

UNINSURED EMPLOYERS' FUND AMENDMENTS

2000 GENERAL SESSION

STATE OF UTAH

Sponsor: Ed P. Mayne

AN ACT RELATING TO LABOR; LIMITING SCOPE OF THE UNINSURED EMPLOYERS' FUND; MAKING TECHNICAL CHANGES; AND PROVIDING AN EFFECTIVE DATE.

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

AMENDS:

34A-2-601, as last amended by Chapter 45 and renumbered and amended by Chapter 375, Laws of Utah 1997

34A-2-704, as renumbered and amended by Chapter 375, Laws of Utah 1997

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

Section 1. Section **34A-2-601** is amended to read:

34A-2-601. Medical panel -- Medical director or medical consultants -- Discretionary authority of Division of Adjudication to refer case -- Findings and reports -- Objections to report -- Hearing -- Expenses.

(1) (a) Upon the filing of a claim for compensation for injury by accident, or for death, arising out of and in the course of employment, and if the employer or its insurance carrier denies liability, the Division of Adjudication may refer the medical aspects of the case to a medical panel appointed by an administrative law judge.

(b) When a claim for compensation based upon disability or death due to an occupational disease is filed with the Division of Adjudication, an administrative law judge shall, except upon stipulation of all parties, appoint an impartial medical panel.

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

(d) As an alternative method of obtaining an impartial medical evaluation of the medical aspects of a controverted case, the division may employ a medical director or medical consultants on a full-time or part-time basis for the purpose of evaluating the medical evidence and advising an administrative law judge with respect to the administrative law judge's ultimate fact-finding

responsibility.

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

(2) (a) The medical panel, medical director, or medical consultants shall make such study, take such X-rays, and perform such tests, including post-mortem examinations if authorized by the administrative law judge, as it may determine to be necessary or desirable.

(b) The medical panel, medical director, or medical consultants shall make:

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

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

(c) In occupational disease cases, in addition to the requirements of Subsection (2)(b), the panel shall certify to the administrative law judge:

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

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

(iii) whether any other causes have aggravated, prolonged, accelerated, or in any way contributed to the disability or death, and if so, the extent in percentage to which the other causes have so contributed.

(d) (i) The administrative law judge shall promptly distribute full copies of the report by certified mail with return receipt requested to:

(A) the applicant;

(B) the employer; and

(C) the employer's insurance carrier.

(ii) Within 15 days after the report is deposited in the United States post office, the applicant, the employer, or its insurance carrier may file with the administrative law judge written objections to the report.

(iii) If no written objections are filed within that period, the report is considered admitted in evidence.

(e) The administrative law judge may base the administrative law judge's finding and decision on the report of the panel, medical director, or medical consultants, but is not bound by the report if other substantial conflicting evidence in the case supports a contrary finding.

(f) (i) If objections to the report are filed, the administrative law judge may set the case for hearing to determine the facts and issues involved.

(ii) At the hearing, any party so desiring may request the administrative law judge to have the chair of the medical panel, the medical director, or the medical consultants present at the hearing for examination and cross-examination.

(iii) For good cause shown, the administrative law judge may order other members of the panel, with or without the chair or the medical director or medical consultants, to be present at the hearing for examination and cross-examination.

(g) The written report of the panel, medical director, or medical consultants may be received as an exhibit at the hearing, but may not be considered as evidence in the case except as far as it is sustained by the testimony admitted.

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

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

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

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

~~[(i) the expenses of]~~ (A) the study and report of the medical panel, medical director, or medical consultant; and

~~[(ii) the expenses of]~~ (B) the panel's, director's, or consultant's appearance before the administrative law judge.

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

Section 2. Section **34A-2-704** is amended to read:

34A-2-704. Uninsured Employers' Fund.

(1) (a) There is created an Uninsured Employers' Fund. The Uninsured Employers' Fund has the purpose of assisting in the payment of workers' compensation benefits to any person entitled to ~~[them]~~ the benefits, if:

(i) that person's employer:

~~[(i)]~~ (A) is individually, jointly, or severally liable to pay the benefits; and

~~[(ii)-(A)]~~ (B) (I) becomes or is insolvent;

~~[(B)]~~ (II) appoints or has appointed a receiver; or

~~[(C)]~~ (III) otherwise does not have sufficient funds, insurance, sureties, or other security to cover workers' compensation liabilities~~[-]~~; and

(ii) the employment relationship between that person and the person's employer is localized within the state as provided in Subsection (20).

(b) The Uninsured Employers' Fund succeeds to all monies previously held in the Default Indemnity Fund.

(c) If it becomes necessary to pay benefits, the Uninsured Employers' Fund is liable for all obligations of the employer as set forth in this chapter and Chapter 3, Utah Occupational Disease Act, with the exception of penalties on those obligations.

(2) (a) Monies for the Uninsured Employers' Fund shall be deposited into the Uninsured Employers' Fund in accordance with Subsection 59-9-101(2).

(b) The commissioner shall appoint an administrator of the Uninsured Employers' Fund.

(c) The state treasurer is the custodian of the Uninsured Employers' Fund, and the

administrator shall make provisions for and direct its distribution.

(3) Reasonable costs of administering the Uninsured Employers' Fund or other fees required to be paid by the Uninsured Employers' Fund may be paid from the Uninsured Employers' Fund.

(4) The state treasurer shall:

(a) receive workers' compensation premium assessments from the State Tax Commission;

and

(b) invest the Uninsured Employers' Fund to ensure maximum investment return for both long and short term investments in accordance with Section 51-7-12.5.

(5) (a) The administrator may employ, retain, or appoint counsel to represent the Uninsured Employers' Fund in all proceedings brought to enforce claims against or on behalf of the Uninsured Employers' Fund.

(b) If requested by the commission, the following shall aid in the representation of the Uninsured Employers' Fund:

(i) the attorney general~~;~~; or

(ii) the city attorney, or county attorney of the locality in which:

(A) any investigation, hearing, or trial under this chapter or Chapter 3, Utah Occupational Disease Act, is pending~~;~~; ~~or in which~~;

(B) the employee resides~~;~~; or

(C) an employer~~;~~;

(I) resides~~;~~; or

(II) is doing business~~;~~; ~~shall aid in the representation of the Fund~~;.

(6) To the extent of the compensation and other benefits paid or payable to or on behalf of an employee or the employee's dependents from the Uninsured Employers' Fund, the Uninsured Employers' Fund, by subrogation, has all the rights, powers, and benefits of the employee or the employee's dependents against the employer failing to make the compensation payments.

(7) (a) The receiver, trustee, liquidator, or statutory successor of an insolvent employer is bound by settlements of covered claims by the Uninsured Employers' Fund.

(b) The court with jurisdiction shall grant all payments made under this section a priority

equal to that to which the claimant would have been entitled in the absence of this section against the assets of the insolvent employer.

(c) The expenses of the Uninsured Employers' Fund in handling claims shall be accorded the same priority as the liquidator's expenses.

(8) (a) The administrator shall periodically file with the receiver, trustee, or liquidator of the insolvent employer or insurance carrier;

(i) statements of the covered claims paid by the Uninsured Employers' Fund; and

(ii) estimates of anticipated claims against the Uninsured Employers' Fund [~~which~~].

(b) The filings under Subsection (8)(a) shall preserve the rights of the Uninsured Employers' Fund for claims against the assets of the insolvent employer.

(9) When any injury or death for which compensation is payable from the Uninsured Employers' Fund has been caused by the wrongful act or neglect of another person not in the same employment, the Uninsured Employers' Fund has the same rights as allowed under Section 34A-2-106.

(10) The Uninsured Employers' Fund, subject to approval of the administrator, shall discharge

its obligations by:

(a) adjusting its own claims; or

(b) contracting with an adjusting company, risk management company, insurance company, or other company that has expertise and capabilities in adjusting and paying workers' compensation claims.

(11) (a) For the purpose of maintaining [~~this~~] the Uninsured Employers' Fund, an administrative law judge, upon rendering a decision with respect to any claim for workers' compensation benefits in which an uninsured employer was duly joined as a party, shall:

(i) order the uninsured employer to reimburse the Uninsured Employers' Fund for all benefits paid to or on behalf of an injured employee by the Uninsured Employers' Fund along with interest, costs, and attorneys' fees; and

(ii) impose a penalty against the uninsured employer of 15% of the value of the total award in connection with the claim that shall be paid into the Uninsured Employers' Fund.

(b) Awards may be docketed as other awards under this chapter and Chapter 3, Utah Occupational Disease Act.

(12) The liability of the state, the commission, and the state treasurer, with respect to payment of any compensation benefits, expenses, fees, or disbursement properly chargeable against the Uninsured Employers' Fund, is limited to the assets in the Uninsured Employers' Fund, and they are not otherwise in any way liable for the making of any payment.

(13) The commission may make reasonable rules for the processing and payment of claims for compensation from the Uninsured Employers' Fund.

(14) (a) If it becomes necessary for the Uninsured Employers' Fund to pay benefits under this section to any employee of an insolvent self-insured employer, the Uninsured Employers' Fund may assess all other self-insured employers amounts necessary to pay:

- (i) the obligations of the Uninsured Employers' Fund subsequent to an insolvency;
- (ii) the expenses of handling covered claims subsequent to an insolvency;
- (iii) the cost of examinations under Subsection (15); and
- (iv) other expenses authorized by this section.

(b) The assessments of each self-insured employer shall be in the proportion that the manual premium of the self-insured employer for the preceding calendar year bears to the manual premium of all self-insured employers for the preceding calendar year.

(c) Each self-insured employer shall be notified of the employer's assessment not later than 30 days before the assessment is due.

(d) (i) A self-insured employer may not be assessed in any year an amount greater than 2% of that self-insured employer's manual premium for the preceding calendar year.

(ii) If the maximum assessment does not provide in any one year an amount sufficient to make all necessary payments from the Uninsured Employers' Fund for one or more insolvent self-insured employers, the unpaid portion shall be paid as soon as funds become available.

(e) All self-insured employers are liable under this section for a period not to exceed three years after the self-insured employer's voluntary or involuntary termination of self-insurance privileges within this state.

(f) This Subsection (14) does not apply to claims made against an insolvent self-insured employer if the insolvency occurred prior to July 1, 1986.

(15) (a) A self-insured employer shall notify the division of any information indicating that any self-insured employer may be insolvent or in a financial condition hazardous to its employees or the public.

(b) Upon receipt of the notification described in Subsection (15)(a) and with good cause appearing, the division may order an examination of that self-insured employer.

(c) The cost of the examination ordered under Subsection (15)(b) shall be assessed against all self-insured employers as provided in Subsection (14).

(d) The results of the examination ordered under Subsection (15)(b) shall be kept confidential.

(16) In any claim against an employer by the Uninsured Employers' Fund, or by or on behalf of the employee to whom or to whose dependents compensation and other benefits are paid or payable from the Uninsured Employers' Fund, the burden of proof is on the employer or other party in interest objecting to the claim. The claim is presumed to be valid up to the full amount of workers' compensation benefits claimed by the employee or the employee's dependents. This Subsection (16) applies whether the claim is filed in court or in an adjudicative proceeding under the authority of the commission.

(17) A partner in a partnership or an owner of a sole proprietorship may not recover compensation or other benefits from the Uninsured Employers' Fund if:

(a) the person is not included as an employee under Subsection 34A-2-104(3); or

(b) the person is included as an employee under Subsection 34A-2-104(3), but:

(i) the person's employer fails to insure or otherwise provide adequate payment of direct compensation; and

(ii) the failure described in Subsection (17)(b)(i) is attributable to an act or omission over which the person had or shared control or responsibility.

(18) A director or officer of a corporation may not recover compensation or other benefits from the Uninsured Employers' Fund if the director or officer is excluded from coverage under

Subsection 34A-2-104(4).

(19) The Uninsured Employers' Fund:

(a) shall be:

(i) used in accordance with this section only for:

(A) the purpose of assisting in the payment of workers' compensation benefits in accordance with Subsection (1); and

(B) in accordance with Subsection (3), payment of:

(I) reasonable costs of administering the Uninsured Employers' Fund; or

(II) fees required to be paid by the Uninsured Employers' Fund; and

(ii) expended according to processes that can be verified by audit; and

(b) may not be used for:

(i) administrative costs unrelated to the Uninsured Employers' Fund; or

(ii) any activity of the commission other than an activity described in Subsection (19)(a).

(20) (a) For purposes of Subsection (1), an employment relationship is localized in the state

if:

(i) (A) the employer who is liable for the benefits has a business premise in the state; and

(B) (I) the contract for hire is entered into in the state; or

(II) the employee regularly performs work duties in the state for the employer who is liable for the benefits; or

(ii) the employee is:

(A) a resident of the state; and

(B) regularly performs work duties in the state for the employer who is liable for the benefits.

(b) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the commission shall by rule define what constitutes regularly performing work duties in the state.

Section 3. **Effective date.**

This act takes effect on July 1, 2000.