsection
166 (18)(a)(ii)(B) by five.

167 (c) Once the executive director of the Department of Administrative Services or the
168 executive director's designee is not a member of the board under Subsection (3), the state shall
169 have a member on the board to represent the state as a policyholder only if the member is
170 appointed in accordance with Subsection (5) [~~or (8)(b)~~].

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

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

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

176 (c) is not bondable.

177 (10) After notice and a hearing, the [~~governor~~] board may remove any director for
178 cause which includes:

179 (a) neglect of duty; or

180 (b) malfeasance.

181 (11) (a) Except as required by Subsection (11)(b), the term of office of the directors
182 [~~appointed by the governor~~] elected by the policyholders shall be four years, beginning July 1

183 of the year of appointment.

184 (b) Notwithstanding the requirements of Subsection (11)(a), the ~~[governor]~~ board shall,
185 at the time of appointment or reappointment, adjust the length of terms to ensure that no more
186 than two terms expire in a calendar year.

187 (12) ~~[Each]~~ A director shall hold office until the director's successor is ~~[appointed]~~
188 selected and qualified.

189 (13) When a vacancy occurs in the membership of the board for any reason, the
190 replacement shall be appointed by a majority of the board for the unexpired term, after which
191 time the replacement shall stand for policyholder election as described in the fund's articles of
192 incorporation and bylaws.

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

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

197 (b) The chair:

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

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

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

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

204 (18) (a) (i) A director may receive compensation and be reimbursed for reasonable
205 expenses incurred in the performance of the director's official duties:

206 (A) as determined by the board of directors; and

207 (B) if the aggregate of compensation paid to all directors of the Workers'

208 Compensation Fund in a calendar year is less than or equal to the amount described in

209 Subsection (18)(a)(ii).

210 (ii) (A) For the period beginning ~~[May 1, 2007]~~ January 1, 2016, and ending December
211 31, ~~[2007]~~ 2016, the amount described in Subsection (18)(a)(i)(B) is ~~[\$75,000 except that any~~
212 ~~compensation paid to a director of the Workers' Compensation Fund on or after January 1,~~
213 ~~2007 but on or before April 30, 2007 shall be included in determining whether the aggregate~~

214 ~~amount described in Subsection (18)(a)(i)(B) is exceeded]~~ \$125,000.

215 (B) For calendar years beginning on or after January 1, ~~[2008]~~ 2017, the amount
216 described in Subsection (18)(a)(i)(B) is the sum of the amount under this Subsection (18)(a) for
217 the previous year and an amount equal to the greater of:

218 (I) an amount calculated by multiplying the amount under this Subsection (18)(a) for
219 the previous year by the actual percent change during the previous calendar year in the
220 consumer price index; and

221 (II) 0.

222 (C) For purposes of this Subsection (18), the consumer price index shall be calculated
223 as provided in Sections 1(f)(4) and 1(f)(5), Internal Revenue Code.

224 (b) Directors may decline to receive compensation and expenses for their service.

225 (c) The Worker's Compensation Fund shall pay compensation to and reimburse
226 reasonable expenses of directors as permitted by this section:

227 (i) from the Injury Fund; and

228 (ii) upon vouchers drawn in the same manner as the Workers' Compensation Fund pays
229 its normal operating expenses.

230 (d) The following shall serve on the board without payment of compensation, but may
231 be reimbursed for reasonable expenses in accordance with Subsection (18)(a):

232 (i) the executive director of the Department of Administrative Services, or the
233 executive director's designee; and

234 (ii) the chief executive officer of the Workers' Compensation Fund~~[-and]~~.

235 ~~[(iii) the director of the Governor's Office of Economic Development if appointed
236 under Subsection (8).]~~

237 (e) The Workers' Compensation Fund shall annually report to the commissioner
238 compensation and expenses paid to the directors on the board.

239 ~~[(19) The requirement that the governor, with the consent of the Senate, appoint the
240 directors of the Workers' Compensation Fund specified in Subsection (5) or (8), does not.]~~

241 (19) The placement of this chapter in this title does not:

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

244 (b) give to the state or the governor managerial, financial, or operational control of the

245 Workers' Compensation Fund;

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

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

248 (ii) expense, liability, or debt described in Section [31A-33-105](#);

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

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

251 (ii) an insurer:

252 (A) regulated under this title;

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

254 (C) domiciled in the state; or

255 (e) alter the requirement that the Workers' Compensation Fund provide workers'

256 compensation:

257 (i) for the purposes set forth in Section [31A-33-102](#);

258 (ii) consistent with Section [34A-2-201](#); and

259 (iii) as provided in Section [31A-22-1001](#).

260 Section 4. **Effective date.**

261 This bill takes effect on May 12, 2015, except that the amendments to Section

262 [31A-33-106](#) in this bill take effect on January 1, 2016.

Legislative Review Note
as of 1-5-15 12:01 PM

Office of Legislative Research and General Counsel