

1 **AMENDMENTS TO WORKERS' COMPENSATION**

2 2003 GENERAL SESSION

3 STATE OF UTAH

4 **Sponsor: Curtis S. Bramble**

5 **This act modifies the Insurance Code by repealing the enabling provisions of the**
6 **Workers' Compensation Fund. This act authorizes the insurance commissioner to**
7 **designate and enter into a contract with a residual market carrier. This act creates the**
8 **Utah Residual Market Oversight Council and specifies the council's membership,**
9 **appointment process, term of office, chair, compensation, and duties. This act requires**
10 **certain reporting by the residual market carrier and the Utah Residual Market Oversight**
11 **Council. This act provides for the withdrawal of independent corporations from the state**
12 **retirement systems and provides for withdrawal procedures. This act provides a**
13 **repealer. This act makes technical corrections. This act provides an immediate effective**
14 **date.**

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

16 AMENDS:

17 **11-8-3**, as last amended by Chapter 222, Laws of Utah 2000

18 **31A-1-105**, as last amended by Chapter 222, Laws of Utah 2000

19 **31A-19a-401**, as last amended by Chapter 222, Laws of Utah 2000

20 **31A-21-101**, as last amended by Chapter 222, Laws of Utah 2000

21 **31A-22-309**, as last amended by Chapter 59, Laws of Utah 2001

22 **31A-26-103**, as last amended by Chapter 222, Laws of Utah 2000

23 **31A-33-109**, as renumbered and amended by Chapter 240, Laws of Utah 1996

24 **34A-2-102**, as last amended by Chapter 222, Laws of Utah 2000

25 **34A-2-107**, as last amended by Chapter 114, Laws of Utah 2001

26 **34A-2-201**, as last amended by Chapter 222, Laws of Utah 2000

27 **34A-2-203**, as last amended by Chapter 222, Laws of Utah 2000



- 28 **34A-2-211**, as last amended by Chapter 222, Laws of Utah 2000
- 29 **34A-2-406**, as last amended by Chapter 222, Laws of Utah 2000
- 30 **51-7-2**, as last amended by Chapter 159, Laws of Utah 2002
- 31 **51-7-4**, as last amended by Chapters 159 and 250, Laws of Utah 2002
- 32 **59-9-101**, as last amended by Chapter 71, Laws of Utah 2002
- 33 **59-9-101.3**, as last amended by Chapter 71, Laws of Utah 2002
- 34 **63-5b-102**, as last amended by Chapters 14 and 159, Laws of Utah 2002
- 35 **63-38a-102**, as last amended by Chapter 159, Laws of Utah 2002
- 36 **63-55b-131**, as last amended by Chapter 3, Laws of Utah 2001
- 37 **63-95-102**, as last amended by Chapters 159 and 250, Laws of Utah 2002
- 38 **63-95-203**, as last amended by Chapter 159, Laws of Utah 2002
- 39 **63E-1-102**, as last amended by Chapters 159 and 250, Laws of Utah 2002
- 40 **63E-1-203**, as last amended by Chapter 159, Laws of Utah 2002
- 41 **67-4-2**, as last amended by Chapter 222, Laws of Utah 2000

42 ENACTS:

- 43 **31A-33a-101**, Utah Code Annotated 1953
- 44 **31A-33a-102**, Utah Code Annotated 1953
- 45 **31A-33a-103**, Utah Code Annotated 1953
- 46 **31A-33a-104**, Utah Code Annotated 1953
- 47 **31A-33a-105**, Utah Code Annotated 1953
- 48 **31A-33a-106**, Utah Code Annotated 1953
- 49 **31A-33a-107**, Utah Code Annotated 1953
- 50 **49-11-621**, Utah Code Annotated 1953

51 REPEALS:

- 52 **31A-22-1001**, as last amended by Chapter 222, Laws of Utah 2000
- 53 **31A-33-101**, as last amended by Chapter 222, Laws of Utah 2000
- 54 **31A-33-102**, as last amended by Chapter 222, Laws of Utah 2000
- 55 **31A-33-103**, as last amended by Chapter 222, Laws of Utah 2000
- 56 **31A-33-103.5**, as last amended by Chapters 33 and 116, Laws of Utah 2001
- 57 **31A-33-104**, as last amended by Chapter 33, Laws of Utah 2001
- 58 **31A-33-105**, as last amended by Chapter 107, Laws of Utah 1998

- 59 **31A-33-106**, as last amended by Chapters 176 and 186, Laws of Utah 2002
 60 **31A-33-107**, as last amended by Chapter 130, Laws of Utah 1999
 61 **31A-33-108**, as last amended by Chapter 375, Laws of Utah 1997
 62 **31A-33-110**, as last amended by Chapter 204, Laws of Utah 1997
 63 **31A-33-111**, as last amended by Chapter 130, Laws of Utah 1999
 64 **31A-33-112**, as renumbered and amended by Chapter 240, Laws of Utah 1996
 65 **31A-33-113**, as last amended by Chapter 116, Laws of Utah 2001
 66 **31A-33-114**, as renumbered and amended by Chapter 240, Laws of Utah 1996
 67 **31A-33-115**, as renumbered and amended by Chapter 240, Laws of Utah 1996
 68 **31A-33-116**, as renumbered and amended by Chapter 240, Laws of Utah 1996
 69 **31A-33-117**, as last amended by Chapter 375, Laws of Utah 1997

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

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

72 **11-8-3. Department of Environmental Quality to negotiate loans for sewage**
 73 **facilities.**

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

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

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

82 **31A-1-105. Presumption of jurisdiction.**

83 (1) Any insurer[~~, including the Workers' Compensation Fund created under Chapter~~
 84 ~~33,~~] that provides coverage of a resident of this state, property located in this state, or a
 85 business activity conducted in this state, or that engages in any activity described in
 86 Subsections 31A-15-102(2)(a) through (h), is:

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

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

90 (2) Any person doing or purporting to do an insurance business in this state as defined
91 in Section 31A-1-301 is subject to the jurisdiction of the insurance commissioner and this title,
92 unless the insurer can establish that the exemptions of Section 31A-1-103 apply.

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

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

96 **31A-19a-401. Scope of part.**

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

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

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

102 **31A-21-101. Scope of Title 31A, Chapters 21 and 22.**

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

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

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

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

116 (d) other exemptions provided in this title.

117 (3) Sections 31A-21-102, 31A-21-103, 31A-21-104, Subsections 31A-21-107 (1) and
118 (3), and Sections 31A-21-306, 31A-21-308, 31A-21-312, and 31A-21-314 apply to ocean
119 marine and inland marine insurance. Section 31A-21-201 applies to inland marine insurance
120 that is written according to manual rules or rating plans.

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

122 (a) group or blanket policies outside the scope of this title under Subsection

123 31A-1-103(3)(h); and

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

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

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

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

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

133 **31A-22-309. Limitations, exclusions, and conditions to personal injury**
134 **protection.**

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

139 (i) death;

140 (ii) dismemberment;

141 (iii) permanent disability or permanent impairment based upon objective findings;

142 (iv) permanent disfigurement; or

143 (v) medical expenses to a person in excess of \$3,000.

144 (b) Subsection (1)(a) does not apply to a person making an uninsured motorist claim.

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

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

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

152 insured motor vehicle;

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

154 (A) by intentionally causing injury to himself; or

155 (B) while committing a felony;

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

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

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

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

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

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

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

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

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

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

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

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

187 (e) Every policy providing personal injury protection coverage is subject to the
188 following:

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

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

197 Section 6. Section **31A-26-103** is amended to read:

198 **31A-26-103. Workers' compensation claims.**

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

203 Section 7. Section **31A-33-109** is amended to read:

204 **31A-33-109. Liability limited.**

205 (1) No officer or employee of the Workers' Compensation Fund is liable in a private
206 capacity for any act performed or obligation entered into when done in good faith, without
207 intent to defraud, and in an official capacity in connection with the administration,
208 management, or conduct of the Workers' Compensation Fund or affairs relating to it.

209 (2) Subject to the director's fiduciary responsibility as established by Section
210 31A-33-106, no director of the Workers' Compensation Fund is liable in a private capacity for
211 any act performed or obligation entered into when done in good faith, without intent to defraud,
212 and in an official capacity in connection with the administration, management, or conduct of
213 the Workers' Compensation Fund or affairs relating to it.

214 (3) The provisions of this section shall apply to acts made pursuant to Title 63E,
215 Chapter 1, Part 4, Privatization of Independent Entities, and other statutes, including decisions,
216 agreements, or payments which address the value of any interests the state holds in the
217 Workers' Compensation Fund and the state's compensation for those interests as part of
218 privatization.

219 Section 8. Section **31A-33a-101** is enacted to read:

220 **CHAPTER 33a. UTAH WORKERS' COMPENSATION RESIDUAL MARKET ACT**
221 **31A-33a-101. Title.**

222 This chapter is known as the "Utah Workers' Compensation Residual Market Act."

223 Section 9. Section **31A-33a-102** is enacted to read:

224 **31A-33a-102. Definitions.**

225 As used in this chapter:

226 (1) "Council" means the Utah Residual Market Oversight Council created in Section
227 31A-33a-104.

228 (2) "Member" means a member of the Utah Residual Market Oversight Council created
229 in Section 31A-33a-104.

230 (3) "Residual market carrier" means the Utah residual market carrier that is designated
231 in accordance with Section 31A-33a-103.

232 Section 10. Section **31A-33a-103** is enacted to read:

233 **31A-33a-103. Residual market carrier -- Designation -- Obligation to write**
234 **workers' compensation insurance -- Limitations.**

235 (1) The commissioner shall designate and enter into a contract with a residual market
236 carrier.

237 (2) The residual market carrier shall:

238 (a) be a licensed, Utah domiciled mutual insurance company;

239 (b) be subject to the jurisdiction of the commissioner and the courts of this state in
240 accordance with Section 31A-1-105;

241 (c) provide workers' compensation insurance at actuarially sound premium rates that
242 are in accordance with Title 31A, Chapter 19a, Part 4, Workers' Compensation Rates; and

243 (d) meet the qualifications of 26 U.S.C. Section 501(c)(27)(B).

244 (3) (a) The residual market carrier shall write all workers' compensation insurance for

245 which application is made to the residual market carrier.

246 (b) The requirement under Subsection (3)(a) does not apply to any other insurer.

247 (4) § ~~[While designated the residual market carrier, and for five years after the contract~~

248 terminates in accordance with Section 31A-33a-107, the] THE § residual market carrier may not

249 pursue:

250 (a) dissolution under Title 16, Chapter 6a, Part 14, Dissolution, or Section 31A-5-504;

251 or

252 (b) conversion of a domestic mutual into a stock corporation under Section 31A-5-506.

252a **§ (5) WHILE DESIGNATED THE RESIDUAL MARKET CARRIER, AND FOR FIVE YEARS AFTER THE**

252b **CONTRACT TERMINATES IN ACCORDANCE WITH SECTION 31A-331-107, THE RESIDUAL MARKET**

252c **CARRIER MAY NOT OFFER HEALTH CARE INSURANCE AS DEFINED IN SECTION 31A-1-301(55).**

252d **(6) THE RESIDUAL MARKET CARRIER SHALL OPERATE ITS BUSINESS IN A MANNER**

252e **CONSISTENT WITH MAINTAINING ITS FEDERAL INCOME TAX EXEMPTION UNDER 26 U.S.C.**

252f **SECTION 501(c)(27)(B) AND SHALL WORK TO CURE ANY DEFECTS IN MAINTAINING ITS**

252g **EXEMPTION.**

252h **(7) MEMBERS OF THE BOARD OF DIRECTORS OF THE RESIDUAL MARKET CARRIER SHALL:**

252i **(a) SERVE NO MORE THAN THREE FOUR-YEAR TERMS ON THE BOARD OF THE RESIDUAL**

252j **MARKET CARRIER; AND**

252k **(b) BE INVESTMENT TRUSTEES AND FIDUCIARIES OF THE RESIDUAL MARKET CARRIER'S**

252l **POLICYHOLDERS.**

252m **(8) COMPENSATION FOR THE OFFICERS, DIRECTORS, AND EMPLOYEES OF THE RESIDUAL**

252n **MARKET CARRIER IS SUBJECT TO THE PROVISIONS OF SECTION 31A-5-416. §**

253 Section 11. Section ~~31A-33a-104~~ is enacted to read:

254 **31A-33a-104. Utah Residual Market Oversight Council -- Membership -- Chair --**

255 **Term of office -- Compensation.**

256 (1) There is created the Utah Residual Market Oversight Council.

257 (2) The council shall consist of the following five members:

258 (a) the commissioner; and

259 (b) four members appointed by the governor, with the consent of the Senate.

260 (3) A person may not be a council member if that person:

261 (a) has a direct and substantial interest as a stockholder of an insurer that competes

262 with the residual market carrier;

263 (b) is an employee, officer, director, or attorney of an insurer that competes with the

264 residual market carrier; or

265 (c) is an employee, officer, director, or attorney of the residual market carrier.

266 (4) The commissioner shall be the chair of the council.

267 (5) (a) Except as required by Subsection (5)(b), the term of office of the members
268 appointed by the governor shall be four years, beginning July 1 of the year of appointment.

269 (b) Notwithstanding the requirements of Subsection (5)(a), the governor shall, at the
270 time of appointment or reappointment, adjust the length of terms to ensure that the terms of
271 members are staggered so that approximately half of the council is appointed every two years.

272 (6) Each member shall hold office until the member's successor is appointed and
273 qualified.

274 (7) When a vacancy occurs in the membership of the council for any reason, the
275 replacement shall be appointed for the unexpired term.

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

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

280 Section 12. Section **31A-33a-105** is enacted to read:

281 **31A-33a-105. Utah Residual Market Oversight Council -- Duties -- Reports.**

282 (1) Prior to July 1 of each year, the residual market carrier shall provide to the Utah
283 Residual Market Oversight Council:

284 (a) the residual market carrier's audited annual financial statement for the calendar year
285 most recently ended;

286 (b) copies of reports issued by the department in connection with any examination of
287 the residual market carrier;

288 (c) actuarial certification of the residual market carrier's loss reserves; and

289 (d) other data or information the council may reasonably require to determine if the
290 residual market carrier is fulfilling its purpose in accordance with this chapter.

291 (2) The council shall:

292 (a) review the items under Subsection (1);

293 (b) review the activities of the residual market carrier for the calendar year most
294 recently ended;

295 (c) determine if the residual market carrier is fulfilling its purpose in accordance with
296 this chapter; and

297 (d) submit a report to the department and the Legislature prior to October 15 of each
298 year that details the council's findings in accordance with this section, including any
299 recommendations.

300 Section 13. Section **31A-33a-106** is enacted to read:

301 **31A-33a-106. Status of the residual market carrier in relationship to the state.**

302 The requirement that the governor, with the consent of the Senate, appoint the members
303 of the Utah Residual Market Oversight Council under Section 31A-33a-104 does not:

304 (1) remove from the board of directors or policyholders of the residual market carrier,
305 nor give to the state, the managerial, financial, operational, or voting control of the residual
306 market carrier;

307 (2) cause the state to be liable for any obligation, expense, liability, or debt of the
308 residual market carrier; or

309 (3) alter the legal status of the residual market carrier as a mutual insurance company:

310 (a) regulated under this title; and

311 (b) domiciled in this state.

312 Section 14. Section **31A-33a-107** is enacted to read:

313 **31A-33a-107. Termination of the residual market carrier.**

314 (1) The commissioner may § **WITH UNANIMOUS CONSENT OF THE UTAH RESIDUAL**
314a **MARKET OVERSIGHT COUNCIL** § terminate the contract entered into with the residual market
315 carrier, for any reason, by giving the residual market carrier between 180 and 365 days written
316 notice of the termination.

317 (2) Upon termination of the contract, the commissioner may require the company that
318 was the residual market carrier to continue under the requirement of Subsection
319 31A-33a-103(3)(a) for up to one year from the date the written notice of termination is given in
320 accordance with Subsection (1).

321 Section 15. Section **34A-2-102** is amended to read:

322 **34A-2-102. Definition of terms.**

323 As used in this chapter:

324 (1) "Average weekly wages" means the average weekly wages as determined under
325 Section 34A-2-409.

326 (2) "Award" means a final order of the commission as to the amount of compensation
327 due:

328 (a) any injured employee; or

329 (b) the dependents of any deceased employee.

330 (3) "Compensation" means the payments and benefits provided for in this chapter or
331 Chapter 3, Utah Occupational Disease Act.

332 (4) "Decision" means the ruling of an administrative law judge or, in accordance with
333 Section 34A-2-801, the commissioner or Appeals Board and may include:

334 (a) an award or denial of medical, disability, death, or other related benefits under this
335 chapter or Chapter 3, Utah Occupational Disease Act; or

336 (b) another adjudicative ruling in accordance with this chapter or Chapter 3, Utah
337 Occupational Disease Act.

338 (5) "Director" means the director of the division, unless the context requires otherwise.

339 (6) "Disability" means an administrative determination that may result in an
340 entitlement to compensation as a consequence of becoming medically impaired as to function.
341 Disability can be total or partial, temporary or permanent, industrial or nonindustrial.

342 (7) "Division" means the Division of Industrial Accidents.

343 (8) "Impairment" is a purely medical condition reflecting any anatomical or functional
344 abnormality or loss. Impairment may be either temporary or permanent, industrial or
345 nonindustrial.

346 (9) "Order" means an action of the commission that determines the legal rights, duties,
347 privileges, immunities, or other interests of one or more specific persons, but not a class of
348 persons.

349 (10) (a) "Personal injury by accident arising out of and in the course of employment"
350 includes any injury caused by the willful act of a third person directed against an employee
351 because of the employee's employment.

352 (b) "Personal injury by accident arising out of and in the course of employment" does
353 not include a disease, except as the disease results from the injury.

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

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

359 Section 16. Section **34A-2-107** is amended to read:

360 **34A-2-107. Appointment of workers' compensation advisory council --**
361 **Composition -- Terms of members -- Duties -- Compensation.**

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

364 (a) the following voting members:

365 (i) five employer representatives; and

366 (ii) five employee representatives; and

367 (b) the following nonvoting members:

368 (i) a representative of the [~~Workers' Compensation Fund~~] residual market carrier

369 designated under Section 31A-33a-103;

- 370 (ii) a representative of a private insurance carrier;
- 371 (iii) a representative of health care providers;
- 372 (iv) the Utah insurance commissioner or the insurance commissioner's designee; and
- 373 (v) the commissioner or the commissioner's designee.

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

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

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

384 (4) (a) When a vacancy occurs in the membership for any reason, the replacement shall
385 be appointed for the unexpired term.

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

388 (5) The council shall confer at least quarterly for the purpose of advising the
389 commission, the division, and the Legislature on:

- 390 (a) the Utah workers' compensation and occupational disease laws;
- 391 (b) the administration of the laws described in Subsection (5)(a); and
- 392 (c) rules related to the laws described in Subsection (5)(a).

393 (6) Regarding workers' compensation, rehabilitation, and reemployment of employees
394 who are disabled because of an industrial injury or occupational disease the council shall:

- 395 (a) offer advice on issues requested by:
 - 396 (i) the commission;
 - 397 (ii) the division; and
 - 398 (iii) the Legislature; and
- 399 (b) make recommendations to:

400 (i) the commission; and

401 (ii) the division.

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

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

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

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

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

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

416 Section 17. Section **34A-2-201** is amended to read:

417 **34A-2-201. Employers to secure workers' compensation benefits for employees --**
418 **Methods.**

419 An employer shall secure the payment of workers' compensation benefits for its
420 employees by:

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

423 [~~(2)~~] (1) insuring, and keeping insured, the payment of this compensation with any
424 stock corporation or mutual association authorized to transact the business of workers'
425 compensation insurance in this state, including the residual market carrier designated under
426 Section 31A-33a-103; or

427 [~~(3)~~] (2) obtaining approval from the division in accordance with Section 34A-2-201.5
428 to pay direct compensation as a self-insured employer in the amount, in the manner, and when
429 due as provided for in this chapter or Chapter 3, Utah Occupational Disease Act.

430 Section 18. Section **34A-2-203** is amended to read:

431 **34A-2-203. Payment of premiums by state department, commission, board, or**
432 **other agency.**

433 Each department, commission, board, or other agency of the state shall pay the
434 insurance premium on its employees direct to the [~~Workers' Compensation Fund~~] residual
435 market carrier designated under Section 31A-33a-103.

436 Section 19. Section **34A-2-211** is amended to read:

437 **34A-2-211. Notice of noncompliance to employer -- Enforcement power of**
438 **division -- Penalty.**

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

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

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

450 (2) (a) Notwithstanding Subsection (1), the division may impose a penalty against the
451 employer under this Subsection (2):

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

454 (ii) if the division believes that an employer of one or more employees is conducting
455 business without securing the payment of benefits in one of the three ways provided in Section
456 34A-2-201.

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

458 (i) \$1,000; or

459 (ii) three times the amount of the premium the employer would have paid for workers'
460 compensation insurance based on the rate filing of the [~~Workers' Compensation Fund~~] residual
461 market carrier designated under Section 31A-33a-103, during the period of noncompliance.

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

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

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

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

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

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

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

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

484 (i) the amount of the uncollected penalty;

485 (ii) reasonable attorneys' fees;

486 (iii) costs of collection; and

487 (iv) court costs.

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

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

490 (a) be in writing;

491 (b) be sent by certified mail to the last-known address of the employer;

492 (c) state the findings and administrative action of the division; and

493 (d) specify its effective date, which may be immediate or may be at a later date.

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

498 Section 20. Section **34A-2-406** is amended to read:

499 **34A-2-406. Exemptions from chapter for employees temporarily in state --**
500 **Conditions -- Evidence of insurance.**

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

504 (a) the employer has furnished workers' compensation insurance coverage under the
505 workers' compensation or similar laws of the other state;

506 (b) the coverage covers the employee's employment while in this state; and

507 (c) (i) the extraterritorial provisions of this chapter and Chapter 3 are recognized in the
508 other state and employers and employees who are covered in this state are likewise exempted
509 from the application of the workers' compensation or similar laws of the other state; or

510 (ii) the [~~Workers' Compensation Fund~~] residual market carrier designated under
511 Section 31A-33a-103:

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

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

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

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

523 Section 21. Section **49-11-621** is enacted to read:

524 **49-11-621. Withdrawal of independent corporations.**

525 (1) Notwithstanding any other provision of this title, an independent corporation, as
526 defined in Section 63E-1-102, which participates in a system or plan prior to § [January] JULY § 1,
526a 2003,

527 may withdraw from participation with that system or plan as follows:

528 (a) the independent corporation shall comply with the provisions of Title 63E, Chapter
529 2, Independent Corporations Act;

530 (b) upon complying with the requirements of Title 63E, Chapter 2, Independent
531 Corporations Act, the independent corporation and the board shall agree upon a date on which
532 the independent entity shall make an election under Subsection (2);

533 (c) an employee hired after the date set under Subsection (1)(b) may not participate in a
534 system or plan; and

535 (d) the withdrawing independent corporation shall pay to the office any actuarial or
536 administrative cost, determined by the office, to have arisen out of the withdrawal.

537 (2) The independent corporation shall elect to:

538 (a) continue its participation for all current employees covered by a system or plan on
539 the date set under Subsection (1)(b); or

540 (b) withdraw from participation in all systems or plans for all employees as of the date
541 set under Subsection (1)(b).

542 (3) If an independent corporation elects to continue participation under Subsection
543 (2)(a), the independent corporation and its employees shall continue to be subject to the laws
544 and the rules governing the system or plan in which the employee participates, including the
545 accrual of service credit and payment of contributions.

546 (4) The independent corporation may create an alternative retirement program for its
547 employees not covered by a system or plan in accordance with its election under Subsection
548 (2).

549 Section 22. Section **51-7-2** is amended to read:

550 **51-7-2. Exemptions from chapter.**

551 The following funds are exempt from this chapter:

552 (1) funds invested in accordance with the participating employees' designation or
553 direction pursuant to a public employees' deferred compensation plan established and operated
554 in compliance with Section 457 of the Internal Revenue Code of 1954, as amended;

555 ~~[(2) funds of the Workers' Compensation Fund;]~~
 556 ~~[(3)]~~ (2) funds of the Utah State Retirement Board;
 557 ~~[(4)]~~ (3) funds of the Utah Technology Finance Corporation; and
 558 ~~[(5)]~~ (4) funds of the Utah Housing Corporation.

559 Section 23. Section **51-7-4** is amended to read:

560 **51-7-4. Transfer of functions, powers, and duties relating to public funds to state**
 561 **treasurer -- Exceptions -- Deposit of income from investment of state money.**

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

568 (a) funds assigned to the Utah State Retirement Board for investment under Section
 569 49-11-302;

570 (b) funds of member institutions of the state system of higher education:

571 (i) acquired by gift, devise, or bequest, or by federal or private contract or grant;

572 (ii) derived from student fees or from income from operations of auxiliary enterprises,
 573 which fees and income are pledged or otherwise dedicated to the payment of interest and
 574 principal of bonds issued by such institutions; and

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

577 (c) funds of the Utah Technology Finance Corporation;

578 (d) inmate funds as provided in Section 64-13-23 or in Title 64, Chapter 9b, Work
 579 Programs for Prisoners;

580 (e) trust funds established by judicial order; and

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

582 ~~[(g)]~~ (f) funds of the Utah Housing Corporation.

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

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

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

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

592 Section 24. Section **59-9-101** is amended to read:

593 **59-9-101. Tax basis -- Rates -- Exemptions.**

594 (1) (a) Except for annuity considerations, insurance premiums paid by institutions
595 within the state system of higher education as specified in Section 53B-1-102, and ocean
596 marine insurance, every admitted insurer shall pay to the commission on or before March 31 in
597 each year, a tax of 2-1/4% of the total premiums received by it during the preceding calendar
598 year from insurance covering property or risks located in this state.

599 (b) This Subsection (1) does not apply to:

600 (i) workers' compensation insurance, assessed under Subsection (2); and

601 (ii) title insurance premiums taxed under Subsection (3).

602 (c) The taxable premium under this Subsection (1) shall be reduced by:

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

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

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

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

615 (b) Total workers' compensation premium income means the net written premium as
616 calculated before any premium reduction for any insured employer's deductible, retention, or

617 reimbursement amounts and also those amounts equivalent to premiums as provided in Section
618 34A-2-202.

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

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

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

628 (iii) an amount of up to 0.50% and any remaining assessed percentage of the premium
629 income to the state treasurer for credit to the Uninsured Employers' Fund created under Section
630 34A-2-704.

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

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

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

641 (iv) At the end of each fiscal year the minimum approximate assets in the Employers'
642 Reinsurance Fund shall be \$5,000,000 which amount shall be adjusted each year beginning in
643 1990 by multiplying by the ratio that the total workers' compensation premium income for the
644 preceding calendar year bears to the total workers' compensation premium income for the
645 calendar year 1988.

646 (v) The requirements of Subsection (2)(d)(iv) cease when the future annual
647 disbursements from the Employers' Reinsurance Fund are projected to be less than the

648 calculations of the corresponding future minimum required assets. The Labor Commission
649 shall, after a public hearing, determine if the future annual disbursements are less than the
650 corresponding future minimum required assets from projections provided by the actuary.

651 (vi) At the end of each fiscal year the minimum approximate assets in the Uninsured
652 Employers' Fund shall be \$2,000,000, which amount shall be adjusted each year beginning in
653 1990 by multiplying by the ratio that the total workers' compensation premium income for the
654 preceding calendar year bears to the total workers' compensation premium income for the
655 calendar year 1988.

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

658 (3) Every admitted insurer writing title insurance in this state shall pay to the
659 commission, on or before March 31 in each year, a tax of .45% of the total premium received
660 by either the insurer or by its agents during the preceding calendar year from title insurance
661 concerning property located in this state. In calculating this tax, "premium" includes the
662 charges made to an insured under or to an applicant for a policy or contract of title insurance
663 for:

664 (a) the assumption by the title insurer of the risks assumed by the issuance of the policy
665 or contract of title insurance; and

666 (b) abstracting title, title searching, examining title, or determining the insurability of
667 title, and every other activity, exclusive of escrow, settlement, or closing charges, whether
668 denominated premium or otherwise, made by a title insurer, an agent of a title insurer, a title
669 insurance agent, or any of them.

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

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

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

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

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

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

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

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

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

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

689 (7) The retaliatory provisions of Title 31A, Chapter 3, Department Funding, Fees, and
690 Taxes, apply to the tax or assessment imposed under this chapter.

691 Section 25. Section **59-9-101.3** is amended to read:

692 **59-9-101.3. Employers' Reinsurance Fund special assessment.**

693 (1) For purposes of this section:

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

696 (b) "Public agency insurance mutual" is as defined in Section 31A-1-103.

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

699 (d) "Self-insured employer" is as defined in Section 34A-2-201.5.

700 (2) (a) For calendar years beginning on January 1, 2002, through December 31, 2004,
701 the following shall pay to the commission, on or before March 31 of each year, an assessment
702 imposed by the Labor Commission under Subsection (3):

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

706 (ii) a public agency insurance mutual that is authorized under Sections 34A-2-201 and
707 34A-2-201.5 to pay workers' compensation direct; and

708 (iii) an employer authorized under Sections 34A-2-201 and 34A-2-201.5 to pay
709 workers' compensation direct.

- 710 (b) The assessment imposed under Subsection (3) shall be in addition to:
- 711 (i) the premium assessment imposed under Subsection 59-9-101(2); and
- 712 (ii) the assessment imposed under Section 34A-2-202.
- 713 (3) (a) If the conditions described in Subsection (3)(b) are met, the Labor Commission
- 714 may impose an assessment in accordance with Subsections (3)(c) and (d) of up to 2% of:
- 715 (i) the total workers' compensation premium income received by the insurer from
- 716 workers' compensation insurance in this state during the preceding calendar year; or
- 717 (ii) if authorized under Sections 34A-2-201 and 34A-2-201.5 to pay workers'
- 718 compensation direct, the amount calculated under Section 34A-2-202 for a self-insured
- 719 employer that is equivalent to the total workers' compensation premium income.
- 720 (b) The Labor Commission may impose the assessment described in Subsection (3)(a)
- 721 if:
- 722 (i) the Labor Commission determines that:
- 723 (A) all admitted insurers writing workers' compensation insurance in this state shall
- 724 pay the maximum 7.25% of the premium income under Subsection 59-9-101(2)(c)(i); and
- 725 (B) all self-insured employers shall pay the maximum 7.25% assessment under Section
- 726 34A-2-202; and
- 727 (ii) the maximum 7.25% of the premium income is insufficient to:
- 728 (A) provide payment of benefits and expenses from the Employers' Reinsurance Fund
- 729 to project a funded condition of the Employers' Reinsurance Fund with assets greater than
- 730 liabilities by no later than June 30, 2025; or
- 731 (B) maintain the minimum approximate assets required in Subsection
- 732 59-9-101(2)(d)(iv).
- 733 (c) On or before each October 15 of the preceding year and following a public hearing,
- 734 the Labor Commission shall determine:
- 735 (i) whether an assessment will be imposed under this section for a calendar year; and
- 736 (ii) if the assessment will be imposed, the percentage of the assessment applicable for
- 737 the calendar year.
- 738 (d) The Labor Commission shall:
- 739 (i) base its determination on the recommendations of the qualified actuary required in
- 740 Subsection 59-9-101(2)(d)(i); and

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

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

746 (5) The commission shall promptly remit the assessment collected under Subsection
747 (2) to the state treasurer for credit to the Employers' Reinsurance Fund created under Section
748 34A-2-702.

749 Section 26. Section **63-5b-102** is amended to read:

750 **63-5b-102. Definitions.**

751 (1) (a) "Absent" means:

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

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

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

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

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

771 (4) "Disaster" means a situation causing, or threatening to cause, widespread damage,

772 social disruption, or injury or loss of life or property resulting from attack, internal disturbance,
773 natural phenomenon, or technological hazard.

774 (5) "Division" means the Division of Emergency Services and Homeland Security
775 established in Title 53, Chapter 2, Emergency [~~Services and Homeland Security Act~~]
776 Management.

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

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

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

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

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

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

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

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

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

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

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

799 (16) "Unavailable" means:

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

803 (b) as otherwise defined by local ordinance.

804 Section 27. Section **63-38a-102** is amended to read:

805 **63-38a-102. Definitions.**

806 As used in this chapter:

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

810 (b) "Agency" does not include the legislative branch, the board of regents, the Utah
811 Higher Education Assistance Authority, the board of trustees of each higher education
812 institution, each higher education institution and its associated branches, centers, divisions,
813 institutes, foundations, hospitals, colleges, schools, or departments, a public education entity,
814 or an independent agency.

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

817 (b) "Dedicated credits" does not mean:

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

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

821 (iii) revenues from any contracts; and

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

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

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

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

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

829 (b) "Fixed collections" does not mean:

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

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

833 (iii) revenues from any contracts; and

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

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

839 (b) "Governmental fund" does not include internal service funds, enterprise funds,
840 capital projects funds, debt service funds, or trust and agency funds as established in Section
841 51-5-4.

842 (6) "Independent agency" means the Utah State Retirement Office, the Utah Housing
843 Corporation, and the Utah Technology Finance Corporation~~], and the Workers' Compensation~~
844 ~~Fund]~~.

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

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

850 Section 28. Section **63-55b-131** is amended to read:

851 **63-55b-131. Repeal dates, Title 31A.**

852 (1) Section 31A-22-626 is repealed July 1, 2004.

853 (2) Section 31A-23-315 is repealed July 1, 2006.

854 (3) Section 31A-33-109 is repealed July 1, 2011.

855 Section 29. Section **63-95-102** is amended to read:

856 **63-95-102. Definitions.**

857 For purposes of this chapter:

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

860 (a) cash, except reasonable compensation or salary for services rendered;

861 (b) stock or other investments;

862 (c) goodwill;

863 (d) real property;

864 (e) an ownership interest;

- 865 (f) a license;
- 866 (g) a cause of action; and
- 867 (h) any similar property.
- 868 (2) "Authorizing statutes" means the statutes creating an entity as a quasi-governmental
- 869 entity.
- 870 (3) "Business interest" means:
- 871 (a) holding the position of trustee, director, officer, or other similar position with a
- 872 business entity; or
- 873 (b) the ownership, either legally or equitably, of at least 10% of the outstanding shares
- 874 of a corporation or 10% interest in any other business entity, being held by:
- 875 (i) an individual;
- 876 (ii) the individual's spouse;
- 877 (iii) a minor child of the individual; or
- 878 (iv) any combination of Subsections (3)(b)(i) through (iii).
- 879 (4) "Committee" means the Legislative Quasi-Governmental Entities Committee
- 880 created in Section 63-95-201.
- 881 (5) "Government requestor" means:
- 882 (a) the governor;
- 883 (b) an executive branch officer other than the governor;
- 884 (c) an executive branch agency;
- 885 (d) a legislator, including a legislative sponsor of legislation creating a
- 886 quasi-governmental entity; or
- 887 (e) a legislative committee.
- 888 (6) "Interested party" means a person that held or holds the position of trustee, director,
- 889 officer, or other similar position with a quasi-governmental entity within:
- 890 (a) five years prior to the date of an action described in Subsection (8); or
- 891 (b) during the privatization of a quasi-governmental entity.
- 892 (7) "Lobbyist" is a person that provided or provides services as a lobbyist, as defined in
- 893 Section 36-11-102, within:
- 894 (a) five years prior to the date of an action described in Subsection (8); or
- 895 (b) during the privatization of a quasi-governmental entity.

896 (8) (a) "Privatized" means an action described in Subsection (8)(b) taken under
897 circumstances in which the operations of the quasi-governmental entity are continued by a
898 successor entity that:

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

902 (b) An action referred to in Subsection (8)(a) includes:

- 903 (i) the repeal of the authorizing statute of a quasi-governmental entity and the revision
904 to state laws to terminate the relationship between the state and the quasi-governmental entity;
- 905 (ii) the dissolution of the quasi-governmental entity;
- 906 (iii) the merger or consolidation of the quasi-governmental entity with another entity;

907 or

- 908 (iv) the sale of all or substantially all of the assets of the quasi-governmental entity.

909 (9) (a) "Quasi-governmental entity" means an entity that:

- 910 (i) is created by the state or is given by the state the right to exist and conduct its affairs
911 as a quasi-governmental entity:

- 912 (A) to serve a public purpose; and
- 913 (B) to meet a need that cannot be met through a private business; and
- 914 (ii) is designated by the state as:
 - 915 (A) an independent state agency;
 - 916 (B) an independent public corporation;
 - 917 (C) a quasi-public corporation; or
 - 918 (D) a term similar to that described in Subsections (9)(a)(ii)(A) through (C).

919 (b) "Quasi-governmental entity" includes the:

- 920 (i) Dairy Commission created in Title 4, Chapter 22, Dairy Promotion Act;
- 921 (ii) Utah Technology Finance Corporation created in Title 9, Chapter 13, Utah
922 Technology and Small Business Finance Act;
- 923 (iii) Heber Valley Railroad Authority created in Title 9, Chapter 3, Part 3, Heber
924 Valley Historic Railroad Authority;
- 925 (iv) Utah Science Center Authority created in Title 9, Chapter 3, Part 4, Utah Science
926 Center Authority;

927 (v) Utah Housing Corporation created in Title 9, Chapter 4, Part 9, Utah Housing
928 Corporation Act;

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

931 [~~(vii) Workers' Compensation Fund created in Title 31A, Chapter 33, Workers'~~
932 ~~Compensation Fund;~~]

933 [~~(viii)~~ (vii) Utah State Retirement Office created in Title 49, Chapter 11, Utah State
934 Retirement Systems Administration;

935 [~~(ix)~~ (viii) School and Institutional Trust Lands Administration created in Title 53C,
936 Chapter 1, Part 2, School and Institutional Trust Lands Administration; and

937 [~~(x)~~ (ix) Utah Communications Agency Network created in Title 63C, Chapter 7, Utah
938 Communications Agency Network Act.

939 (c) Notwithstanding Subsection (9)(a), "quasi-governmental entity" does not include:

940 (i) the Public Service Commission of Utah created in Section 54-1-1;

941 (ii) an institution within the state system of higher education;

942 (iii) a city, county, or town;

943 (iv) a local school district;

944 (v) a special district created under the authority of Title 17A, Special Districts; or

945 (vi) a local district created under the authority of Title 17B, Limited Purpose Local
946 Government Entities.

947 Section 30. Section **63-95-203** is amended to read:

948 **63-95-203. Exemption from committee activities.**

949 Notwithstanding the other provisions of this Part 2 and Subsection 63-95-102(9), the
950 [~~following quasi-governmental entities are~~] Utah Housing Corporation created in Title 9,
951 Chapter 4, Part 9, Utah Housing Corporation Act, is exempt from the study by the committee
952 under Section 63-95-202[.];

953 [~~(1) the Utah Housing Corporation created in Title 9, Chapter 4, Part 9, Utah Housing~~
954 ~~Corporation Act; and~~]

955 [~~(2) the Workers' Compensation Fund created in Title 31A, Chapter 33, Workers'~~
956 ~~Compensation Fund.~~]

957 Section 31. Section **63E-1-102** is amended to read:

958 **63E-1-102. Definitions.**

959 As used in this title:

960 (1) "Authorizing statute" means the statute creating an entity as an independent entity.

961 (2) "Committee" means the Legislative Independent Entities Committee created in

962 Section 63E-1-201.

963 (3) "Independent corporation" means a corporation incorporated in accordance with

964 Chapter 2, Independent Corporations Act.

965 (4) (a) "Independent entity" means an entity having a public purpose relating to the

966 state or its citizens that is individually created by the state or is given by the state the right to

967 exist and conduct its affairs as an:

968 (i) independent state agency; or

969 (ii) independent corporation.

970 (b) "Independent entity" includes the:

971 (i) Dairy Commission created in Title 4, Chapter 22, Dairy Promotion Act;

972 (ii) Utah Technology Finance Corporation created in Title 9, Chapter 13, Utah

973 Technology and Small Business Finance Act;

974 (iii) Heber Valley Railroad Authority created in Title 9, Chapter 3, Part 3, Heber

975 Valley Historic Railroad Authority;

976 (iv) Utah Science Center Authority created in Title 9, Chapter 3, Part 4, Utah Science

977 Center Authority;

978 (v) Utah Housing Corporation created in Title 9, Chapter 4, Part 9, Utah Housing

979 Corporation Act;

980 (vi) Utah State Fair Corporation created in Title 9, Chapter 4, Part 11, Utah State Fair

981 Corporation Act;

982 ~~[(vii) Workers' Compensation Fund created in Title 31A, Chapter 33, Workers'~~983 ~~Compensation Fund;]~~984 ~~[(viii)]~~ (vii) Utah State Retirement Office created in Title 49, Chapter 11, Utah State

985 Retirement Systems Administration;

986 ~~[(ix)]~~ (viii) School and Institutional Trust Lands Administration created in Title 53C,

987 Chapter 1, Part 2, School and Institutional Trust Lands Administration; and

988 ~~[(x)]~~ (ix) Utah Communications Agency Network created in Title 63C, Chapter 7, Utah

989 Communications Agency Network Act.

990 (c) Notwithstanding this Subsection (4), "independent entity" does not include:

991 (i) the Public Service Commission of Utah created in Section 54-1-1;

992 (ii) an institution within the state system of higher education;

993 (iii) a city, county, or town;

994 (iv) a local school district;

995 (v) a special district created under the authority of Title 17A, Special Districts; or

996 (vi) a local district created under the authority of Title 17B, Limited Purpose Local

997 Government Entities.

998 (5) "Independent state agency" means an entity that is created by the state, but is

999 independent of the governor's direct supervisory control.

1000 (6) "Monies held in trust" means monies maintained for the benefit of:

1001 (a) one or more private individuals, including public employees;

1002 (b) one or more public or private entities; or

1003 (c) the owners of a quasi-public corporation.

1004 (7) "Public corporation" means an artificial person, public in ownership, individually

1005 created by the state as a body politic and corporate for the administration of a public purpose

1006 relating to the state or its citizens.

1007 (8) "Quasi-public corporation" means an artificial person, private in ownership,

1008 individually created as a corporation by the state which has accepted from the state the grant of

1009 a franchise or contract involving the performance of a public purpose relating to the state or its

1010 citizens.

1011 Section 32. Section **63E-1-203** is amended to read:

1012 **63E-1-203. Exemption from committee activities.**

1013 Notwithstanding the other provisions of this Part 2 and Subsection 63E-1-102(4), the

1014 ~~[following independent entities are]~~ Utah Housing Corporation created in Title 9, Chapter 4,

1015 Part 9, Utah Housing Corporation Act, is exempt from the study by the committee under

1016 Section 63E-1-202[?].

1017 ~~[(1) the Utah Housing Corporation created in Title 9, Chapter 4, Part 9, Utah Housing~~

1018 ~~Corporation Act; and]~~

1019 ~~[(2) the Workers' Compensation Fund created in Title 31A, Chapter 33, Workers'~~

1020 ~~Compensation Fund.]~~

1021 Section 33. Section **67-4-2** is amended to read:

1022 **67-4-2. Definitions.**

1023 As used in this chapter:

1024 (1) "Federal funds" means cash received from the United States government or from
1025 other individuals or entities for or on behalf of the United States and deposited with the state
1026 treasurer or any agency of the state.

1027 (2) "General Fund" means monies received into the treasury and not specially
1028 appropriated to any other fund.

1029 (3) "Maintain custody" means to direct the safekeeping and investment of state funds.

1030 (4) (a) "State entity" means each department, commission, board, council, agency,
1031 institution, officer, corporation, fund, division, office, committee, authority, laboratory, library,
1032 unit, bureau, panel, or other administrative unit of the state.

1033 (b) "State entity" includes independent state agencies and public corporations.

1034 (5) (a) "State funds" means funds that are owned, held, or administered by a state
1035 entity, regardless of the source of the funds.

1036 (b) "State funds" includes funds of independent state agencies or public corporations,
1037 regardless of the source of funds.

1038 (c) "State funds" does not include funds held by the Utah State Retirement Board [~~or~~
1039 ~~the Workers' Compensation Fund~~].

1040 (6) "Warrant" means an order in a specific amount drawn upon the treasurer by the
1041 Division of Finance or another state agency.

1042 Section 34. **Repealer.**

1043 This act repeals:

1044 Section **31A-22-1001, Obligation to write workers' compensation insurance.**

1045 Section **31A-33-101, Definitions.**

1046 Section **31A-33-102, Establishment of the Workers' Compensation Fund and the**
1047 **Injury Fund.**

1048 Section **31A-33-103, Legal nature of Workers' Compensation Fund.**

1049 Section **31A-33-103.5, Powers of Fund -- Limitations.**

1050 Section **31A-33-104, Workers' Compensation Fund exempted.**

- 1051 Section **31A-33-105, Price of insurance -- Liability of state.**
- 1052 Section **31A-33-106, Board of directors -- Status of the fund in relationship to the**
- 1053 **state.**
- 1054 Section **31A-33-107, Duties of board -- Creation of subsidiaries -- Entering into**
- 1055 **joint enterprises.**
- 1056 Section **31A-33-108, Powers and duties of chief executive officer.**
- 1057 Section **31A-33-110, Audits and examinations required.**
- 1058 Section **31A-33-111, Adoption of rates.**
- 1059 Section **31A-33-112, Withdrawal of policyholders.**
- 1060 Section **31A-33-113, Cancellation of policies.**
- 1061 Section **31A-33-114, Premium assessment.**
- 1062 Section **31A-33-115, Interest and costs of collecting delinquent premium.**
- 1063 Section **31A-33-116, Dividends.**
- 1064 Section **31A-33-117, Availability of employers' reports.**
- 1065 Section **35. Effective date.**
- 1066 If approved by two-thirds of all the members elected to each house, this act takes effect
- 1067 upon approval by the governor, or the day following the constitutional time limit of Utah
- 1068 Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto,
- 1069 the date of veto override.

Legislative Review Note
as of 2-14-03 1:53 PM

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

Office of Legislative Research and General Counsel