



28 aspects of a controverted case, the division may employ a medical director or medical consultants  
29 on a full-time or part-time basis for the purpose of evaluating the medical evidence and advising  
30 an administrative law judge with respect to the administrative law judge's ultimate fact-finding  
31 responsibility.

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

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

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

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

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

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

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

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

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

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

53 (A) the applicant;

54 (B) the employer; and

55 (C) the employer's insurance carrier.

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

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

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

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

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

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

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

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

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

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

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

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

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

89 (ii) Notwithstanding Section 34A-2-704, the expenses described in Subsection (2)(i)(i)

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

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

94 **34A-2-704. Uninsured Employers' Fund.**

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

98 (i) that person's employer:

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

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

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

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

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

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

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

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

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

114 (c) The state treasurer is the custodian of the Uninsured Employers' Fund, and the  
115 administrator shall make provisions for and direct its distribution.

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

119 (4) The state treasurer shall:

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

121 and

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

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

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

129 (i) the attorney general~~[-]; or~~

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

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

133 (B) the employee resides; or

134 (C) an employer;

135 (I) resides; or

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

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

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

143 (b) The court with jurisdiction shall grant all payments made under this section a priority  
144 equal to that to which the claimant would have been entitled in the absence of this section against  
145 the assets of the insolvent employer.

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

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

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

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

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

154 (9) When any injury or death for which compensation is payable from the Uninsured  
155 Employers' Fund has been caused by the wrongful act or neglect of another person not in the same  
156 employment, the Uninsured Employers' Fund has the same rights as allowed under Section  
157 34A-2-106.

158 (10) The Uninsured Employers' Fund, subject to approval of the administrator, shall  
159 discharge its obligations by:

160 (a) adjusting its own claims; or

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

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

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

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

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

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

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

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

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

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

190 (c) Each self-insured employer shall be notified of the employer's assessment not later than  
191 30 days before the assessment is due.

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

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

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

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

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

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

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

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

211 (16) In any claim against an employer by the Uninsured Employers' Fund, or by or on  
212 behalf of the employee to whom or to whose dependents compensation and other benefits are paid  
213 or payable from the Uninsured Employers' Fund, the burden of proof is on the employer or other

214 party in interest objecting to the claim. The claim is presumed to be valid up to the full amount  
215 of workers' compensation benefits claimed by the employee or the employee's dependents. This  
216 Subsection (16) applies whether the claim is filed in court or in an adjudicative proceeding under  
217 the authority of the commission.

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

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

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

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

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

226 (18) A director or officer of a corporation may not recover compensation or other benefits  
227 from the Uninsured Employers' Fund if the director or officer is excluded from coverage under  
228 Subsection 34A-2-104(4).

229 (19) The Uninsured Employers' Fund:

230 (a) shall be:

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

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

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

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

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

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

238 (b) may not be used for:

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

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

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

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

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



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

247 (ii) the employee is:

248 (A) a resident of the state; and

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

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

253 Section 3. **Effective date.**

254 This act takes effect on July 1, 2000.

**Legislative Review Note**  
**as of 1-25-00 10:41 AM**

This legislation raises the following constitutional or statutory concerns:

This legislation prohibits persons that may be eligible for workers' compensation benefits under Utah law from receiving benefits from the Uninsured Employers' Fund if that person's employment is not localized within the state. This prohibition may raise constitutional concerns including whether it violates a constitutionally protected "right to travel." However, the United States Supreme Court has recognized that the constitutional protections of the right to travel are not absolute and has indicated that a state may treat citizens of other states differently than its own citizens if there is a substantial reason for that difference.

**Office of Legislative Research and General Counsel**