

**FUNDS RELATED TO WORKPLACE SAFETY
AND WORKERS' COMPENSATION**

2003 GENERAL SESSION

STATE OF UTAH

Sponsor: Scott K. Jenkins

This act modifies the Utah Labor Code to expand the purposes for which funds in the Workplace Safety Account and the Uninsured Employers' Fund may be used. This act makes technical changes.

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

AMENDS:

34A-2-701, as renumbered and amended by Chapter 375, Laws of Utah 1997

34A-2-704, as last amended by Chapter 71, Laws of Utah 2002

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

Section 1. Section **34A-2-701** is amended to read:

34A-2-701. Premium assessment restricted account for safety.

(1) There is created in the General Fund a restricted account known as the Workplace Safety Account.

(2) An amount equal to 0.25% of the premium income remitted to the state treasurer pursuant to Subsection 59-9-101(2)(c) shall be deposited in the Workplace Safety Account in the General Fund for use by the commission [~~to promote Utah workplace safety~~] as provided in Subsection (3).

(3) Monies shall be appropriated by the Legislature from the restricted account to the commission for use by the commission to:

(a) improve safety consultation services available to Utah employers; [~~or~~]

(b) provide for electronic or print media advertising campaigns designed to promote workplace safety[-];

~~[(4) From monies appropriated by the Legislature from the restricted account to the~~



commission for use by the commission, the commission may]

(c) fund [other] safety programs or initiatives [recommended to it by its state] the
commission elects to fund on the basis of recommendations to the commission by the workers'
compensation advisory council created under Section 34A-2-107[:]; or

(d) fund reasonable costs of administering the division.

[5] (4) The commission shall annually report to the governor, the Legislature, and [its
state] the workers' compensation advisory council regarding:

(a) the use of the monies appropriated under Subsection (3) [or (4)]; and

(b) the use of the monies on the safety of Utah's workplaces.

[6] (5) The monies deposited in the restricted account:

(a) shall be:

(i) used only for the activities described in Subsection (3) [or (4)]; and

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

(b) may not be used for[: (i) administrative costs unrelated to the restricted account; or
(ii)] any activity of the commission other than the activities of the commission described in
Subsection (3) [or (4)].

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

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

(1) (a) There is created an Uninsured Employers' Fund.

(b) The Uninsured Employers' Fund has the purpose of assisting in the funding of the
administration of the division in accordance with Subsection (2)(c)(ii) and assisting in the
payment of workers' compensation benefits to any person entitled to the benefits, if:

(i) that person's employer:

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

(B) (I) becomes or is insolvent;

(II) appoints or has appointed a receiver; or

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

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

[b] (c) The Uninsured Employers' Fund succeeds to all monies previously held in the

59 Default Indemnity Fund.

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

63 (2) (a) Monies for the Uninsured Employers' Fund shall be deposited into the
64 Uninsured Employers' Fund in accordance with ~~[Section 34A-2-202]~~ this chapter and
65 Subsection 59-9-101(2).

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

68 (c) ~~[The]~~ (i) Except as provided in Subsection (2)(c)(ii), the state treasurer is the
69 custodian of the Uninsured Employers' Fund, and the administrator shall make provisions for
70 and direct ~~[its distribution]~~ distributions from the Uninsured Employers' Fund.

71 (ii) Notwithstanding Subsection (2)(c)(i), the Legislature may appropriate monies from
72 the Uninsured Employers' Fund to fund administration of the division.

73 (3) ~~[Reasonable]~~ The following may be paid from the Uninsured Employers' Fund:

74 (a) the reasonable costs of administering the Uninsured Employers' Fund ~~[or]~~;

75 (b) the reasonable costs of administering the division; or

76 (c) to pay other fees required to be paid by the Uninsured Employers' Fund ~~[may be~~
77 paid from the Uninsured Employers' Fund].

78 (4) The state treasurer shall:

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

81 (b) invest monies deposited into the Uninsured Employers' Fund to ensure maximum
82 investment return for both long and short term investments in accordance with Section
83 51-7-12.5.

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

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

89 (i) the attorney general; or

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

(A) any investigation, hearing, or trial under this chapter or Chapter 3, Utah

Occupational Disease Act, is pending;

(B) the employee resides; or

(C) an employer:

(I) resides; or

(II) is doing business.

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

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

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

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

(8) (a) The administrator shall periodically file the information described in Subsection (8)(b) with the receiver, trustee, or liquidator of:

(i) an insolvent employer;

(ii) an insolvent public agency insurance mutual as defined in Section 31A-1-103; or

(iii) an insolvent insurance carrier.

(b) The information required to be filed under Subsection (8)(a) is:

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

(ii) estimates of anticipated claims against the Uninsured Employers' Fund.

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

(9) When any injury or death for which compensation is payable from the Uninsured Employers' Fund has been caused by the wrongful act or neglect of another person not in the

same employment, the Uninsured Employers' Fund has the same rights as allowed under Section 34A-2-106.

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

(a) adjusting its own claims; or

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

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

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

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

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

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

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

(14) (a) (i) If it becomes necessary for the Uninsured Employers' Fund to pay benefits under this section to an employee described in Subsection (14)(a)(ii), the Uninsured Employers' Fund may assess all other self-insured employers amounts necessary to pay:

(A) the obligations of the Uninsured Employers' Fund subsequent to an insolvency;

(B) the expenses of handling covered claims subsequent to an insolvency;

(C) the cost of examinations under Subsection (15); and

(D) other expenses authorized by this section.

(ii) This Subsection (14) applies to benefits paid to an employee of:

(A) a self-insured employer, as defined in Section 34A-2-201.5, that is insolvent; or

(B) if the insolvent self-insured employer is a public agency insurance mutual, a member of the public agency insurance mutual.

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

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

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

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

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

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

(15) (a) The following shall notify the division of any information indicating that any of the following may be insolvent or in a financial condition hazardous to its employees or the public:

(i) a self-insured employer; or

(ii) if the self-insured employer is a public agency insurance mutual, a member of the public agency insurance mutual.

(b) Upon receipt of the notification described in Subsection (15)(a) and with good cause appearing, the division may order an examination of:

(i) that self-insured employer; or

(ii) if the self-insured employer is a public agency insurance mutual, a member of the public agency mutual.

(c) The cost of the examination ordered under Subsection (15)(b) shall be assessed

183 against all self-insured employers as provided in Subsection (14).

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

186 (16) (a) In any claim against an employer by the Uninsured Employers' Fund, or by or
187 on behalf of the employee to whom or to whose dependents compensation and other benefits
188 are paid or payable from the Uninsured Employers' Fund, the burden of proof is on the
189 employer or other party in interest objecting to the claim. [~~The~~]

190 (b) A claim described in Subsection (16)(a) is presumed to be valid up to the full
191 amount of workers' compensation benefits claimed by the employee or the employee's
192 dependents.

193 (c) This Subsection (16) applies whether the claim is filed in court or in an adjudicative
194 proceeding under the authority of the commission.

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

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

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

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

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

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

206 (19) The Uninsured Employers' Fund:

207 (a) shall be:

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

209 (A) the purpose of assisting in the payment of workers' compensation benefits in
210 accordance with Subsection (1); [~~and~~]

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

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

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

214 (C) funding the administrative costs of the division in accordance with Subsection
215 (2)(c)(ii); and
216 (ii) expended according to processes that can be verified by audit; and
217 (b) may not be used for:
218 (i) administrative costs unrelated to the Uninsured Employers' Fund or the division; or
219 (ii) any activity of the commission other than an activity described in Subsection
220 (19)(a).
221 (20) (a) For purposes of Subsection (1), an employment relationship is localized in the
222 state if:
223 (i) (A) the employer who is liable for the benefits has a business premise in the state;
224 and
225 (B) (I) the contract for hire is entered into in the state; or
226 (II) the employee regularly performs work duties in the state for the employer who is
227 liable for the benefits; or
228 (ii) the employee is:
229 (A) a resident of the state; and
230 (B) regularly performs work duties in the state for the employer who is liable for the
231 benefits.
232 (b) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
233 commission shall by rule define what constitutes regularly performing work duties in the state.

Legislative Review Note
as of 2-19-03 4:17 PM

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

Office of Legislative Research and General Counsel

Fiscal Note**Funds Related To Workplace Safety and Workers' Compensation***21-Feb-03***Bill Number SB0220***11:53 AM*

State Impact

The clarifying language of this bill will have no fiscal impact.

Individual and Business Impact

No fiscal impact.

Office of the Legislative Fiscal Analyst