

**WORKERS' COMPENSATION INSURANCE
RELATED AMENDMENTS**

2002 GENERAL SESSION

STATE OF UTAH

Sponsor: L. Steven Poulton

This act modifies the Insurance Code and makes technical changes. This act amends the provisions related to reporting liabilities for assessments for workers' compensation insurance. This act amends provisions related to the Workers' Compensation Fund.

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

AMENDS:

31A-17-402, as last amended by Chapter 116, Laws of Utah 2001

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

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

Section 1. Section **31A-17-402** is amended to read:

31A-17-402. Valuation of liabilities.

~~[The]~~ (1) Subject to this section, the commissioner shall ~~[adopt]~~ make rules:

(a) specifying the liabilities required to be reported by ~~[insurers]~~ an insurer in a financial ~~[statements]~~ statement submitted under Section 31A-2-202; and

(b) the methods of valuing ~~[them]~~ the liabilities described in Subsection (1)(a).

(2) For life insurance, ~~[those]~~ the methods of valuing specified pursuant to Subsection (1)(b) shall be consistent with Part 5 ~~[of this chapter]~~, Standard Valuation Law.

(3) Title insurance reserves are provided for under Section 31A-17-408.

(4) In determining the financial condition of an insurer, liabilities include:

~~[(4)]~~ (a) the estimated amount necessary to pay:

(i) all ~~[its]~~ the insurer's unpaid losses and claims incurred on or ~~[prior to]~~ before the date of statement, whether reported or unreported~~[-, together with]~~; and

(ii) the expense of adjustment or settlement of ~~[the]~~ a loss or claim described in this Subsection (4)(a);

~~[(2)]~~ (b) for life, accident and health insurance, and annuity contracts:

~~[(a)]~~ (i) the reserves on life insurance policies and annuity contracts in force, valued according to appropriate tables of mortality and the applicable rates of interest;

~~[(b)]~~ (ii) the reserves for accident and health benefits, for both active and disabled lives;

~~[(c)]~~ (iii) the reserves for accidental death benefits; and

~~[(d)]~~ (iv) any additional reserves ~~[which]~~:

(A) that may be required by the commissioner by rule~~[-]~~; or

(B) if no rule is applicable~~[-, then]~~ under Subsection (4)(b)(iv)(A), in a manner consistent with the practice formulated or approved by the National Association of Insurance Commissioners with respect to those types of insurance;

~~[(3)]~~ (c) subject to Subsection (6), for insurance other than life, accident and health, and title insurance, the amount of reserves equal to the unearned portions of the gross premiums charged on policies in force, computed:

(i) on a daily or monthly pro rata basis; or

(ii) other basis approved by the commissioner; ~~[provided that after adopting any one of the methods for computing those reserves, an insurer may not change methods without the commissioner's written consent;]~~

~~[(4)]~~ (d) for ocean marine and other transportation insurance, reserves:

(i) equal to 50% of the amount of premiums upon risks covering not more than one trip or passage not terminated~~[-]~~; and

(ii) computed:

(A) upon a pro rata basis; or~~[-]~~

(B) with the commissioner's consent, in accordance with ~~[methods]~~ a method provided under Subsection ~~[(3)]~~ (4)(c); and

~~[(5) its]~~ (e) the insurer's other liabilities~~[-, including taxes, expenses, and other obligations]~~ due or accrued at the date of statement~~[-]~~ including:

(i) taxes;

(ii) expenses; and

(iii) other obligations.

(5) (a) Except to the extent provided in Subsection (5)(b), in determining the financial condition of an insurer of workers' compensation insurance, the insurer's liabilities do not include any liability based on the liability of the Employer's Reinsurance Fund under Section 34A-2-702 for industrial accidents or occupational diseases occurring on or before June 30, 1994.

(b) Notwithstanding Subsection (5)(a), the liability of an insurer of workers' compensation insurance includes any premium assessment:

(i) imposed under Section 59-9-101 or 59-9-101.3; and

(ii) due at the date of statement.

(6) After adopting a method for computing the reserves described in Subsection (4)(c), an insurer may not change the method without the commissioner's written consent.

Section 2. Section **31A-33-106** is amended to read:

31A-33-106. Board of directors -- Status of the fund in relationship to the state.

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

(2) The board shall consist of seven directors.

(3) One ~~[of the directors]~~ director:

(a) shall be the executive director of the Department of Administrative Services or [his] the executive director's designee[-]; and

(b) acts as the representative of the state as a policyholder of the Workers' Compensation Fund.

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

(5) (a) ~~[The]~~ In accordance with a plan that meets the requirements of this section, the governor, with the advice and consent of the Senate, shall appoint five public directors as follows:

~~[(a)]~~ (i) three directors who are owners, officers, or employees of policyholders other than the state, each of whom is an owner, officer, or employee of a policyholder that [have] has been insured by the Workers' Compensation Fund for at least one year before [their] the appointment of the director representing the policyholder; and

~~[(b)]~~ (ii) two directors from the public in general.

(b) The plan described in Subsection (5)(a) shall comply with Section 31A-5-409 to the extent that Section 31A-5-409 does not conflict with this section.

(6) No two directors may represent the same policyholder.

(7) At least four directors appointed by the governor shall have had previous experience in:

(a) the actuarial profession;

(b) accounting;

(c) investments[;];

(d) risk management[;];

(e) occupational safety[;];

(f) casualty insurance[~~, or law~~]; or

(g) the legal profession.

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

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

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

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

(c) is not bondable.

(10) After notice and a hearing, the governor may remove any director for cause which includes:

(a) neglect of duty[~~, inefficiency~~]; or

(b) malfeasance.

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

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

(12) Each director shall hold office until ~~[his]~~ the director's successor is appointed and qualified.

(13) When a vacancy occurs in the membership of the board for any reason, the replacement shall be appointed for the unexpired term.

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

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

~~[(16)]~~ (b) The chair:

(i) may call board meetings more frequently than quarterly; and

(ii) shall call additional board meetings if requested to do so by a majority of the board.

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

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

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

(b) ~~[Members]~~ Directors may decline to receive per diem and expenses for their service.

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

~~[(21)]~~ (d) The executive director of the Department of Administrative Services, or ~~[his]~~ the executive director's designee, and the chief executive officer of the Workers' Compensation Fund shall serve on the board without a per diem allowance.

(19) The requirement that the governor, with the advice and consent of the Senate, appoint the directors of the Workers' Compensation Fund specified in Subsection (5), does not:

(a) remove from the board of directors the managerial, financial, or operational control of

the Workers' Compensation Fund;

(b) give to the state or the governor managerial, financial, or operational control of the Workers' Compensation Fund;

(c) consistent with Section 31A-33-105, cause the state to be liable for any:

(i) obligation of the Workers' Compensation Fund; or

(ii) expense, liability, or debt described in Section 31A-33-105;

(d) alter the legal status of the Workers' Compensation Fund as:

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

(ii) an insurer:

(A) regulated under this title;

(B) that is structured to operate in perpetuity; and

(C) domiciled in the state; or

(e) alter the requirement that the Workers' Compensation Fund provide workers' compensation:

(i) for the purposes set forth in Section 31A-33-102;

(ii) consistent with Section 34A-2-201; and

(iii) as provided in Section 31A-22-1001.