

## **Part 1**

### **Risk Manager**

#### **63A-4-101.1 Definitions.**

As used in this chapter:

- (1) "Captive insurance company" means the same as that term is defined in Section 31A-37-102.
- (2) "Covered entity" means a participating entity of:
  - (a) the Risk Management Fund; or
  - (b) any captive insurance company created by the risk manager.

Enacted by Chapter 33, 2021 General Session

#### ***(Contingently Effective)***

#### **63A-4-101.5 Risk manager -- Appointment -- Duties.**

- (1) As used in this section:
  - (a) "K-12 personnel" means a public employee of a local education agency.
  - (b) "Local education agency" means the same as that term is defined in Section 53E-1-102.
- (2)
  - (a) There is created within the department the Division of Risk Management.
  - (b) The executive director shall, with the approval of the governor, appoint a risk manager as the division director, who shall be qualified by education and experience in the management of general property and casualty insurance.
- (3) The risk manager shall:
  - (a) except as provided in Subsection (5), acquire and administer the following purchased by the state or any captive insurance company created by the risk manager:
    - (i) all property and casualty insurance;
    - (ii)
      - (A) professional liability insurance for K-12 personnel; and
      - (B) other professional liability insurance for public employees not covered under Subsection (3)(a)(ii)(A) if the risk manager determines there is sufficient demand;
    - (iii) reinsurance of property, casualty insurance, and professional liability insurance; and
    - (iv) subject to Section 34A-2-203, workers' compensation insurance;
  - (b) make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act:
    - (i) prescribing reasonable and objective underwriting and risk control standards for:
      - (A) all covered entities of the Risk Management Fund;
      - (B) management of the professional liability insurance described in Subsection (3)(a)(ii); and
      - (C) any captive insurance company created by the risk manager;
    - (ii) prescribing the risks to be covered by the Risk Management Fund and the extent to which these risks will be covered;
    - (iii) prescribing the properties, risks, deductibles, and amount limits eligible for payment out of the Risk Management Fund;
    - (iv) prescribing procedures for making claims and proof of loss; and
    - (v) establishing procedures for the resolution of disputes relating to coverage or claims, which may include binding arbitration;
  - (c) implement a risk management and loss prevention program for covered entities for the purpose of reducing risks, accidents, and losses to assist covered entities in fulfilling their responsibilities for risk control and safety;

- (d) coordinate and cooperate with any covered entity having responsibility to manage and protect state properties, including:
    - (i) the state fire marshal;
    - (ii) the director of the Division of Facilities Construction and Management;
    - (iii) the Department of Public Safety;
    - (iv) institutions of higher education;
    - (v) school districts; and
    - (vi) charter schools;
  - (e) maintain records necessary to fulfill the requirements of this section;
  - (f) manage the Risk Management Fund and any captive insurance company created by the risk manager in accordance with economically and actuarially sound principles to produce adequate reserves for the payment of contingencies, including unpaid and unreported claims, and may purchase any insurance or reinsurance considered necessary to accomplish this objective; and
  - (g) inform the covered entity's governing body and the governor when any covered entity fails or refuses to comply with reasonable risk control recommendations made by the risk manager.
- (4) Before the effective date of any rule, the risk manager shall provide a copy of the rule to each covered entity affected by it.
- (5) The risk manager may not use a captive insurance company created by the risk manager to purchase:
- (a) workers' compensation insurance;
  - (b) health insurance; or
  - (c) life insurance.

Amended by Chapter 10, 2025 General Session

**63A-4-102 Risk manager -- Powers.**

- (1) The risk manager may:
- (a) enter into contracts;
  - (b) form one or more captive insurance companies authorized under Title 31A, Chapter 37, Captive Insurance Companies Act;
  - (c) purchase insurance or reinsurance;
  - (d) adjust, settle, and pay claims;
  - (e) pay expenses and costs;
  - (f) study the risks of all covered entities and properties;
  - (g) issue certificates of coverage or insurance for covered entities with respect to any risks covered by the Risk Management Fund or any captive insurance company created by the risk manager;
  - (h) make recommendations about risk management and risk reduction strategies to covered entities;
  - (i) in consultation with the attorney general, prescribe insurance, indemnification, and liability provisions to be included in all state contracts;
  - (j) review covered entity building construction, major remodeling plans, program plans, and make recommendations to the covered entity about needed changes to address risk considerations;
  - (k) attend covered entity planning and management meetings when necessary;
  - (l) review any proposed legislation and communicate with legislators and legislative committees about the liability or risk management issues connected with any legislation; and

- (m) solicit any needed information about covered entity plans, programs, or risks necessary to perform the risk manager's responsibilities under this part.
- (2)
  - (a) The risk manager may expend money from the Risk Management Fund to procure and provide coverage to all covered entities and their indemnified employees, except those entities or employees specifically exempted by statute.
  - (b) The risk manager shall apportion the costs of that coverage according to the requirements of this part.
- (3) Before charging a rate, fee, or other amount to an executive branch agency, or to a subscriber of services other than an executive branch agency, the director shall:
  - (a) submit the proposed rates, fees, or other amount and cost analysis to the Rate Committee established in Section 63A-1-114; and
  - (b) obtain the approval of the Legislature as required by Section 63J-1-410.
- (4) The director shall conduct a market analysis by July 1, 2005, and periodically thereafter, of proposed rates and premiums, which analysis shall include a comparison of the division's rates and premiums with the rates and premiums of other public or private sector providers where comparable services and rates are reasonably available.

Amended by Chapter 169, 2022 General Session

**63A-4-103 Risk management -- Duties of covered entities.**

- (1)
  - (a) Unless expressly authorized by statute, a covered entity may not:
    - (i) purchase insurance or self-fund any risk unless authorized by the risk manager; or
    - (ii) procure or provide liability insurance for the state.
  - (b)
    - (i) Notwithstanding the provisions of Subsection (1)(a), the Utah Board of Higher Education may authorize higher education institutions to purchase insurance for, or self-fund, risks associated with their programs and activities that are not covered through the risk manager.
    - (ii) The Utah Board of Higher Education shall provide copies of those purchased policies to the risk manager.
    - (iii) The Utah Board of Higher Education shall ensure that the state is named as additional insured on any of those policies.
- (2) Each covered entity shall:
  - (a) comply with reasonable risk related recommendations made by the risk manager;
  - (b) participate in risk management training activities conducted or sponsored by the risk manager;
  - (c) include the insurance, indemnification, and liability provisions prescribed by the risk manager in all state contracts, together with a statement certifying to the other party to the contract that the insurance and liability provisions in the contract are those prescribed by the risk manager;
  - (d) upon request of the risk manager, provide written notice to the risk manager that construction and major remodeling plans relating to covered entity buildings and facilities to be covered by the Risk Management Fund are available for review at each principal design stage, for risk control purposes, and make them available to the risk manager for review and to provide recommendations; and
  - (e) cooperate fully with requests from the risk manager for covered entity planning, program, or risk related information, and allow the risk manager to attend covered entity planning and management meetings.

- (3) Failure to include in the contract the provisions required by Subsection (2)(c) does not make the contract unenforceable by the state.

Amended by Chapter 33, 2021 General Session

**63A-4-104 Course-of-construction insurance for facilities constructed by This is the Place Foundation.**

The risk manager may provide course-of-construction insurance for facilities constructed by This is the Place Foundation at This is the Place State Park and bill the Division of State Parks for the cost of the insurance.

Amended by Chapter 280, 2021 General Session