

**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 board of directors of 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:

[(+)] (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



28 of statement, whether reported or unreported~~[-, together with]; and~~  
 29 (ii) the expense of adjustment or settlement of ~~[the]~~ a loss or claim described in this  
 30 Subsection (4)(a);  
 31 ~~[(2)]~~ (b) for life, accident and health insurance, and annuity contracts:  
 32 ~~[(a)]~~ (i) the reserves on life insurance policies and annuity contracts in force, valued  
 33 according to appropriate tables of mortality and the applicable rates of interest;  
 34 ~~[(b)]~~ (ii) the reserves for accident and health benefits, for both active and disabled lives;  
 35 ~~[(c)]~~ (iii) the reserves for accidental death benefits; and  
 36 ~~[(d)]~~ (iv) any additional reserves ~~[which]~~;  
 37 (A) that may be required by the commissioner by rule~~[-]~~; or  
 38 (B) if no rule is applicable~~[-, then]~~ under Subsection (4)(b)(iv)(A), in a manner consistent  
 39 with the practice formulated or approved by the National Association of Insurance Commissioners  
 40 with respect to those types of insurance;  
 41 ~~[(3)]~~ (c) subject to Subsection (6), for insurance other than life, accident and health, and  
 42 title insurance, the amount of reserves equal to the unearned portions of the gross premiums  
 43 charged on policies in force, computed:  
 44 (i) on a daily or monthly pro rata basis; or  
 45 (ii) other basis approved by the commissioner; ~~[provided that after adopting any one of the~~  
 46 ~~methods for computing those reserves, an insurer may not change methods without the~~  
 47 ~~commissioner's written consent;]~~  
 48 ~~[(4)]~~ (d) for ocean marine and other transportation insurance, reserves:  
 49 (i) equal to 50% of the amount of premiums upon risks covering not more than one trip  
 50 or passage not terminated~~[-]~~; and  
 51 (ii) computed;  
 52 (A) upon a pro rata basis; or~~[-]~~  
 53 (B) with the commissioner's consent, in accordance with ~~[methods]~~ a method provided  
 54 under Subsection ~~[(3)]~~ (4)(c); and  
 55 ~~[(5) its]~~ (e) the insurer's other liabilities~~[-, including taxes, expenses, and other obligations]~~  
 56 due or accrued at the date of statement~~[-]~~ including:  
 57 (i) taxes;  
 58 (ii) expenses; and

59 (iii) other obligations.

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

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

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

67 (ii) due at the date of statement.

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

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

71 **31A-33-106. Board of directors.**

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

73 (2) (a) The board shall consist of seven directors[-] as follows:

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

76 ~~[(4) One of the directors]~~

77 (i) one director shall be the chief executive officer of the fund[-]; and

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

79 (ii) six directors shall:

80 (A) be public directors appointed according to a plan meeting the requirements of:

81 (I) this section; and

82 (II) Section 31A-5-409; and

83 (B) consist of:

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

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

89 ~~[(6)] (b) No two~~ directors may represent the same policyholder.

90 ~~[(7)]~~ (c) At least four directors ~~[appointed by the governor]~~ shall have had previous  
 91 experience in:

92 (i) the actuarial profession;

93 (ii) accounting;

94 (iii) investments[-];

95 (iv) risk management[-];

96 (v) occupational safety[-];

97 (vi) casualty insurance[-,law]; or

98 (vii) the legal profession.

99 ~~[(8)]~~ (3) Any director who represents a policyholder that fails to maintain workers'  
 100 compensation insurance through the Workers' Compensation Fund shall immediately resign from  
 101 the board.

102 ~~[(9)]~~ (4) A person may not be a director if ~~[he]~~ that person:

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

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

106 or

107 (c) is not bondable.

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

110 (5) A director may be removed from office for cause as provided in Section 31A-5-409.

111 ~~[(11)]~~ (6) (a) Except as required by Subsection ~~[(11)]~~ (6)(b), the term of office of the  
 112 directors appointed ~~[by the governor]~~ under Subsection (2)(a)(ii) shall be four years, beginning  
 113 July 1 of the year of appointment.

114 (b) Notwithstanding the requirements of Subsection ~~[(11)]~~ (6)(a), the ~~[governor]~~ board  
 115 shall, at the time of appointment or reappointment, adjust the length of ~~[terms]~~ a term to ensure  
 116 that the terms of ~~[board members]~~ directors are staggered so that approximately half of the board  
 117 is appointed every two years.

118 ~~[(12)]~~ (7) Each director shall hold office until ~~[his]~~ the director's successor is appointed  
 119 and qualified.

120 ~~[(13)]~~ (8) When a vacancy occurs in the membership of the board for any reason, the

121 replacement shall be appointed:

122       (a) in accordance with this section; and

123       (b) for the unexpired term.

124       ~~[(14)]~~ (9) The board shall annually elect a chair and other officers as needed from ~~[its]~~ the  
125 board's membership.

126       ~~[(15)]~~ (10) (a) The board shall meet at least quarterly at a time and place designated by the  
127 chair.

128       ~~[(16)]~~ (b) The chair:

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

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

131       ~~[(17)]~~ (11) ~~[Four directors are a]~~ A quorum of the board for the purpose of transacting all  
132 business of the board[-] is:

133       (a) four directors; or

134       (b) if one or more positions on the board are vacant, a majority of the directors appointed  
135 and in office at the time the business of the board is transacted.

136       ~~[(18)]~~ (12) Each decision of the board requires:

137       (a) the affirmative vote of at least four directors for approval[-]; or

138       (b) if one or more positions on the board are vacant, a majority of the directors appointed  
139 and in office at the time of the vote.

140       ~~[(19)]~~ (13) (a) ~~[Members shall]~~ A director may not receive ~~[no]~~ compensation or benefits  
141 for ~~[their]~~ the director's services, but may receive per diem and expenses incurred in the  
142 performance of the ~~[member's]~~ director's official duties at the rates established by the Division of  
143 Finance under Sections 63A-3-106 and 63A-3-107.

144       (b) ~~[Members]~~ A director may decline to receive per diem and expenses for ~~[their]~~ the  
145 director's service.

146       ~~[(20)]~~ (c) The ~~[fund]~~ Workers' Compensation Fund shall pay the per diem allowance and  
147 expenses allowed under this Subsection (13) from the Injury Fund upon vouchers drawn in the  
148 same manner as the Workers' Compensation Fund pays its normal operating expenses.

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

152           (14) Each director shall discharge the director's duties as a director:  
153           (a) in good faith;  
154           (b) with the care an ordinarily prudent person in a like position would exercise under  
155 similar circumstances; and  
156           (c) in a manner that the director reasonably believes is:  
157           (i) in the best interests of the Workers' Compensation Fund; and  
158           (ii) consistent with the purposes of the Workers' Compensation Fund specified in Section  
159 31A-33-102.

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**Legislative Review Note**  
**as of 1-15-02 2:15 PM**

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

**Office of Legislative Research and General Counsel**