

**WORKERS' COMPENSATION FUND AMENDMENTS**

2000 GENERAL SESSION

STATE OF UTAH

**Sponsor: John E. Swallow**

AN ACT RELATING TO WORKERS' COMPENSATION; AMENDING DEFINITION OF WORKERS' COMPENSATION PRODUCTS AND SERVICES; AMENDING THE NAME OF THE WORKERS' COMPENSATION FUND OF UTAH; AND MAKING TECHNICAL CHANGES.

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

AMENDS:

**11-8-3**, as last amended by Chapter 299, Laws of Utah 1995

**31A-1-105**, as last amended by Chapter 131, Laws of Utah 1999

**31A-19a-401**, as renumbered and amended by Chapter 130, Laws of Utah 1999

**31A-21-101**, as last amended by Chapter 10, Laws of Utah 1988, Second Special Session

**31A-22-309**, as last amended by Chapter 4, Laws of Utah 1994

**31A-22-1001**, as last amended by Chapter 204, Laws of Utah 1986

**31A-26-103**, as last amended by Chapter 375, Laws of Utah 1997

**31A-33-101**, as last amended by Chapter 107, Laws of Utah 1998

**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

**34A-2-102**, as renumbered and amended by Chapter 375, Laws of Utah 1997

**34A-2-107**, as last amended by Chapter 10 and renumbered and amended by Chapter 375,

Laws of Utah 1997

**34A-2-201**, as last amended by Chapter 55, Laws of Utah 1999

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

**34A-2-211**, as last amended by Chapter 13, Laws of Utah 1998

**34A-2-406**, as renumbered and amended by Chapter 375, Laws of Utah 1997

**51-5-4**, as last amended by Chapter 127, Laws of Utah 1993

**51-7-2**, as repealed and reenacted by Chapter 285, Laws of Utah 1992

**51-7-4**, as last amended by Chapter 263, Laws of Utah 1995

**59-9-101**, as last amended by Chapter 375, Laws of Utah 1997

**59-9-101.1**, as last amended by Chapter 21, Laws of Utah 1999

**63-5b-102**, as last amended by Chapters 82 and 375, Laws of Utah 1997

**63-38a-102**, as enacted by Chapter 259, Laws of Utah 1992

**63-95-102**, as last amended by Chapter 76, Laws of Utah 1999

**67-4-2**, as last amended by Chapter 14, Laws of Utah 1998

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

Section 1. Section **11-8-3** is amended to read:

**11-8-3. Department of Environmental Quality to negotiate loans for sewage facilities.**

(1) The Department of Environmental Quality may negotiate loans from the Retirement Systems Fund, State Land Principal Fund, Workers' Compensation Fund [~~of Utah~~], or any state trust and agency fund which has sums available for loaning, as these funds are defined in Title 51, Chapter 5, Funds Consolidation Act, not to exceed \$1,000,000 in any fiscal year for the purposes of providing the funding for the loans provided for in Section 11-8-2.

(2) The terms of any borrowing and repayment shall be negotiated between the borrower and the lender consistent with the legal duties of the lender.

Section 2. Section **31A-1-105** is amended to read:

**31A-1-105. Presumption of jurisdiction.**

(1) Any insurer, including the Workers' Compensation Fund [~~of Utah~~] created under Chapter 33, that provides coverage of a resident of this state, property located in this state, or a business activity conducted in this state, or that engages in any activity described in Subsections 31A-15-102(2)(a) through (h), is:

(a) doing an insurance business in this state; and

(b) subject to the jurisdiction of the insurance commissioner and the courts of this state under Sections 31A-2-309 and 31A-2-310 to the extent of that coverage or activity.

(2) Any person doing or purporting to do an insurance business in this state as defined in Section 31A-1-301 is subject to the jurisdiction of the insurance commissioner and this title, unless

the insurer can establish that the exemptions of Section 31A-1-103 apply.

(3) This section does not limit the jurisdiction of the courts of this state under other applicable law.

Section 3. Section **31A-19a-401** is amended to read:

**31A-19a-401. Scope of part.**

(1) This part applies to workers' compensation insurance and employers' liability insurance written in connection with it.

(2) All insurers writing workers' compensation coverage, including the Workers' Compensation Fund [~~of Utah~~] created under Chapter 33, are subject to this part.

Section 4. Section **31A-21-101** is amended to read:

**31A-21-101. Scope of Title 31A, Chapters 21 and 22.**

(1) Except as provided in Subsections (2) through (6), this chapter and Chapter 22 apply to all insurance policies, applications, and certificates:

- (a) delivered or issued for delivery in this state;
- (b) on property ordinarily located in this state;
- (c) on persons residing in this state when the policy is issued; and
- (d) on business operations in this state.

(2) This chapter and Chapter 22 do not apply to:

- (a) the exemptions provided in Section 31A-1-103;
- (b) insurance policies procured under Sections 31A-15-103 and 31A-15-104;
- (c) an insurance policy on business operations in this state if the contract is negotiated primarily outside this state and if the operations in this state are incidental or subordinate to operations outside this state, except that insurance required by a Utah statute must conform to the statutory requirements; or
- (d) other exemptions provided in this title.

(3) Sections 31A-21-102, 31A-21-103, 31A-21-104, Subsections 31A-21-107 (1) and (3), and Sections 31A-21-306, 31A-21-308, 31A-21-312, and 31A-21-314 apply to ocean marine and inland marine insurance. Section 31A-21-201 applies to inland marine insurance that is written

according to manual rules or rating plans.

(4) Group or blanket policies are subject to this chapter and Chapter 22, except:

(a) group or blanket policies outside the scope of this title under Subsection 31A-1-103 (3) (h); and

(b) other exemptions provided under Subsection (5).

(5) The commissioner may by rule exempt any class of insurance contract or class of insurer from any or all of the provisions of this chapter and Chapter 22 if the interests of the Utah insureds, creditors, or the public would not be harmed by the exemption.

(6) Workers' compensation insurance, including that written by the Workers' Compensation Fund ~~[of Utah]~~ created under Chapter 33, is subject to this chapter and Chapter 22.

(7) Unless clearly inapplicable, any provision of this chapter or Chapter 22 applicable to either a policy or a contract is applicable to both.

Section 5. Section **31A-22-309** is amended to read:

**31A-22-309. Limitations, exclusions, and conditions to personal injury protection.**

(1) A person who has or is required to have direct benefit coverage under a policy which includes personal injury protection may not maintain a cause of action for general damages arising out of personal injuries alleged to have been caused by an automobile accident, except where the person has sustained one or more of the following:

- (a) death;
- (b) dismemberment;
- (c) permanent disability or permanent impairment based upon objective findings;
- (d) permanent disfigurement; or
- (e) medical expenses to a person in excess of \$3,000.

(2) (a) Any insurer issuing personal injury protection coverage under this part may only exclude from this coverage benefits:

(i) for any injury sustained by the insured while occupying another motor vehicle owned by or furnished for the regular use of the insured or a resident family member of the insured and not insured under the policy;

(ii) for any injury sustained by any person while operating the insured motor vehicle without the express or implied consent of the insured or while not in lawful possession of the insured motor vehicle;

(iii) to any injured person, if the person's conduct contributed to his injury:

(A) by intentionally causing injury to himself; or

(B) while committing a felony;

(iv) for any injury sustained by any person arising out of the use of any motor vehicle while located for use as a residence or premises;

(v) for any injury due to war, whether or not declared, civil war, insurrection, rebellion or revolution, or to any act or condition incident to any of the foregoing; or

(vi) for any injury resulting from the radioactive, toxic, explosive, or other hazardous properties of nuclear materials.

(b) The provisions of this subsection do not limit the exclusions which may be contained in other types of coverage.

(3) The benefits payable to any injured person under Section 31A-22-307 are reduced by:

(a) any benefits which that person receives or is entitled to receive as a result of an accident covered in this code under any workers' compensation or similar statutory plan; and

(b) any amounts which that person receives or is entitled to receive from the United States or any of its agencies because that person is on active duty in the military service.

(4) When a person injured is also an insured party under any other policy, including those policies complying with this part, primary coverage is given by the policy insuring the motor vehicle in use during the accident.

(5) (a) Payment of the benefits provided for in Section 31A-22-307 shall be made on a monthly basis as expenses are incurred.

(b) Benefits for any period are overdue if they are not paid within 30 days after the insurer receives reasonable proof of the fact and amount of expenses incurred during the period. If reasonable proof is not supplied as to the entire claim, the amount supported by reasonable proof is overdue if not paid within 30 days after that proof is received by the insurer. Any part or all of the

remainder of the claim that is later supported by reasonable proof is also overdue if not paid within 30 days after the proof is received by the insurer.

(c) If the insurer fails to pay the expenses when due, these expenses shall bear interest at the rate of 1-1/2% per month after the due date.

(d) The person entitled to the benefits may bring an action in contract to recover the expenses plus the applicable interest. If the insurer is required by the action to pay any overdue benefits and interest, the insurer is also required to pay a reasonable attorney's fee to the claimant.

(6) Every policy providing personal injury protection coverage is subject to the following:

(a) that where the insured under the policy is or would be held legally liable for the personal injuries sustained by any person to whom benefits required under personal injury protection have been paid by another insurer, including the Workers' Compensation Fund [~~of Utah~~] created under Chapter 33, the insurer of the person who would be held legally liable shall reimburse the other insurer for the payment, but not in excess of the amount of damages recoverable; and

(b) that the issue of liability for that reimbursement and its amount shall be decided by mandatory, binding arbitration between the insurers.

Section 6. Section **31A-22-1001** is amended to read:

**31A-22-1001. Obligation to write workers' compensation insurance.**

The Workers' Compensation Fund [~~of Utah~~] created under Chapter 33, shall write all workers' compensation insurance for which application is made to the Workers' Compensation Fund [~~of Utah~~]. This requirement does not apply to any other insurer.

Section 7. Section **31A-26-103** is amended to read:

**31A-26-103. Workers' compensation claims.**

In addition to being subject to this and other chapters of this title, insurers writing workers' compensation insurance in this state, including the Workers' Compensation Fund [~~of Utah~~] created under Chapter 33, are subject to the Labor Commission with respect to claims for and payment of compensation and benefits.

Section 8. Section **31A-33-101** is amended to read:

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

As used in this chapter:

- (1) "Board" means the board of directors of the Workers' Compensation Fund.
- (2) "Chief executive officer" means the chief executive officer appointed by the board.
- (3) "Director" means a member of the board.
- (4) "Fund" and "Workers' Compensation Fund" mean the nonprofit, quasi-public corporation established by this chapter.
- (5) "Injury Fund" means the premiums, reserves, investment income, and any other funds administered by the Workers' Compensation Fund as provided in this chapter.
- (6) "Joint enterprise" means a joint business activity either for-profit or not-for-profit:
  - (a) by which two or more persons provide insurance, products, or services; and
  - (b) that is established by contract between the persons providing the insurance, products, or services.
- (7) (a) "Workers' compensation products and services" means:
  - ~~(a)~~ (i) medical or lost time claims management;
  - ~~(b)~~ (ii) utilization review;
  - ~~(c)~~ (iii) rehabilitation counseling or training;
  - ~~(d)~~ (iv) fraud detection for workers' compensation claims;
  - ~~(e)~~ (v) loss prevention or safety consultation; ~~and~~
  - ~~(f)~~ (vi) data or information reporting or processing involving workers' compensation[-]; and
  - (vii) liability insurance claims management if the claims management is related to or arising out of:
    - (A) the sale of workers' compensation products and services described in Subsections (7)(a)(i) through (vi) by:
      - (I) the Workers' Compensation Fund; or
      - (II) a subsidiary of the fund; or
    - (B) workers' compensation insurance coverage through:
      - (I) the Workers' Compensation Fund; or
      - (II) a subsidiary of the fund in accordance with Section 31A-33-103.5.

(b) "Workers' compensation products and services" does not include the bearing of any insurance risk associated with insurance coverage.

Section 9. Section **31A-33-102** is amended to read:

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

(1) (a) There is created a nonprofit, quasi-public corporation to be known as the Workers' Compensation Fund [~~of Utah~~] created by this chapter.

(b) The purpose of the fund is to:

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

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

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

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

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

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

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

Section 10. Section **31A-33-103** is amended to read:

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

(1) The Workers' Compensation Fund is:

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

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

(2) All of the business and affairs of the corporation shall be conducted in the name of the Workers' Compensation Fund [~~of Utah~~] or if conducted through a subsidiary, such other corporate names that comply with state law.

Section 11. Section **34A-2-102** is amended to read:



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

As used in this chapter:

- (1) "Average weekly wages" means the average weekly wages as determined under Section 34A-2-409.
- (2) "Award" means a final order of the commission as to the amount of compensation due:
  - (a) any injured employee; or
  - (b) the dependents of any deceased employee.
- (3) "Compensation" means the payments and benefits provided for in this chapter or Chapter 3, Utah Occupational Disease Act.
- (4) "Decision" means the ruling of an administrative law judge or, in accordance with Section 34A-2-801, the commissioner or Appeals Board and may include:
  - (a) an award or denial of medical, disability, death, or other related benefits 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.
- (5) "Director" means the director of the division, unless the context requires otherwise.
- (6) "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.
- (7) "Division" means the Division of Industrial Accidents.
- (8) "Impairment" is a purely medical condition reflecting any anatomical or functional abnormality or loss. Impairment may be either temporary or permanent, industrial or nonindustrial.
- (9) "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.
- (10) (a) "Personal injury by accident arising out of and in the course of employment" includes any injury caused by the willful act of a third person directed against an employee because of the employee's employment.
  - (b) "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.

(11) "Safe" and "safety," as applied to any employment or place of employment, means the freedom from danger to the life or health of employees reasonably permitted by the nature of the employment.

(12) "Workers' Compensation Fund [~~of Utah~~]" means the nonprofit, quasi-public corporation created in Title 31A, Chapter 33, Workers' Compensation Fund [~~of Utah~~].

Section 12. Section **34A-2-107** is amended to read:

**34A-2-107. Appointment of workers' compensation advisory council -- Composition -- Terms of members -- Duties -- Compensation.**

(1) The commissioner shall appoint a workers' compensation advisory council composed of:

(a) the following voting members:

(i) five employer representatives; and

(ii) five employee representatives; and

(b) the following nonvoting members:

(i) a representative of the Workers' Compensation Fund [~~of Utah~~];

(ii) a representative of a private insurance carrier;

(iii) a representative of health care providers;

(iv) the Utah insurance commissioner; and

(v) the commissioner or the commissioner's designee.

(2) Employers and employees shall consider nominating members of groups who historically may have been excluded from the council, such as women, minorities, and individuals with disabilities.

(3) (a) Except as required by Subsection (3)(b), as terms of current council members expire, the commissioner shall appoint each new member or reappointed member to a two-year term beginning July 1 and ending June 30.

(b) Notwithstanding the requirements of Subsection (3)(a), the commissioner shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of council members are staggered so that approximately half of the council is appointed every two years.

(4) (a) When a vacancy occurs in the membership for any reason, the replacement shall be

appointed for the unexpired term.

(b) The commissioner shall terminate the terms of any council member who ceases to be representative as designated by the member's original appointment.

(5) The council shall confer at least quarterly for the purpose of advising the commission, the division, and the Legislature on the Utah workers' compensation and occupational disease laws, the administration of them, and related rules.

(6) The council shall offer advice on issues requested by the commission, the division, and the Legislature and also make recommendations to the commission and division regarding workers' compensation, rehabilitation, and reemployment of employees who are disabled because of an industrial injury or occupational disease.

(7) The commissioner or the commissioner's designee shall serve as the chair of the council and call the necessary meetings.

(8) The commission shall provide staff support to the council.

(9) (a) (i) Members who are not government employees may not receive compensation or benefits for their services, but may receive per diem and expenses incurred in the performance of the member's official duties at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

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

(b) (i) State government officer and employee members who do not receive salary, per diem, or expenses from their agency for their service may receive per diem and expenses incurred in the performance of their official duties from the council at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

(ii) State government officer and employee members may decline to receive per diem and expenses for their service.

Section 13. Section **34A-2-201** is amended to read:

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

An employer shall secure the payment of workers' compensation benefits for its employees

by:

(1) insuring, and keeping insured, the payment of this compensation with the Workers' Compensation Fund [~~of Utah~~];

(2) 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; or

(3) obtaining approval from the division in accordance with Section 34A-2-201.5 to pay direct compensation as a self-insured employer in the amount, in the manner, and when due as provided for in this chapter or Chapter 3, Utah Occupational Disease Act.

Section 14. Section **34A-2-203** is amended to read:

**34A-2-203. Payment of premiums by state department, commission, board, or other agency.**

Each department, commission, board, or other agency of the state shall pay the insurance premium on its employees direct to the Workers' Compensation Fund [~~of Utah~~].

Section 15. Section **34A-2-211** is amended to read:

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

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

(b) If the employer does not remedy the default within 15 days after delivery of the notice, the division may issue an order requiring the employer to appear before the division and show cause why the employer should not be ordered to comply with Section 34A-2-201.

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

(2) (a) Notwithstanding Subsection (1), the division may impose a penalty against the

employer under this Subsection (2):

(i) subject to the notice and other requirements of Title 63, Chapter 46b, Administrative Procedures Act; and

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

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

(i) \$1,000; or

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

(c) For purposes of Subsection (2)(b)(ii), the premium is calculated by applying rates and rate multipliers to the payroll basis under Subsection (2)(d), using the highest rated employee class code applicable to the employer's operations.

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

(3) The penalty imposed under Subsection (2) shall be deposited in the Uninsured Employers' Fund created by Section 34A-2-704 and used for the purposes of that fund.

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

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

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

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

(b) The abstract filed under Subsection (5)(a) shall state:

- (i) the amount of the uncollected penalty;
- (ii) reasonable attorneys' fees;
- (iii) costs of collection; and
- (iv) court costs.

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

(6) Any administrative action issued by the division under this section shall:

- (a) be in writing;
- (b) be sent by certified mail to the last-known address of the employer;
- (c) state the findings and administrative action of the division; and
- (d) specify its effective date, which may be immediate or may be at a later date.

(7) The final order of the commission under this section, upon application by the division on behalf of the commission made on or after the effective date of the order to a court of general jurisdiction in any county in this state, may be enforced by an order to comply entered ex parte and without notice by the court.

Section 16. Section **34A-2-406** is amended to read:

**34A-2-406. Exemptions from chapter for employees temporarily in state -- Conditions -- Evidence of insurance.**

(1) Any employee who has been hired in another state and the employee's employer are exempt from this chapter and Chapter 3, Utah Occupational Disease Act, while the employee is temporarily within this state doing work for the employee's employer if:

- (a) the employer has furnished workers' compensation insurance coverage under the workers' compensation or similar laws of the other state;
- (b) the coverage covers the employee's employment while in this state; and
- (c) (i) the extraterritorial provisions of this chapter and Chapter 3 are recognized in the other

state and employers and employees who are covered in this state are likewise exempted from the application of the workers' compensation or similar laws of the other state; or

(ii) the Workers' Compensation Fund [~~of Utah~~]:

(A) is an admitted insurance carrier in the other state; or

(B) has agreements with a carrier and is able to furnish workers' compensation insurance or similar coverage to Utah employers and their subsidiaries or affiliates doing business in the other state.

(2) The benefits under the workers' compensation or similar laws of the other state are the exclusive remedy against an employer for any injury, whether resulting in death or not, received by an employee while working for the employer in this state.

(3) A certificate from an authorized officer of the industrial commission or similar department of the other state certifying that the employer is insured in the other state and has provided extraterritorial coverage insuring the employer's employees while working in this state is prima facie evidence that the employer carries compensation insurance.

Section 17. Section **51-5-4** is amended to read:

**51-5-4. Funds established -- Titles of funds -- Fund functions.**

(1) (a) (i) The funds enumerated in this section are established as major fund types.

(ii) All resources and financial transactions of Utah state government shall be accounted for within one of these major fund types.

(b) (i) All funds or subfunds shall be consolidated into one of the state's major fund types.

(ii) Where a specific statute requires that a restricted fund be established, that fund shall be accounted for as an individual fund or subfund within the major fund type to meet generally accepted accounting principles.

(iii) Existing and new activities of state government authorized by the Legislature shall be accounted for within the framework of the major fund types established in this section.

(c) The Division of Finance shall determine the accounting classification that complies with generally accepted accounting principles for all funds or subfunds created by the Legislature.

(d) (i) Major fund types shall be added by amending this chapter.

(ii) Whenever a new act creates or establishes a fund without amending this chapter, the reference to a fund in the new act means a subfund.

(2) Major Fund Type Titles:

(a) General Fund;

(b) Special Revenue Funds;

(c) Capital Projects Funds;

(d) Debt Service Funds;

(e) Enterprise Funds;

(f) Internal Service Funds;

(g) Trust and Agency Funds;

(h) General Fixed Assets Account Group;

(i) General Long-Term Obligation Account Group; and

(j) College and University Funds.

(3) The General Fund shall receive all revenues and account for all expenditures not otherwise provided for by law in any other fund.

(4) Special Revenue Funds shall account for proceeds of specific revenue sources (other than expendable trusts, or major capital projects) that are legally restricted to expenditures for a specific purpose.

(a) The Uniform School Fund is a Special Revenue Fund that shall account for all revenues that are required by law to be expended for the public school programs of the state.

(b) The Transportation Fund is a Special Revenue Fund that shall account for all revenues that are required by Article XIII, Sec. 13, Utah Constitution, to be expended for highway purposes.

(5) Capital Projects Funds shall account for financial resources to be expended for the acquisition or construction of major capital facilities, except that when financing for the acquisition or construction of a major capital facility is obtained from a trust fund or a proprietary type fund within one of the major fund types, the monies shall be accounted for in those accounts.

(6) Debt Service Funds shall account for the accumulation of resources for, and the payment of, the principal and interest on general long-term obligations.



(7) (a) Enterprise Funds are designated to account for the following:

(i) operations, financed and operated in a manner similar to private business enterprises, where the Legislature intends that the costs of providing goods or services to the public are financed or recovered primarily through user charges; or

(ii) operations where the Legislature requires periodic determination of revenues earned, expenses incurred, and net income.

(b) The Alcoholic Beverage Control Fund is an Enterprise Fund that shall account for the state-controlled liquor merchandising operations.

(c) The Utah Housing Finance Agency Fund, the Utah Correctional Industries Fund, and the Workers' Compensation Fund [~~of Utah~~], are Enterprise Funds.

(8) Internal Service Funds shall account for the financing of goods or services provided by one department, division, or agency to other departments, divisions, or agencies of the state, or to other governmental units, on a cost-reimbursement basis.

(9) (a) Trust and Agency Funds shall account for assets held by the state as trustee or agent for individuals, private organizations, or governmental units, or other funds.

(b) Expendable Trust Funds, Nonexpendable Trust Funds, and Agency Funds are Trust and Agency Funds.

(i) The Retirement Systems Fund is a Trust Fund that shall account for resources received and held by the state as trustee for the state retirement systems established by the Utah School Employees' Retirement Act, the Utah Public Employees' Retirement Act, and the Firemen's Pension Act. Additional retirement systems that are established by the Legislature shall be included in the Retirement Systems Fund.

(ii) The State Land Principal Fund is a Nonexpendable Trust Fund that shall account for resources received by the state as trustee for land grants made in the Enabling Act of the state of Utah.

(10) The General Fixed Assets Account Group shall account for all fixed assets acquired or constructed for use by the state, except for the fixed assets accounted for in the Internal Service, Enterprise, Trust and Agency, and College and University Funds.

(11) The General Long-Term Obligation Account Group shall account for general obligation bonds, revenue bonds, capital lease obligations, accrued annual and compensatory leave, and other long-term obligations not otherwise recorded in Internal Service, Enterprise, Trust and Agency, and College and University Funds.

(12) College and University Funds shall account for the financial resources used to operate the state's colleges and universities. They shall include the Current Funds, Fiduciary Funds, and Plant Funds for each college and university.

Section 18. Section **51-7-2** is amended to read:

**51-7-2. Exemptions from chapter.**

The following funds are exempt from this chapter:

- (1) funds invested in accordance with the participating employees' designation or direction pursuant to a public employees' deferred compensation plan established and operated in compliance with Section 457 of the Internal Revenue Code of 1954, as amended;
- (2) funds of the [~~Utah~~] Workers' Compensation Fund;
- (3) funds of the Utah State Retirement Board;
- (4) funds of the Utah Technology Finance Corporation; and
- (5) funds of the Utah Housing Finance Agency.

Section 19. Section **51-7-4** is amended to read:

**51-7-4. Transfer of functions, powers, and duties relating to public funds to state treasurer -- Exceptions -- Deposit of income from investment of state money.**

(1) Unless otherwise required by the Utah Constitution or applicable federal law, the functions, powers, and duties vested by law in each and every state officer, board, commission, institution, department, division, agency, and other similar instrumentalities relating to the deposit, investment, or reinvestment of public funds, and the purchase, sale, or exchange of any investments or securities of or for any funds or accounts under the control and management of these instrumentalities, are transferred to and shall be exercised by the state treasurer, except:

- (a) funds assigned to the Utah State Retirement Board for investment under Section 49-1-302;

(b) funds of member institutions of the state system of higher education:  
(i) acquired by gift, devise, or bequest, or by federal or private contract or grant;  
(ii) derived from student fees or from income from operations of auxiliary enterprises, which fees and income are pledged or otherwise dedicated to the payment of interest and principal of bonds issued by such institutions; and

(iii) any other funds which are not included in the institution's work program as approved by the State Board of Regents;

(c) funds of the Utah Technology Finance Corporation;

(d) inmate funds as provided in Section 64-13-23 or in Title 64, Chapter 9b;

(e) trust funds established by judicial order;

(f) funds of the [Utah] Workers' Compensation Fund; and

(g) funds of the Utah Housing Finance Agency.

(2) All public funds held or administered by the state or any of its boards, commissions, institutions, departments, divisions, agencies, or similar instrumentalities and not transferred to the state treasurer as provided by this section shall be:

(a) deposited and invested by the custodian in accordance with this chapter, unless otherwise required by statute or by applicable federal law; and

(b) reported to the state treasurer in a form prescribed by the state treasurer.

(3) Unless otherwise provided by the constitution or laws of this state or by contractual obligation, the income derived from the investment of state money by the state treasurer shall be deposited in and become part of the General Fund.

Section 20. Section **59-9-101** is amended to read:

**59-9-101. Tax basis -- Rates -- Exemptions.**

(1) Except for annuity considerations, insurance premiums paid by institutions within the state system of higher education as specified in Section 53B-1-102, and ocean marine insurance, every admitted insurer shall pay to the commission on or before March 31 in each year, a tax of 2-1/4% of the total premiums received by it during the preceding calendar year from insurance covering property or risks located in this state. Subsection (1) does not apply to workers' compensation insurance,

assessed under Subsection (2), and title insurance premiums, taxed under Subsection (3). The taxable premium under Subsection (1) shall be reduced by:

(a) all premiums returned or credited to policyholders on direct business subject to tax in this state;

(b) all premiums received for reinsurance of property or risks located in this state; and

(c) the dividends, including premium reduction benefits maturing within the year, paid or credited to policyholders in this state or applied in abatement or reduction of premiums due during the preceding calendar year.

(2) (a) Every admitted insurer writing workers' compensation insurance in this state, including the Workers' Compensation Fund [~~of Utah~~] created under Title 31A, Chapter 33, shall pay to the tax commission, on or before March 31 in each year, a premium assessment of between 1% and 8% of the total workers' compensation premium income received by the insurer from workers' compensation insurance in this state during the preceding calendar year.

(b) Total workers' compensation premium income means the net written premium as calculated before any premium reduction for any insured employer's deductible, retention, or reimbursement amounts and also those amounts equivalent to premiums as provided in Section 34A-2-202.

(c) The percentage of premium assessment applicable for a calendar year shall be determined by the Labor Commission under Subsection (2)(d). The total premium income shall be reduced in the same manner as provided in Subsections (1)(a) and (1)(b), but not as provided in Subsection (1)(c). The tax commission shall promptly remit from the premium assessment collected under Subsection (2):

(i) an amount of up to 7.25% of the premium income to the state treasurer for credit to the Employers' Reinsurance Fund created under Subsection 34A-2-702(1);

(ii) an amount equal to 0.25% of the premium income to the state treasurer for credit to the restricted account in the General Fund, created by Section 34A-2-701; and

(iii) an amount of up to 0.50% and any remaining assessed percentage of the premium income to the state treasurer for credit to the Uninsured Employers' Fund created under Section 34A-2-704.

(d) (i) The Labor Commission shall determine the amount of the premium assessment for each year on or before each October 15 of the preceding year. The Labor Commission shall make this determination following a public hearing. The determination shall be based upon the recommendations of a qualified actuary.

(ii) The actuary shall recommend a premium assessment rate sufficient to provide payments of benefits and expenses from the Employers' Reinsurance Fund and to project a funded condition with assets greater than liabilities by no later than June 30, 2025.

(iii) The actuary shall recommend a premium assessment rate sufficient to provide payments of benefits and expenses from the Uninsured Employers' Fund and to maintain it at a funded condition with assets equal to or greater than liabilities.

(iv) At the end of each fiscal year the minimum approximate assets in the Employers' Reinsurance Fund shall be \$5,000,000 which amount shall be adjusted each year beginning in 1990 by multiplying by the ratio that the total workers' compensation premium income for the preceding calendar year bears to the total workers' compensation premium income for the calendar year 1988.

(v) The requirements of Subsection (2)(d)(iv) cease when the future annual disbursements from the Employers' Reinsurance Fund are projected to be less than the calculations of the corresponding future minimum required assets. The Labor Commission shall, after a public hearing, determine if the future annual disbursements are less than the corresponding future minimum required assets from projections provided by the actuary.

(vi) At the end of each fiscal year the minimum approximate assets in the Uninsured Employers' Fund shall be \$2,000,000, which amount shall be adjusted each year beginning in 1990 by multiplying by the ratio that the total workers' compensation premium income for the preceding calendar year bears to the total workers' compensation premium income for the calendar year 1988.

(e) A premium assessment that is to be transferred into the General Fund may be collected on premiums received from Utah public agencies.

(3) Every admitted insurer writing title insurance in this state shall pay to the commission, on or before March 31 in each year, a tax of .45% of the total premium received by either the insurer or by its agents during the preceding calendar year from title insurance concerning property located

in this state. In calculating this tax, "premium" includes the charges made to an insured under or to an applicant for a policy or contract of title insurance for:

- (a) the assumption by the title insurer of the risks assumed by the issuance of the policy or contract of title insurance; and
- (b) abstracting title, title searching, examining title, or determining the insurability of title, and every other activity, exclusive of escrow, settlement, or closing charges, whether denominated premium or otherwise, made by a title insurer, an agent of a title insurer, a title insurance agent, or any of them.

(4) Beginning July 1, 1986, former county mutuals and former mutual benefit associations shall pay the premium tax or assessment due under this chapter. All premiums received after July 1, 1986, shall be considered in determining the tax or assessment.

(5) The following insurers are not subject to the premium tax on health care insurance that would otherwise be applicable under Subsection (1):

(a) insurers licensed under Title 31A, Chapter 5, Domestic Stock and Mutual Insurance Corporations;

(b) insurers licensed under Title 31A, Chapter 7, Nonprofit Health Service Insurance Corporations;

(c) insurers licensed under Title 31A, Chapter 8, Health Maintenance Organizations and Limited Health Plans;

(d) insurers licensed under Title 31A, Chapter 9, Insurance Fraternal;

(e) insurers licensed under Title 31A, Chapter 11, Motor Clubs;

(f) insurers licensed under Title 31A, Chapter 13, Employee Welfare Funds and Plans; and

(g) insurers licensed under Title 31A, Chapter 14, Foreign Insurers.

(6) An insurer issuing multiple policies to an insured may not artificially allocate the premiums among the policies for purposes of reducing the aggregate premium tax or assessment applicable to the policies.

(7) The retaliatory provisions of Title 31A, Chapter 3, apply to the tax or assessment imposed under this chapter.

(8) A premium tax paid to the General Fund may not be collected on premiums paid to public agency insurance mutuals.

Section 21. Section **59-9-101.1** is amended to read:

**59-9-101.1. Employers' Reinsurance Fund special assessment.**

(1) For purposes of this section:

(a) "Calendar year" means a time period beginning January 1 and ending December 31 during which an assessment is imposed.

(b) "Total workers' compensation premium income" has the same meaning as under Subsection 59-9-101(2).

(2) (a) For calendar years beginning on January 1, 1998, through December 31, 2000, the following shall pay to the commission, on or before March 31 of each year, an assessment imposed by the Labor Commission under Subsection (3):

(i) an admitted insurer writing workers' compensation insurance in this state, including the Workers' Compensation Fund [~~of Utah~~] created under Title 31A, Chapter 33, Workers' Compensation Fund [~~of Utah~~]; and

(ii) an employer authorized under Section 34A-2-201 to pay workers' compensation direct.

(b) The assessment imposed under Subsection (3) shall be in addition to:

(i) the premium assessment imposed under Subsection 59-9-101(2); and

(ii) the assessment imposed under Section 34A-2-202.

(3) (a) If the conditions described in Subsection (3)(b) are met, the Labor Commission may impose an assessment in accordance with Subsections (3)(c) and (d) of up to 2% of:

(i) the total workers' compensation premium income received by the insurer from workers' compensation insurance in this state during the preceding calendar year; or

(ii) if authorized under Section 34A-2-201 to pay workers' compensation direct, the amount calculated under Section 34A-2-202 for a self-insured employer that is equivalent to the total workers' compensation premium income.

(b) The Labor Commission may impose the assessment described in Subsection (3)(a) if:

(i) the Labor Commission determines that:

(A) all admitted insurers writing workers' compensation insurance in this state shall pay the maximum 7.25% of the premium income under Subsection 59-9-101(2)(c)(i); and

(B) all employers authorized to pay compensation direct shall pay the maximum 7.25% assessment under Section 34A-2-202; and

(ii) the maximum 7.25% of the premium income is insufficient to:

(A) provide payment of benefits and expenses from the Employers' Reinsurance Fund to project a funded condition of the Employers' Reinsurance Fund with assets greater than liabilities by no later than June 30, 2025; or

(B) maintain the minimum approximate assets required in Subsection 59-9-101(2)(d)(iv).

(c) On or before each October 15 of the preceding year and following a public hearing, the Labor Commission shall determine:

(i) whether an assessment will be imposed under this section for a calendar year; and

(ii) if the assessment will be imposed, the percentage of the assessment applicable for the calendar year.

(d) The Labor Commission shall:

(i) base its determination on the recommendations of the qualified actuary required in Subsection 59-9-101(2)(d)(i); and

(ii) take into consideration the recommended premium assessment rate recommended by the actuary under Subsection 59-9-101(2)(d)(ii).

(4) An employer shall aggregate all assessments imposed under this section and Section 34A-2-202 or 59-9-101 to determine whether the total assessment obligation shall be paid in quarterly installments in accordance with Sections 34A-2-202 and 59-9-104.

(5) The commission shall promptly remit the assessment collected under Subsection (2) to the state treasurer for credit to the Employers' Reinsurance Fund created under Section 34A-2-702.

Section 22. Section **63-5b-102** is amended to read:

**63-5b-102. Definitions.**

(1) (a) "Absent" means:

(i) not physically present or not able to be communicated with for 48 hours; or



(ii) for local government officers, as defined by local ordinances.

(b) "Absent" does not include a person who can be communicated with via telephone, radio, or telecommunications.

(2) "Attack" means a nuclear, conventional, biological, or chemical warfare action against the United States of America or this state.

(3) "Department" means the Department of Administrative Services, the Department of Agriculture and Food, the Alcoholic Beverage Control Commission, the Department of Commerce, the Department of Community and Economic Development, the Department of Corrections, the Department of Environmental Quality, the Department of Financial Institutions, the Department of Health, the Department of Human Resource Management, the Department of Workforce Services, the Labor Commission, the National Guard, the Department of Insurance, the Department of Natural Resources, the Department of Public Safety, the Public Service Commission, the Department of Human Services, the State Tax Commission, the Department of Transportation, any other major administrative subdivisions of state government, the State Board of Education, the State Board of Regents, the Utah Housing Finance Agency, the Utah Technology Finance Corporation, the Workers' Compensation Fund [of Utah], the State Retirement Board, and each institution of higher education within the system of higher education.

(4) "Disaster" means a situation causing, or threatening to cause, widespread damage, social disruption, or injury or loss of life or property resulting from attack, internal disturbance, natural phenomenon, or technological hazard.

(5) "Division" means the Comprehensive Emergency Management Division established in Title 53, Chapter 2, Comprehensive Emergency Management Act.

(6) "Emergency interim successor" means a person designated by this chapter to exercise the powers and discharge the duties of an office when the person legally exercising the powers and duties of the office is unavailable.

(7) "Executive director" means the person with ultimate responsibility for managing and overseeing the operations of each department, however denominated.

(8) "Internal disturbance" means a riot, prison break, disruptive terrorism, or strike.

(9) "Natural phenomenon" means any earthquake, tornado, storm, flood, landslide, avalanche, forest or range fire, drought, epidemic, or other catastrophic event.

(10) (a) "Office" includes all state and local offices, the powers and duties of which are defined by constitution, statutes, charters, optional plans, ordinances, articles, or by-laws.

(b) "Office" does not include the office of governor or the legislative or judicial offices.

(11) "Place of governance" means the physical location where the powers of an office are being exercised.

(12) "Political subdivision" includes counties, cities, towns, townships, districts, authorities, and other public corporations and entities whether organized and existing under charter or general law.

(13) "Political subdivision officer" means a person holding an office in a political subdivision.

(14) "State officer" means the attorney general, the state treasurer, the state auditor, and the executive director of each department.

(15) "Technological hazard" means any hazardous materials accident, mine accident, train derailment, air crash, radiation incident, pollution, structural fire, or explosion.

(16) "Unavailable" means:

(a) absent from the place of governance during a disaster that seriously disrupts normal governmental operations, whether or not that absence or inability would give rise to a vacancy under existing constitutional or statutory provisions; or

(b) as otherwise defined by local ordinance.

Section 23. Section **63-38a-102** is amended to read:

**63-38a-102. Definitions.**

As used in this chapter:

(1) (a) "Agency" means each department, commission, board, council, agency, institution, officer, corporation, fund, division, office, committee, authority, laboratory, library, unit, bureau, panel, or other administrative unit of the state.

(b) "Agency" does not include the legislative branch, the board of regents, the Utah Higher Education Assistance Authority, the board of trustees of each higher education institution, each

higher education institution and its associated branches, centers, divisions, institutes, foundations, hospitals, colleges, schools, or departments, a public education entity, or an independent agency.

(2) (a) "Dedicated credits revenues" means revenues from collections by an agency that are deposited directly into an account for expenditure on a separate line item and program.

(b) "Dedicated credits" does not mean:

(i) federal revenues and the related pass through or the related state match paid by one agency to another;

(ii) revenues that are not deposited in governmental funds;

(iii) revenues from any contracts; and

(iv) revenues received by the Attorney General's Office from billings for professional services.

(3) "Fees" means revenue collected by an agency for performing a service or providing a function that the agency deposits or accounts for as dedicated credits or fixed collections.

(4) (a) "Fixed collections revenues" means revenue from collections:

(i) fixed by law or by the appropriation act at a specific amount; and

(ii) required by law to be deposited into a separate line item and program.

(b) "Fixed collections" does not mean:

(i) federal revenues and the related pass through or the related state match paid by one agency to another;

(ii) revenues that are not deposited in governmental funds;

(iii) revenues from any contracts; and

(iv) revenues received by the Attorney General's Office from billings for professional services.

(5) (a) "Governmental fund" means funds used to account for the acquisition, use, and balances of expendable financial resources and related liabilities using a measurement focus that emphasizes the flow of financial resources.

(b) "Governmental fund" does not include internal service funds, enterprise funds, capital projects funds, debt service funds, or trust and agency funds as established in Section 51-5-4.

(6) "Independent agency" means the Utah State Retirement Office, the Utah Housing Finance Agency, the Utah Technology Finance Corporation, and the Workers' Compensation Fund [of Utah].

(7) "Program" means the function or service provided by an agency for which the agency collects fees.

(8) "Revenue types" means the categories established by the Division of Finance under the authority of this chapter that classify revenue according to the purpose for which it is collected.

Section 24. Section **63-95-102** is amended to read:

**63-95-102. Definitions.**

For purposes of this chapter:

(1) "Asset" means property of all kind, real and personal, tangible and intangible, and includes:

- (a) cash, except reasonable compensation or salary for services rendered;
- (b) stock or other investments;
- (c) goodwill;
- (d) real property;
- (e) an ownership interest;
- (f) a license;
- (g) a cause of action; and
- (h) any similar property.

(2) "Authorizing statutes" means the statutes creating an entity as a quasi-governmental entity.

(3) "Business interest" means:

(a) holding the position of trustee, director, officer, or other similar position with a business entity; or

(b) the ownership, either legally or equitably, of at least 10% of the outstanding shares of a corporation or 10% interest in any other business entity, being held by:

- (i) an individual;
- (ii) the individual's spouse;
- (iii) a minor child of the individual; or
- (iv) any combination of Subsections (3)(b)(i) through (iii).

(4) "Interested party" means a person that held or holds the position of trustee, director, officer, or other similar position with a quasi-governmental entity within:

- (a) five years prior to the date of an action described in Subsection (6); or
- (b) during the privatization of a quasi-governmental entity.

(5) "Lobbyist" is a person that provided or provides services as a lobbyist, as defined in Section 36-11-102, within:

- (a) five years prior to the date of an action described in Subsection (6); or
- (b) during the privatization of a quasi-governmental entity.

(6) (a) "Privatized" means an action described in Subsection (6)(b) taken under circumstances in which the operations of the quasi-governmental entity are continued by a successor entity that:

- (i) is privately owned;
- (ii) is unaffiliated to the state; and
- (iii) receives any asset of the quasi-governmental entity.

(b) An action referred to in Subsection (6)(a) includes:

- (i) the repeal of the authorizing statute of a quasi-governmental entity and the revision to state laws to terminate the relationship between the state and the quasi-governmental entity;
- (ii) the dissolution of the quasi-governmental entity;
- (iii) the merger or consolidation of the quasi-governmental entity with another entity; or
- (iv) the sale of all or substantially all of the assets of the quasi-governmental entity.

(7) "Quasi-governmental entity" means the:

- (a) Dairy Commission created in Title 4, Chapter 22, Dairy Promotion Act;
- (b) Utah Technology Finance Corporation created in Title 9, Chapter 13, Utah Technology and Small Business Finance Act;
- (c) Heber Valley Railroad Authority created in Title 9, Chapter 3, Part 3, Heber Valley Historic Railroad Authority;
- (d) Utah Science Center Authority created in Title 9, Chapter 3, Part 4, Utah Science Center Authority;
- (e) Utah Housing Finance Agency created in Title 9, Chapter 4, Part 9, Utah Housing Finance

Agency Act;

(f) Utah State Fair Corporation created in Title 9, Chapter 4, Part 11, Utah State Fair Corporation Act;

(g) Workers' Compensation Fund [~~of Utah~~] created in Title 31A, Chapter 33, Workers' Compensation Fund [~~of Utah~~];

(h) Utah State Retirement Office created in Title 49, Chapter 1, Part 2, Retirement Office and Board;

(i) School and Institutional Trust Lands Administration created in Title 53C, Chapter 1, Part 2, School and Institutional Trust Lands Administration;

(j) Crime Victims' Reparations Office created in Title 63, Chapter 25a, Part 4, Crime Victims' Reparations Act; and

(k) Utah Communications Agency Network created in Title 63C, Chapter 7, Utah Communications Agency Network Act.

Section 25. Section **67-4-2** is amended to read:

**67-4-2. Definitions.**

As used in this chapter:

(1) "Federal funds" means cash received from the United States government or from other individuals or entities for or on behalf of the United States and deposited with the state treasurer or any agency of the state.

(2) "General Fund" means monies received into the treasury and not specially appropriated to any other fund.

(3) "Maintain custody" means to direct the safekeeping and investment of state funds.

(4) (a) "State entity" means each department, commission, board, council, agency, institution, officer, corporation, fund, division, office, committee, authority, laboratory, library, unit, bureau, panel, or other administrative unit of the state.

(b) "State entity" includes independent state agencies and public corporations.

(5) (a) "State funds" means funds that are owned, held, or administered by a state entity, regardless of the source of the funds.

(b) "State funds" includes funds of independent state agencies or public corporations, regardless of the source of funds.

(c) "State funds" does not include funds held by the Utah State Retirement Board or the Workers' Compensation Fund [~~of Utah~~].

(6) "Warrant" means an order in a specific amount drawn upon the treasurer by the Division of Finance or another state agency.