

WORKERS' COMPENSATION FUND OF UTAH**AMENDMENTS**

1998 GENERAL SESSION

STATE OF UTAH

Sponsor: David H. Steele

AN ACT RELATING TO INSURANCE; AMENDING DEFINITIONS; AMENDING PROVISIONS RELATED TO THE LEGAL NATURE AND POWERS OF THE WORKERS' COMPENSATION FUND OF UTAH; ADDRESSING PARTICIPATION BY THE FUND WITH SUBSIDIARIES AND JOINT ENTERPRISES; MODIFYING BOARD OF DIRECTORS; REPEALING THE REQUIREMENT THAT THE STATE PURCHASE WORKERS' COMPENSATION FROM THE FUND; PROVIDING FOR THE STATE OBTAINING WORKERS' COMPENSATION COVERAGE; AND MAKING TECHNICAL CORRECTIONS.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

31A-33-101, as renumbered and amended by Chapter 240, Laws of Utah 1996

31A-33-102, as last amended by Chapter 375, Laws of Utah 1997

31A-33-103, as last amended by Chapter 204, Laws of Utah 1997

31A-33-103.5, as enacted by Chapters 204 and 375, Laws of Utah 1997

31A-33-105, as renumbered and amended by Chapter 240, Laws of Utah 1996

31A-33-106, as renumbered and amended by Chapter 240 and last amended by Chapter 243, Laws of Utah 1996

31A-33-107, as last amended by Chapter 204, Laws of Utah 1997

31A-33-118, as enacted by Chapter 240, Laws of Utah 1996

34A-2-201, as renumbered and amended by Chapter 375, Laws of Utah 1997

63A-4-201, as renumbered and amended by Chapter 212, Laws of Utah 1993

REPEALS:***SB0170***

1 **34A-2-203**, as renumbered and amended by Chapter 375, Laws of Utah 1997

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

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

4 **31A-33-101. Definitions.**

5 As used in this chapter:

6 (1) "Board" means the board of directors of the Workers' Compensation Fund.

7 (2) "Chief executive officer" means the chief executive officer appointed by the board.

8 (3) "Director" means a member of the board.

9 (4) "Fund" [and] or "Workers' Compensation Fund" [mean] means the nonprofit,
10 quasi-public corporation established by this chapter.

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

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

14 (a) by which two or more persons provide insurance, products, or services; and

15 (b) that is established by:

16 (i) the creation of a partnership; or

17 (ii) contract between the persons providing the insurance, products, or services.

18 Section 2. Section **31A-33-102** is amended to read:

19 **31A-33-102. Establishment of the Workers' Compensation Fund and the Injury**
20 **Fund.**

21 (1) (a) There is created a nonprofit, quasi-public corporation to be known as the Workers'
22 Compensation Fund of Utah.

23 (b) The purpose of the fund is to:

24 (i) insure Utah employers against liability for compensation based on job-related
25 accidental injuries and occupational diseases; and

26 (ii) assure payment of this compensation to Utah employees who are entitled to it under
27 Title 34A, Chapters 2, Workers' Compensation Act, and Chapter 3, Utah Occupational Disease
28 Act.

29 (c) In a manner consistent with the purpose of the fund described in Subsection (1)(b) and
30 in accordance with this title and this chapter, the fund may:

31 (i) insure nonUtah employers against liability for compensation based on job-related

1 accidental injuries and occupational disease; and

2 (ii) participate in joint enterprises.

3 (2) (a) There is created an Injury Fund, [which] that shall be maintained by the Workers'
4 Compensation Fund.

5 (b) The Injury Fund shall consist of all assets acquired from premiums and penalties paid
6 into the Injury Fund and interest and dividends earned on those assets.

7 (c) The Injury Fund is the sole source of monies to:

8 (i) pay losses sustained on account of the insurance provided; and

9 (ii) pay salaries and other expenses of the Workers' Compensation Fund in accordance
10 with this chapter.

11 Section 3. Section **31A-33-103** is amended to read:

12 **31A-33-103. Legal nature of Workers' Compensation Fund.**

13 (1) The Workers' Compensation Fund is:

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

15 (b) a legal entity, that may sue and be sued in its own name.

16 (2) (a) All of the business and affairs of the corporation shall be conducted in the name of
17 the Workers' Compensation Fund of Utah; ~~or [if conducted through a subsidiary, such]~~

18 (b) other [corporate names] name that [comply] complies with state law if the business is
19 conducted through a:

20 (i) subsidiary; or

21 (ii) joint enterprise.

22 Section 4. Section **31A-33-103.5** is amended to read:

23 **31A-33-103.5. Powers of Fund -- Limitations.**

24 (1) (a) The fund may form or acquire subsidiaries;

25 (i) in accordance with Section 31A-33-107; and

26 (ii) except as limited by [Subsections (2) and (3)] this chapter and applicable insurance
27 rules or statutes.

28 ~~[(2) (a) Subject to applicable insurance rules and statutes, the]~~

29 (b) The Workers' Compensation Fund of Utah[;] or its subsidiaries, may offer [only]
30 workers' compensation insurance and workers' compensation products and services in Utah and
31 other states ~~[until the Legislature enacts legislation addressing the recommendations of a~~

1 legislatively authorized study of the fund's authority, if any, to offer insurance products or services
2 other than workers' compensation insurance products or services either directly, through a
3 subsidiary, or through a joint venture].

4 ~~[(b) A subsidiary of the Workers' Compensation Fund of Utah may offer workers'~~
5 ~~compensation insurance coverage only in a state other than Utah.]~~

6 ~~[(3) There is a moratorium until July 1, 2000, on the Workers' Compensation Fund of~~
7 ~~Utah's authority, if any, to offer health insurance services including medical, surgical, hospital, and~~
8 ~~other ancillary medical expenses, by any means including directly, through a subsidiary, or~~
9 ~~through a joint venture.]~~

10 (2) (a) The fund or a subsidiary of the fund may not offer insurance other than workers'
11 compensation insurance except as provided in Subsection (2)(b).

12 (b) The fund or a subsidiary of the fund may enter into a joint enterprise that offers
13 workers' compensation insurance and other insurance coverage, provided:

14 (i) the joint enterprise primarily offers in addition to workers' compensation insurance
15 only:

16 (A) disability insurance; or

17 (B) property or liability insurance;

18 (ii) the fund or a subsidiary of the fund may not bear any insurance risk associated with
19 the insurance coverage other than risk associated with workers' compensation insurance; and

20 (iii) the offer of insurance shall be part of an insurance program that includes workers'
21 compensation insurance coverage that is provided by the fund or one of its subsidiaries.

22 (3) The fund or a subsidiary of the fund, pursuant to commissioner approval, shall write
23 workers' compensation insurance in accordance with Section 31A-22-1001.

24 Section 5. Section **31A-33-105** is amended to read:

25 **31A-33-105. Price of insurance -- Liability of state.**

26 (1) (a) The Workers' Compensation Fund shall provide workers' compensation insurance
27 at an actuarially sound price, which the board shall determine.

28 (b) To allow more competitive Utah rates consistent with Chapter 19, Part IV, Workers'
29 Compensation Ratemaking, including commissioner approval, the Workers' Compensation Fund
30 may provide workers' compensation insurance through itself or nonprofit subsidiaries in Utah.

31 (2) The state;

- 1 (a) is not liable for the expenses, liabilities, or debts of:
- 2 (i) the Workers' Compensation Fund[-];
- 3 (ii) a subsidiary of the fund; or
- 4 (iii) a joint enterprise in which the fund participates; and
- 5 (b) may not use any assets of the Injury Fund for any purpose.

6 Section 6. Section **31A-33-106** is amended to read:

7 **31A-33-106. Board of directors.**

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

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

10 ~~[(3) One of the directors shall be the executive director of the Department of~~
11 ~~Administrative Services or his designee.]~~

12 ~~[(4)]~~ (3) One of the directors shall be the chief executive officer of the fund.

13 ~~[(5)]~~ (4) The governor, with the advice and consent of the Senate, shall appoint:

14 (a) ~~[three]~~ four directors:

15 (i) who are owners, officers, or employees of policyholders ~~[other than the state]~~ that have
16 been insured by the Workers' Compensation Fund for at least one year before their appointment;

17 (ii) if the state is a policyholder of the fund, one of which is the executive director of the
18 Department of Administrative Services or the executive director's designee regardless of whether
19 the state has been a policyholder for one year prior to the appointment; and

20 (b) two directors from the public in general.

21 ~~[(6)]~~ (5) No two directors may represent the same policyholder.

22 ~~[(7)]~~ (6) At least four directors appointed by the governor shall have had previous
23 experience in investments, risk management, occupational safety, casualty insurance, or law.

24 ~~[(8)]~~ (7) Any director who represents a policyholder that fails to maintain workers'
25 compensation insurance through the Workers' Compensation Fund shall immediately resign from
26 the board.

27 ~~[(9)]~~ (8) A person may not be a director if he:

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

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

31 or

1 (c) is not bondable.

2 [(10)] (9) After notice and a hearing, the governor may remove any director for neglect
3 of duty, inefficiency, or malfeasance.

4 [(11)] (10) (a) Except as required by Subsection (11)(b), the term of office of the directors
5 appointed by the governor shall be four years, beginning July 1 of the year of appointment.

6 (b) Notwithstanding the requirements of Subsection (11)(a), the governor shall, at the time
7 of appointment or reappointment, adjust the length of terms to ensure that the terms of board
8 members are staggered so that approximately half of the board is appointed every two years.

9 [(12)] (11) Each director shall hold office until his successor is appointed and qualified.

10 [(13)] (12) When a vacancy occurs in the membership for any reason, the replacement
11 shall be appointed for the unexpired term.

12 [(14)] (13) The board shall annually elect a chair and other officers as needed from its
13 membership.

14 [(15)] (14) The board shall meet at least quarterly at a time and place designated by the
15 chair.

16 [(16)] (15) The chair may call board meetings more frequently than quarterly and shall call
17 additional board meetings if requested to do so by a majority of the board.

18 [(17)] (16) Four directors are a quorum for the purpose of transacting all business of the
19 board.

20 [(18)] (17) Each decision of the board requires the affirmative vote of at least four
21 directors for approval.

22 [(19)] (18) (a) Members shall receive no compensation or benefits for their services, but
23 may receive per diem and expenses incurred in the performance of the member's official duties
24 at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

25 (b) Members may decline to receive per diem and expenses for their service.

26 [(20)] (c) The fund shall pay the per diem allowance and expenses from the Injury Fund
27 upon vouchers drawn in the same manner as the Workers' Compensation Fund pays its normal
28 operating expenses.

29 (19) [(21) The executive director of the Department of Administrative Services, or his
30 designee, and the chief executive officer of the Workers' Compensation Fund] Notwithstanding
31 Subsection (18)(a), the following shall serve on the board without a per diem allowance[-]:

1 (a) the chief executive officer of the Workers' Compensation Fund; and
2 (b) if serving on the board under Subsection (4)(a)(ii), the executive director of the
3 Department of Administrative Services or the executive director's designee.

4 Section 7. Section **31A-33-107** is amended to read:

5 **31A-33-107. Duties of board -- Creation of subsidiaries.**

6 (1) The board shall:

7 (a) appoint a chief executive officer to administer the Workers' Compensation Fund;

8 (b) receive and act upon financial, management, and actuarial reports covering the
9 operations of the Workers' Compensation Fund;

10 (c) ensure that the Workers' Compensation Fund is administered according to law;

11 (d) examine and approve an annual operating budget for the Workers' Compensation Fund;

12 (e) serve as investment trustees and fiduciaries of the Injury Fund;

13 (f) receive and act upon recommendations of the chief executive officer;

14 (g) develop broad policy for the long-term operation of the Workers' Compensation Fund,
15 consistent with its mission and fiduciary responsibility;

16 (h) subject to [~~Sections 31A-19-401 through 31A-19-420~~] Chapter 19, Part IV, Workers'
17 Compensation Rate-Making, approve any rating plans that would modify a policyholder's
18 premium;

19 (i) subject to [~~Sections 31A-19-401 through 31A-19-420~~] Chapter 19, Part IV, Workers'
20 Compensation Rate-Making, approve the amount of deviation, if any, from standard insurance
21 rates;

22 (j) approve the amount of the dividends, if any, to be returned to policyholders;

23 (k) adopt a procurement policy consistent with the provisions of Title 63, Chapter 56, Utah
24 Procurement Code;

25 (l) develop and publish an annual report to policyholders, the governor, the Legislature,
26 and interested parties that describes the financial condition of the Injury Fund, including a
27 statement of expenses and income and what measures were taken or will be necessary to keep the
28 Injury Fund actuarially sound;

29 (m) establish a fiscal year;

30 (n) determine and establish an actuarially sound price for insurance offered by the fund;

31 (o) establish conflict of interest requirements that govern the board, officers, and

employees; and

(p) perform all other acts necessary for the policymaking and oversight of the Workers' Compensation Fund.

(2) Subject to board review and its responsibilities under Subsection (1)(e), the board may delegate authority to make daily investment decisions.

(3) ~~[The fund may form or acquire a subsidiary under Section 31A-33-103.5 only if that]~~
If the action is approved by the board, the Workers' Compensation Fund may in accordance with this chapter:

(a) form or acquire a subsidiary; or

(b) enter into a joint enterprise.

Section 8. Section **31A-33-118** is amended to read:

31A-33-118. Scope of chapter.

The placement of this chapter in this title may not be construed to~~[(1)]~~ change the Workers' Compensation Fund's legal nature or purpose as set forth in this chapter~~[, or]~~.

~~[(2) change the Workers' Compensation Fund's obligation to write workers' compensation insurance pursuant to Section 31A-22-1001.]~~

Section 9. Section **34A-2-201** is amended to read:

34A-2-201. Employers to secure workers' compensation benefits for employees -- Methods -- Self insured status.

(1) Employers, including the state, counties, cities, towns, and school districts, shall secure the payment of workers' compensation benefits for their employees:

(a) by insuring, and keeping insured, the payment of this compensation with the Workers' Compensation Fund of Utah, which payments shall commence within 30 days after any final award by the commission;

(b) by insuring, and keeping insured, the payment of this compensation with any stock corporation or mutual association authorized to transact the business of workers' compensation insurance in this state, which payments shall commence within 30 days after any final award by the commission; or

(c) by furnishing annually to the division satisfactory proof of financial ability to pay direct compensation in the amount, in the manner, and when due as provided for in this chapter or Chapter 3, Utah Occupational Disease Act, which payments shall commence within 30 days

1 after any final award by the commission.

2 (2) (a) If an employer secures payment of workers' compensation benefits under
3 Subsection (1)(c), the division may:

4 (i) require the deposit of acceptable security, indemnity, or bond to secure the payment of
5 compensation liabilities as they are incurred; and

6 (ii) at any time change or modify the requirement to deposit acceptable security,
7 indemnity, or bond, if in its judgment this action is necessary or desirable to secure or assure a
8 strict compliance with all the provisions of law relating to the payment of compensation and the
9 furnishing of medical, nurse, and hospital services, medicines, and burial expenses to injured
10 employees and to the dependents of killed employees.

11 (b) (i) The division may in proper cases revoke any employer's privilege as a self-insurer.

12 (ii) The revocation under Subsection (2)(b)(i) becomes a final order of the commission
13 effective 30 days from the date the division revokes the privilege, unless within the 30 days the
14 employer files an application for hearing in accordance with Part 8, Adjudication.

15 Section 10. Section **63A-4-201** is amended to read:

16 **63A-4-201. Risk Management Fund created -- Administration -- Use.**

17 (1) (a) There is created the Risk Management Fund, which shall be administered by the
18 risk manager.

19 (b) The fund shall cover property, liability, fidelity, workers' compensation, and other risks
20 as determined by the risk manager in consultation with the executive director.

21 (2) The risk manager may only use the fund to pay:

22 (a) insurance or reinsurance premiums;

23 (b) costs of administering the fund;

24 (c) loss adjustment expenses;

25 (d) risk control and related educational and training expenses; and

26 (e) loss costs which at the time of loss were eligible for payment under rules previously
27 issued by the executive director under the authority of Section 63A-4-101.

28 (3) In addition to any monies appropriated to the fund by the Legislature, the risk manager
29 shall deposit with the state treasurer for credit to the fund:

30 (a) any insured loss or loss expenses paid by insurance or reinsurance companies;

31 (b) the gross amount of all premiums and surcharges received under Section 63A-4-202;

1 (c) the net refunds from canceled insurance policies necessary to self-insure previously
2 insured risks, with the balance of the proceeds to be refunded to the previously insured agencies;

3 (d) all refunds, returns, or dividends from insurance carriers not specifically covered in
4 Subsections (3)(a), (b), and (c);

5 (e) savings from amounts otherwise appropriated for participation in the fund; and

6 (f) all net proceeds from sale of salvage and subrogation recoveries from adverse parties
7 related to losses paid out of the fund.

8 (4) All monies deposited in the fund are nonlapsing.

9 (5) (a) Pending disbursement, the risk manager shall provide surplus monies in the fund
10 to the state treasurer for investment as provided in Title 51, Chapter 7, State Money Management
11 Act.

12 (b) The state treasurer shall deposit all interest earned on invested fund monies into the
13 fund.

14 Section 11. **Repealer.**

15 This act repeals:

16 Section **34A-2-203, State department, commission, board, or other agency to pay**
17 **premiums direct to Workers' Compensation Fund of Utah.**

Legislative Review Note

as of 2-4-98 3:39 PM

A limited legal review of this bill raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel