

WORKERS' COMPENSATION AMENDMENTS

2004 GENERAL SESSION

STATE OF UTAH

Sponsor: Curtis S. Bramble

LONG TITLE

General Description:

This bill modifies the Insurance Code by repealing the enabling provisions of the Workers' Compensation Fund and provides for the residual market through a residual market carrier or an assigned risk plan.

Highlighted Provisions:

This bill:

- ▶ repeals the enabling provisions of the Workers' Compensation Fund;
 - ▶ removes references to the Workers' Compensation Fund from the code;
 - ▶ requires the insurance commissioner to provide for the workers' compensation insurance residual market by designating and entering into a contract with a residual market carrier or implementing an assigned risk plan;
 - ▶ specifies the qualifications to become the residual market carrier;
 - ▶ provides the residual market carrier's obligations and restrictions;
 - ▶ specifies the membership of the residual market carrier's board of directors and its selection process;
 - ▶ limits the state's liability for the residual market carrier;
 - ▶ allows the commissioner to terminate the contract with the residual market carrier;
 - ▶ provides rulemaking authority for the insurance commissioner to create an assigned risk plan;
 - ▶ provides specifications for the assigned risk plan, including termination procedures;
- and



28 ▶ provides for the withdrawal of independent corporations from the state retirement
29 systems and provides withdrawal procedures.

30 **Monies Appropriated in this Bill:**

31 None

32 **Other Special Clauses:**

33 This bill takes effect on ~~§ [March 3]~~ **MAY 5** § , 2005.

34 **Utah Code Sections Affected:**

35 AMENDS:

- 36 **11-8-3**, as last amended by Chapter 222, Laws of Utah 2000
- 37 **31A-1-105**, as last amended by Chapter 222, Laws of Utah 2000
- 38 **31A-19a-401**, as last amended by Chapter 222, Laws of Utah 2000
- 39 **31A-21-101**, as last amended by Chapter 222, Laws of Utah 2000
- 40 **31A-22-309**, as last amended by Chapter 59, Laws of Utah 2001
- 41 **31A-26-103**, as last amended by Chapter 222, Laws of Utah 2000
- 42 **31A-33-109**, as renumbered and amended by Chapter 240, Laws of Utah 1996
- 43 **34A-2-102**, as last amended by Chapter 222, Laws of Utah 2000
- 44 **34A-2-107**, as last amended by Chapter 114, Laws of Utah 2001
- 45 **34A-2-201**, as last amended by Chapter 222, Laws of Utah 2000
- 46 **34A-2-203**, as last amended by Chapter 222, Laws of Utah 2000
- 47 **34A-2-211**, as last amended by Chapter 222, Laws of Utah 2000
- 48 **34A-2-406**, as last amended by Chapter 222, Laws of Utah 2000
- 49 **51-7-2**, as last amended by Chapter 159, Laws of Utah 2002
- 50 **51-7-4**, as last amended by Chapters 159 and 250, Laws of Utah 2002
- 51 **59-9-101**, as last amended by Chapter 298, Laws of Utah 2003
- 52 **59-9-101.3**, as last amended by Chapter 71, Laws of Utah 2002
- 53 **63-5b-102**, as last amended by Chapters 14 and 159, Laws of Utah 2002
- 54 **63-38a-102**, as last amended by Chapter 159, Laws of Utah 2002
- 55 **63-55b-131**, as last amended by Chapter 298, Laws of Utah 2003
- 56 **63E-1-102**, as last amended by Chapters 8 and 291, Laws of Utah 2003
- 57 **63E-1-203**, as last amended by Chapter 159, Laws of Utah 2002
- 58 **67-4-2**, as last amended by Chapter 222, Laws of Utah 2000

59 ENACTS:

60 **31A-33a-101**, Utah Code Annotated 1953

61 **31A-33a-102**, Utah Code Annotated 1953

62 **31A-33a-103**, Utah Code Annotated 1953

63 **31A-33a-201**, Utah Code Annotated 1953

64 **31A-33a-202**, Utah Code Annotated 1953

65 **31A-33a-203**, Utah Code Annotated 1953

66 **31A-33a-204**, Utah Code Annotated 1953

67 **31A-33a-301**, Utah Code Annotated 1953

68 **31A-33a-302**, Utah Code Annotated 1953

69 **31A-33a-303**, Utah Code Annotated 1953

70 **49-11-621**, Utah Code Annotated 1953

71 REPEALS:

72 **31A-22-1001**, as last amended by Chapter 222, Laws of Utah 2000

73 **31A-33-101**, as last amended by Chapter 222, Laws of Utah 2000

74 **31A-33-102**, as last amended by Chapter 222, Laws of Utah 2000

75 **31A-33-103**, as last amended by Chapter 222, Laws of Utah 2000

76 **31A-33-103.5**, as last amended by Chapters 33 and 116, Laws of Utah 2001

77 **31A-33-104**, as last amended by Chapter 33, Laws of Utah 2001

78 **31A-33-105**, as last amended by Chapter 107, Laws of Utah 1998

79 **31A-33-106**, as last amended by Chapters 176 and 186, Laws of Utah 2002

80 **31A-33-107**, as last amended by Chapter 130, Laws of Utah 1999

81 **31A-33-108**, as last amended by Chapter 252, Laws of Utah 2003

82 **31A-33-110**, as last amended by Chapter 204, Laws of Utah 1997

83 **31A-33-111**, as last amended by Chapter 130, Laws of Utah 1999

84 **31A-33-112**, as renumbered and amended by Chapter 240, Laws of Utah 1996

85 **31A-33-113**, as last amended by Chapter 116, Laws of Utah 2001

86 **31A-33-114**, as renumbered and amended by Chapter 240, Laws of Utah 1996

87 **31A-33-115**, as renumbered and amended by Chapter 240, Laws of Utah 1996

88 **31A-33-116**, as renumbered and amended by Chapter 240, Laws of Utah 1996

89 **31A-33-117**, as last amended by Chapter 375, Laws of Utah 1997

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

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

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

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

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

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

31A-1-105. Presumption of jurisdiction.

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

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

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

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

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

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

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

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

(2) All insurers writing workers' compensation coverage[~~, including the Workers'~~

121 ~~Compensation Fund created under Chapter 33;~~] are subject to this part.

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

123 **31A-21-101. Scope of Title 31A, Chapters 21 and 22.**

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

126 (a) delivered or issued for delivery in this state;

127 (b) on property ordinarily located in this state;

128 (c) on persons residing in this state when the policy is issued; and

129 (d) on business operations in this state.

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

131 (a) the exemptions provided in Section 31A-1-103;

132 (b) insurance policies procured under Sections 31A-15-103 and 31A-15-104;

133 (c) an insurance policy on business operations in this state if the contract is negotiated
134 primarily outside this state and if the operations in this state are incidental or subordinate to
135 operations outside this state, except that insurance required by a Utah statute must conform to
136 the statutory requirements; or

137 (d) other exemptions provided in this title.

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

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

143 (a) group or blanket policies outside the scope of this title under Subsection
144 31A-1-103(3)(h); and

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

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

149 (6) Workers' compensation insurance~~[-, including that written by the Workers'~~

150 ~~Compensation Fund created under Chapter 33;~~] is subject to this chapter and Chapter 22.

151 (7) Unless clearly inapplicable, any provision of this chapter or Chapter 22 applicable

152 to either a policy or a contract is applicable to both.

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

154 **31A-22-309. Limitations, exclusions, and conditions to personal injury**
155 **protection.**

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

- 160 (i) death;
- 161 (ii) dismemberment;
- 162 (iii) permanent disability or permanent impairment based upon objective findings;
- 163 (iv) permanent disfigurement; or
- 164 (v) medical expenses to a person in excess of \$3,000.

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

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

- 168 (i) for any injury sustained by the insured while occupying another motor vehicle
169 owned by or furnished for the regular use of the insured or a resident family member of the
170 insured and not insured under the policy;
- 171 (ii) for any injury sustained by any person while operating the insured motor vehicle
172 without the express or implied consent of the insured or while not in lawful possession of the
173 insured motor vehicle;
- 174 (iii) to any injured person, if the person's conduct contributed to his injury:
 - 175 (A) by intentionally causing injury to himself; or
 - 176 (B) while committing a felony;
- 177 (iv) for any injury sustained by any person arising out of the use of any motor vehicle
178 while located for use as a residence or premises;
- 179 (v) for any injury due to war, whether or not declared, civil war, insurrection, rebellion
180 or revolution, or to any act or condition incident to any of the foregoing; or
- 181 (vi) for any injury resulting from the radioactive, toxic, explosive, or other hazardous
182 properties of nuclear materials.

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

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

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

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

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

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

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

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

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

208 (6) Every policy providing personal injury protection coverage is subject to the
209 following:

210 (a) that where the insured under the policy is or would be held legally liable for the
211 personal injuries sustained by any person to whom benefits required under personal injury
212 protection have been paid by another insurer, [~~including the Workers' Compensation Fund
213 created under Chapter 33,~~] the insurer of the person who would be held legally liable shall

214 reimburse the other insurer for the payment, but not in excess of the amount of damages
215 recoverable; and

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

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

219 **31A-26-103. Workers' compensation claims.**

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

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

225 **31A-33-109. Liability limited.**

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

230 (2) Subject to the director's fiduciary responsibility [~~as established by Section~~
231 ~~31A-33-106~~], no director of the Workers' Compensation Fund is liable in a private capacity for
232 any act performed or obligation entered into when done in good faith, without intent to defraud,
233 and in an official capacity in connection with the administration, management, or conduct of
234 the Workers' Compensation Fund or affairs relating to it.

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

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

241 **CHAPTER 33a. UTAH WORKERS' COMPENSATION RESIDUAL MARKET ACT**

242 **Part 1. General Provisions**

243 **31A-33a-101. Title.**

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

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

246 **31A-33a-102. Definitions.**

247 As used in this chapter, "residual market carrier" means the Utah residual market carrier
248 that is designated in accordance with Section 31A-33a-201.

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

250 **31A-33a-103. Workers' compensation residual market -- Commissioner election.**

251 (1) The commissioner shall elect to administer workers' compensation insurance
252 coverage for the residual market by:

253 (a) designating and entering into a contract with a residual market carrier under Part 2;

254 or

255 (b) implementing an assigned risk plan under Part 3.

256 (2) The commissioner may change the election under this section provided:

257 (a) a residual market carrier contract and an assigned risk plan may not both be in
258 effect at the same time;

259 (b) the termination requirements under Section 31A-33a-204 or 31A-33a-303 are
260 satisfied; and

261 (c) coverage for the residual market shall be secured under the other option prior to the
262 delivery of notice for termination under Section 31A-33a-204 or 31A-33a-303.

263 Section 11. Section **31A-33a-201** is enacted to read:

264 **Part 2. Residual Market Carrier**

265 **31A-33a-201. Residual market carrier -- Designation -- Obligation to write**
266 **workers' compensation insurance -- Limitations.**

267 (1) If the commissioner elects under Section 31A-33a-103 to administer workers'
268 compensation insurance coverage for the residual market through a residual market carrier, the
269 commissioner shall designate and enter into a contract with a residual market carrier.

270 (2) The residual market carrier shall:

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

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

274 (c) provide workers' compensation insurance at actuarially sound premium rates that
275 are in accordance with Title 31A, Chapter 19a, Part 4, Workers' Compensation Rates § , EXCEPT
275a **THAT DURING THE FIRST THREE YEARS OF THE CONTRACT, THE RESIDUAL MARKET CARRIER**
275b **MAY NOT INCREASE RATES FOR THE RESIDUAL MARKET ABOVE THE AVERAGE RATE INCREASE**
275c **OF THE OTHER WORKERS' COMPENSATION INSURANCE CARRIERS THAT WRITE COVERAGE IN**
275d **THE STATE § .**

276 (3) (a) The residual market carrier shall write all workers' compensation insurance for
277 which application is made to the residual market carrier.

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

279 (4) The residual market carrier may not pursue:

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

281 or

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

283 (5) While designated the residual market carrier, and for five years after the contract
284 terminates in accordance with Section 31A-33a-204, the residual market carrier may not offer
285 health care insurance as defined in Section 31a-1-301.

286 (6) If the residual market carrier is exempt under 26 U.S.C. Sec. 501(c)(27)(B), the
287 residual market carrier shall operate its business in a manner consistent with maintaining its
288 federal income tax exemption and shall work to cure any defects in maintaining its exemption.

289 Section 12. Section **31A-33a-202** is enacted to read:

290 **31A-33a-202. Residual market carrier -- Board of directors.**

291 (1) A board of directors of the residual market carrier shall be created pursuant to
292 Section 31A-5-409.

293 (2) The commissioner shall be designated as an executive branch official for all state
294 law purposes, including for appointing members of the residual market carrier's board of
295 directors.

296 (3) The residual market carrier's board of directors shall consist of the following seven
297 public directors:

298 (a) the commissioner, with the consent of the Senate, shall appoint the residual market
299 carrier's chief executive officer as a public director, ex officio;

300 (b) the commissioner shall appoint three public directors as follows:

301 (i) a nominating committee of the residual market carrier's board of directors shall
302 recommend at least two qualified names to the commissioner for each director position that the
303 commissioner is to appoint; and

304 (ii) the commissioner is not bound by the nominating committee's recommendations
305 but may, in the commissioner's sole discretion, appoint any person having the requisite
306 qualifications; and

307 (c) three public directors shall be elected by the residual market carrier's policyholders.

308 (4) Each director shall:

309 (a) except for the chief executive officer, serve no more than three four-year terms on
310 the board of directors; and

311 (b) be an investment trustee and fiduciary of the residual market carrier's policyholders.

312 (5) Compensation for the officers, directors, and employees of the residual market
313 carrier is subject to the provisions of Section 31A-5-416.

314 Section 13. Section **31A-33a-203** is enacted to read:

315 **31A-33a-203. Liability of the state.**

316 The state is not liable for any obligation, expense, liability, or debt of the residual
317 market carrier.

318 Section 14. Section **31A-33a-204** is enacted to read:

319 **31A-33a-204. Termination of the residual market carrier.**

320 (1) Subject to the requirements under Subsection (3), the commissioner may terminate
321 the contract entered into with the residual market carrier, for any reason, by giving the residual
322 market carrier between 180 and 365 days written notice of the termination.

323 (2) Upon termination of the contract, the commissioner may require the company that
324 was the residual market carrier to continue under the requirement of Subsection
325 31A-33a-201(3)(a) for up to one year from the date of termination in accordance with
326 Subsection (1).

327 (3) Prior to notice of contract termination under this section, the commissioner shall:

328 (a) send written notice of the commissioner's intent to terminate the contract to the
329 governor, president of the Senate, and speaker of the House of Representatives; and

330 (b) comply with the provisions of Title 31A, Chapter 33a, Part 3, Assigned Risk Plan.

331 Section 15. Section **31A-33a-301** is enacted to read:

332 **Part 3. Assigned Risk Plan**

333 **31A-33a-301. Assigned risk plan.**

334 (1) If the commissioner elects under Section 31A-33a-103 to administer workers'
335 compensation insurance coverage for the residual market through an assigned risk plan, in
336 accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
337 commissioner shall make rules to create and administer the assigned risk plan.

338 (2) The assigned risk plan shall provide employers who would otherwise be unable to
339 obtain workers' compensation insurance coverage with coverage if:

340 (a) the employer pays for the coverage; and

341 (b) the employer complies with reasonable contractual requirements.

342 (3) The rules under Subsection (1) may include:

343 (a) provisions for department management, employer eligibility, carrier participation,
344 and assigned risk plan enforcement; and

345 (b) criteria, methodology, or a formula for providing coverage for eligible employers.

346 Section 16. Section **31A-33a-302** is enacted to read:

347 **31A-33a-302. Assigned risk plan administrator.**

348 The commissioner may enter into a contract with a qualified administrator to facilitate
349 the operation of the assigned risk plan.

350 Section 17. Section **31A-33a-303** is enacted to read:

351 **31A-33a-303. Termination of assigned risk plan.**

352 The commissioner may terminate the assigned risk plan, for any reason, by:

353 (1) providing participating carriers and the administrator, if any, with written notice

354 and otherwise complying with termination procedures similar to those described under Section
355 31A-33a-204; and

356 (2) complying with the provisions of Title 31A, Chapter 33a, Part 2, Residual Market
357 Carrier.

358 Section 18. Section **34A-2-102** is amended to read:

359 **34A-2-102. Definition of terms.**

360 As used in this chapter:

361 (1) "Average weekly wages" means the average weekly wages as determined under

362 Section 34A-2-409.

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

365 (a) any injured employee; or

366 (b) the dependents of any deceased employee.

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

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

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

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

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

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

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

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

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

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

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

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

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

396 Section 19. Section **34A-2-107** is amended to read:

397 **34A-2-107. Appointment of workers' compensation advisory council --**
398 **Composition -- Terms of members -- Duties -- Compensation.**

399 (1) The commissioner shall appoint a workers' compensation advisory council

400 composed of:

401 (a) the following voting members:

402 (i) five employer representatives; and

403 (ii) five employee representatives; and

404 (b) the following nonvoting members:

405 (i) a representative of the [~~Workers' Compensation Fund~~] designated residual market
406 carrier or assigned risk § [pool] PLAN § implemented in accordance with Section 31A-33a-103;

407 (ii) a representative of a private insurance carrier;

408 (iii) a representative of health care providers;

409 (iv) the Utah insurance commissioner or the insurance commissioner's designee; and

410 (v) the commissioner or the commissioner's designee.

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

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

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

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

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

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

427 (a) the Utah workers' compensation and occupational disease laws;

428 (b) the administration of the laws described in Subsection (5)(a); and

429 (c) rules related to the laws described in Subsection (5)(a).

430 (6) Regarding workers' compensation, rehabilitation, and reemployment of employees

431 who are disabled because of an industrial injury or occupational disease the council shall:

432 (a) offer advice on issues requested by:

433 (i) the commission;

434 (ii) the division; and

435 (iii) the Legislature; and

436 (b) make recommendations to:

437 (i) the commission; and

438 (ii) the division.

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

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

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

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

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

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

453 Section 20. Section **34A-2-201** is amended to read:

454 **34A-2-201. Employers to secure workers' compensation benefits for employees --**
455 **Methods.**

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

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

460 [~~(2)~~] (1) insuring, and keeping insured, the payment of this compensation with any
461 stock corporation or mutual association authorized to transact the business of workers'

462 compensation insurance in this state, including the designated residual market carrier or
463 through the assigned risk plan implemented in accordance with Section 31A-33a-103; or
464 [~~3~~] (2) obtaining approval from the division in accordance with Section 34A-2-201.5
465 to pay direct compensation as a self-insured employer in the amount, in the manner, and when
466 due as provided for in this chapter or Chapter 3, Utah Occupational Disease Act.

467 Section 21. Section **34A-2-203** is amended to read:

468 **34A-2-203. Payment of premiums by state department, commission, board, or**
469 **other agency.**

470 Each department, commission, board, or other agency of the state shall pay the
471 insurance premium on its employees direct to the [~~Workers' Compensation Fund~~] designated
472 residual market carrier or through the assigned risk plan implemented in accordance with
473 Section 31A-33a-103.

474 Section 22. Section **34A-2-211** is amended to read:

475 **34A-2-211. Notice of noncompliance to employer -- Enforcement power of**
476 **division -- Penalty.**

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

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

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

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

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

492 (ii) if the division believes that an employer of one or more employees is conducting

493 business without securing the payment of benefits in one of the three ways provided in Section
494 34A-2-201.

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

496 (i) \$1,000; or

497 (ii) three times the amount of the premium the employer would have paid for workers'
498 compensation insurance based on the rate filing of the [~~Workers' Compensation Fund~~] residual
499 market carrier designated under Section 31A-33a-103 or as determined by the commissioner
500 under an assigned risk plan, during the period of noncompliance.

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

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

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

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

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

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

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

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

523 (i) the amount of the uncollected penalty;

- 524 (ii) reasonable attorneys' fees;
525 (iii) costs of collection; and
526 (iv) court costs.
- 527 (c) The filed abstract shall have the effect of a judgment of that court.
- 528 (6) Any administrative action issued by the division under this section shall:
- 529 (a) be in writing;
- 530 (b) be sent by certified mail to the last-known address of the employer;
- 531 (c) state the findings and administrative action of the division; and
- 532 (d) specify its effective date, which may be immediate or may be at a later date.
- 533 (7) The final order of the commission under this section, upon application by the
534 division on behalf of the commission made on or after the effective date of the order to a court
535 of general jurisdiction in any county in this state, may be enforced by an order to comply
536 entered ex parte and without notice by the court.

537 Section 23. Section **34A-2-406** is amended to read:

538 **34A-2-406. Exemptions from chapter for employees temporarily in state --**
539 **Conditions -- Evidence of insurance.**

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

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

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

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

549 (ii) the ~~[Workers' Compensation Fund]~~ designated residual market carrier or through an
550 assigned risk plan implemented in accordance with Section 31A-33a-103:

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

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

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

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

562 Section 24. Section **49-11-621** is enacted to read:

563 **49-11-621. Withdrawal of independent corporations.**

564 (1) Notwithstanding any other provision of this title, an independent corporation, as
 565 defined in Section 63E-1-102, which participates in a system or plan prior to January 1, § [2005]
 565a **2006 §** ,

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

567 (a) the independent corporation shall comply with the provisions of Title 63E, Chapter
 568 2, Independent Corporations Act;

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

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

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

576 (2) The independent corporation shall elect to:

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

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

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

585 (4) The independent corporation may create an alternative retirement program for its

586 employees not covered by a system or plan in accordance with its election under Subsection
587 (2).

588 Section 25. Section **51-7-2** is amended to read:

589 **51-7-2. Exemptions from chapter.**

590 The following funds are exempt from this chapter:

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

594 [~~(2) funds of the Workers' Compensation Fund;~~]

595 [~~(3)~~] (2) funds of the Utah State Retirement Board;

596 [~~(4)~~] (3) funds of the Utah Technology Finance Corporation; and

597 [~~(5)~~] (4) funds of the Utah Housing Corporation.

598 Section 26. Section **51-7-4** is amended to read:

599 **51-7-4. Transfer of functions, powers, and duties relating to public funds to state**
600 **treasurer -- Exceptions -- Deposit of income from investment of state money.**

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

607 (a) funds assigned to the Utah State Retirement Board for investment under Section
608 49-11-302;

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

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

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

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

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

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

619 (e) trust funds established by judicial order; and
620 [~~(f) funds of the Workers' Compensation Fund; and~~]

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

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

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

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

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

631 Section 27. Section **59-9-101** is amended to read:

632 **59-9-101. Tax basis -- Rates -- Exemptions.**

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

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

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

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

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

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

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

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

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

654 (b) Total workers' compensation premium income means the net written premium as
655 calculated before any premium reduction for any insured employer's deductible, retention, or
656 reimbursement amounts and also those amounts equivalent to premiums as provided in Section
657 34A-2-202.

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

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

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

667 (iii) an amount of up to 0.50% and any remaining assessed percentage of the premium
668 income to the state treasurer for credit to the Uninsured Employers' Fund created under Section
669 34A-2-704.

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

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

677 (iii) The actuary shall recommend a premium assessment rate sufficient to provide
678 payments of benefits and expenses from the Uninsured Employers' Fund and to maintain it at a

679 funded condition with assets equal to or greater than liabilities.

680 (iv) At the end of each fiscal year the minimum approximate assets in the Employers'
681 Reinsurance Fund shall be \$5,000,000 which amount shall be adjusted each year beginning in
682 1990 by multiplying by the ratio that the total workers' compensation premium income for the
683 preceding calendar year bears to the total workers' compensation premium income for the
684 calendar year 1988.

685 (v) The requirements of Subsection (2)(d)(iv) cease when the future annual
686 disbursements from the Employers' Reinsurance Fund are projected to be less than the
687 calculations of the corresponding future minimum required assets. The Labor Commission
688 shall, after a public hearing, determine if the future annual disbursements are less than the
689 corresponding future minimum required assets from projections provided by the actuary.

690 (vi) At the end of each fiscal year the minimum approximate assets in the Uninsured
691 Employers' Fund shall be \$2,000,000, which amount shall be adjusted each year beginning in
692 1990 by multiplying by the ratio that the total workers' compensation premium income for the
693 preceding calendar year bears to the total workers' compensation premium income for the
694 calendar year 1988.

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

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

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

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

709 (4) Beginning July 1, 1986, former county mutuals and former mutual benefit

710 associations shall pay the premium tax or assessment due under this chapter. All premiums
711 received after July 1, 1986, shall be considered in determining the tax or assessment.

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

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

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

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

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

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

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

723 and

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

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

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

730 Section 28. Section **59-9-101.3** is amended to read:

731 **59-9-101.3. Employers' Reinsurance Fund special assessment.**

732 (1) For purposes of this section:

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

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

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

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

739 (2) (a) For calendar years beginning on January 1, 2002, through December 31, 2004,
740 the following shall pay to the commission, on or before March 31 of each year, an assessment

741 imposed by the Labor Commission under Subsection (3):

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

745 (ii) a public agency insurance mutual that is authorized under Sections 34A-2-201 and
746 34A-2-201.5 to pay workers' compensation direct; and

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

749 (b) The assessment imposed under Subsection (3) shall be in addition to:

750 (i) the premium assessment imposed under Subsection 59-9-101(2); and

751 (ii) the assessment imposed under Section 34A-2-202.

752 (3) (a) If the conditions described in Subsection (3)(b) are met, the Labor Commission
753 may impose an assessment in accordance with Subsections (3)(c) and (d) of up to 2% of:

754 (i) the total workers' compensation premium income received by the insurer from
755 workers' compensation insurance in this state during the preceding calendar year; or

756 (ii) if authorized under Sections 34A-2-201 and 34A-2-201.5 to pay workers'
757 compensation direct, the amount calculated under Section 34A-2-202 for a self-insured
758 employer that is equivalent to the total workers' compensation premium income.

759 (b) The Labor Commission may impose the assessment described in Subsection (3)(a)
760 if:

761 (i) the Labor Commission determines that:

762 (A) all admitted insurers writing workers' compensation insurance in this state shall
763 pay the maximum 7.25% of the premium income under Subsection 59-9-101(2)(c)(i); and

764 (B) all self-insured employers shall pay the maximum 7.25% assessment under Section
765 34A-2-202; and

766 (ii) the maximum 7.25% of the premium income is insufficient to:

767 (A) provide payment of benefits and expenses from the Employers' Reinsurance Fund
768 to project a funded condition of the Employers' Reinsurance Fund with assets greater than
769 liabilities by no later than June 30, 2025; or

770 (B) maintain the minimum approximate assets required in Subsection
771 59-9-101(2)(d)(iv).

772 (c) On or before each October 15 of the preceding year and following a public hearing,
773 the Labor Commission shall determine:

- 774 (i) whether an assessment will be imposed under this section for a calendar year; and
- 775 (ii) if the assessment will be imposed, the percentage of the assessment applicable for
776 the calendar year.

777 (d) The Labor Commission shall:

778 (i) base its determination on the recommendations of the qualified actuary required in
779 Subsection 59-9-101(2)(d)(i); and

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

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

785 (5) The commission shall promptly remit the assessment collected under Subsection
786 (2) to the state treasurer for credit to the Employers' Reinsurance Fund created under Section
787 34A-2-702.

788 Section 29. Section **63-5b-102** is amended to read:

789 **63-5b-102. Definitions.**

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

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

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

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

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

797 (3) "Department" means the Department of Administrative Services, the Department of
798 Agriculture and Food, the Alcoholic Beverage Control Commission, the Department of
799 Commerce, the Department of Community and Economic Development, the Department of
800 Corrections, the Department of Environmental Quality, the Department of Financial
801 Institutions, the Department of Health, the Department of Human Resource Management, the
802 Department of Workforce Services, the Labor Commission, the National Guard, the

803 Department of Insurance, the Department of Natural Resources, the Department of Public
804 Safety, the Public Service Commission, the Department of Human Services, the State Tax
805 Commission, the Department of Transportation, any other major administrative subdivisions of
806 state government, the State Board of Education, the State Board of Regents, the Utah Housing
807 Corporation, the Utah Technology Finance Corporation, [~~the Workers' Compensation Fund,~~
808 the State Retirement Board, and each institution of higher education within the system of
809 higher education.

810 (4) "Disaster" means a situation causing, or threatening to cause, widespread damage,
811 social disruption, or injury or loss of life or property resulting from attack, internal disturbance,
812 natural phenomenon, or technological hazard.

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

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

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

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

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

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

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

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

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

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

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

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

838 (16) "Unavailable" means:

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

842 (b) as otherwise defined by local ordinance.

843 Section 30. Section **63-38a-102** is amended to read:

844 **63-38a-102. Definitions.**

845 As used in this chapter:

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

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

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

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

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

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

860 (iii) revenues from any contracts; and

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

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

- 865 (4) (a) "Fixed collections revenues" means revenue from collections:
 866 (i) fixed by law or by the appropriation act at a specific amount; and
 867 (ii) required by law to be deposited into a separate line item and program.
 868 (b) "Fixed collections" does not mean:
 869 (i) federal revenues and the related pass through or the related state match paid by one
 870 agency to another;
 871 (ii) revenues that are not deposited in governmental funds;
 872 (iii) revenues from any contracts; and
 873 (iv) revenues received by the Attorney General's Office from billings for professional
 874 services.
- 875 (5) (a) "Governmental fund" means funds used to account for the acquisition, use, and
 876 balances of expendable financial resources and related liabilities using a measurement focus
 877 that emphasizes the flow of financial resources.
- 878 (b) "Governmental fund" does not include internal service funds, enterprise funds,
 879 capital projects funds, debt service funds, or trust and agency funds as established in Section
 880 51-5-4.
- 881 (6) "Independent agency" means the Utah State Retirement Office, the Utah Housing
 882 Corporation, and the Utah Technology Finance Corporation~~, and the Workers' Compensation~~
 883 ~~Fund~~].
- 884 (7) "Program" means the function or service provided by an agency for which the
 885 agency collects fees.
- 886 (8) "Revenue types" means the categories established by the Division of Finance under
 887 the authority of this chapter that classify revenue according to the purpose for which it is
 888 collected.

889 Section 31. Section **63-55b-131** is amended to read:

890 **63-55b-131. Repeal dates, Title 31A.**

- 891 (1) Section 31A-22-626 is repealed July 1, 2004.
 892 (2) Section 31A-23a-415 is repealed July 1, 2006.
 893 (3) Section 31A-33-109 is repealed July 1, § [2012] 2013 § .

894 Section 32. Section **63E-1-102** is amended to read:

895 **63E-1-102. Definitions.**

896 As used in this title:

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

898 (2) "Committee" means the Retirement and Independent Entities Committee created in
899 Section 63E-1-201.

900 (3) "Independent corporation" means a corporation incorporated in accordance with
901 Chapter 2, Independent Corporations Act.

902 (4) (a) "Independent entity" means an entity having a public purpose relating to the
903 state or its citizens that is individually created by the state or is given by the state the right to
904 exist and conduct its affairs as an:

905 (i) independent state agency; or

906 (ii) independent corporation.

907 (b) "Independent entity" includes the:

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

909 (ii) Utah Technology Finance Corporation created in Title 9, Chapter 13, Utah
910 Technology and Small Business Finance Act;

911 (iii) Heber Valley Railroad Authority created in Title 9, Chapter 3, Part 3, Heber
912 Valley Historic Railroad Authority;

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

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

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

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

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

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

925 [~~(x)~~ (ix) Utah Communications Agency Network created in Title 63C, Chapter 7, Utah
926 Communications Agency Network Act; and

927 [~~(xi)~~] (x) Utah Capital Investment Corporation created in Title 9, Chapter 2, Part 19,
928 Utah Venture Capital Enhancement Act.

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

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

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

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

933 (iv) a local school district;

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

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

937 (5) "Independent state agency" means an entity that is created by the state, but is
938 independent of the governor's direct supervisory control.

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

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

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

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

943 (7) "Public corporation" means an artificial person, public in ownership, individually
944 created by the state as a body politic and corporate for the administration of a public purpose
945 relating to the state or its citizens.

946 (8) "Quasi-public corporation" means an artificial person, private in ownership,
947 individually created as a corporation by the state which has accepted from the state the grant of
948 a franchise or contract involving the performance of a public purpose relating to the state or its
949 citizens.

950 Section 33. Section **63E-1-203** is amended to read:

951 **63E-1-203. Exemption from committee activities.**

952 Notwithstanding the other provisions of this Part 2 and Subsection 63E-1-102(4), the
953 [~~following independent entities are~~] Utah Housing Corporation created in Title 9, Chapter 4,
954 Part 9, Utah Housing Corporation Act, is exempt from the study by the committee under
955 Section 63E-1-202[?].

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

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

960 Section 34. Section **67-4-2** is amended to read:

961 **67-4-2. Definitions.**

962 As used in this chapter:

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

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

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

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

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

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

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

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

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

981 Section 35. **Repealer.**

982 This bill repeals:

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

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

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

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

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

- 989 Section 31A-33-104, Workers' Compensation Fund exempted.
- 990 Section 31A-33-105, Price of insurance -- Liability of state.
- 991 Section 31A-33-106, Board of directors -- Status of the fund in relationship to the
- 992 **state.**
- 993 Section 31A-33-107, Duties of board -- Creation of subsidiaries -- Entering into
- 994 **joint enterprises.**
- 995 Section 31A-33-108, Powers and duties of chief executive officer.
- 996 Section 31A-33-110, Audits and examinations required.
- 997 Section 31A-33-111, Adoption of rates.
- 998 Section 31A-33-112, Withdrawal of policyholders.
- 999 Section 31A-33-113, Cancellation of policies.
- 1000 Section 31A-33-114, Premium assessment.
- 1001 Section 31A-33-115, Interest and costs of collecting delinquent premium.
- 1002 Section 31A-33-116, Dividends.
- 1003 Section 31A-33-117, Availability of employers' reports.
- 1004 Section 36. **Effective date.**
- 1005 This bill takes effect on § [~~March 3~~] MAY 5 § , 2005.

Legislative Review Note
as of 2-6-04 8:45 AM

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

Office of Legislative Research and General Counsel