

**Representative Jeff Alexander** proposes the following substitute bill:

**WORKERS' COMPENSATION AMENDMENTS**

2004 GENERAL SESSION

STATE OF UTAH

**Sponsor: Curtis S. Bramble**

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**LONG TITLE**

**General Description:**

This bill modifies the Insurance Code by modifying the enabling provisions of the Workers' Compensation Fund and its subsidiaries.

**Highlighted Provisions:**

This bill:

- ▶ provides Workers' Compensation Fund Responsibilities for the residual market; **Ĥ [and]**
- ▶ **AMENDS DEFINITIONS; AND ĥ**
- ▶ regulates a subsidiary of the fund **Ĥ [-] ; AND**
- ▶ **PROVIDES FOR CERTAIN AUDITING BY UTAH'S INSURANCE COMMISSIONER FOR**

**COMPLIANCE WITH CERTAIN SUBSIDIARY LIMITATIONS. ĥ**

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**Ĥ 31A-2-212, AS LAST AMENDED BY CHAPTER 265, LAWS OF UTAH 1997 ĥ**

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

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

**Ĥ 63E-1-102, AS LAST AMENDED BY CHAPTERS 8 AND 291, LAWS OF UTAH 2003 ĥ**



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

23a **Ĥ Section 1. Section 31A-2-212 is amended to read:**

23b **31A-2-212. Miscellaneous duties.**

23c **(1) Upon issuance of any order limiting, suspending, or revoking an insurer's authority to do**  
 23d **business in Utah, and on institution of any proceedings against the insurer under Chapter 27, the**  
 23e **commissioner shall notify by mail all agents of the insurer of whom the commissioner has record. The**  
 23f **commissioner may also publish notice of the order in any manner he considers necessary to protect**  
 23g **the rights of the public.**

23h **(2) When required for evidence in any legal proceeding, the commissioner shall furnish a**  
 23i **certificate of the authority of any licensee to transact insurance business in Utah on any particular**  
 23j **date. The court or other officer shall receive the certificate in lieu of the commissioner's testimony.**

23k **(3) The commissioner shall obtain and publish tables showing the average expectancy of life,**  
 23l **the values of annuities, and of life and term estates. These tables shall be for the use of courts and**  
 23m **appraisers in Utah.**

23n **(4) On the request of any insurer authorized to do a surety business, the commissioner shall**  
 23o **mail a certified copy of the insurer's certificate of authority to any designated public officer in this**  
 23p **state who requires that certificate before accepting a bond. That public officer shall file the certificate.**  
 23q **After a certified copy of a certificate of authority has been furnished to a public officer, it is not**  
 23r **necessary, while the certificate remains effective, to attach a copy of it to any instrument of suretyship**  
 23s **filed with that public officer. Whenever the commissioner revokes the certificate of authority or starts**  
 23t **proceedings under Chapter 27 against any insurer authorized to do a surety business, the**  
 23u **commissioner shall immediately give notice of that action to each officer who was sent a certified**  
 23v **copy under this subsection.**

23w **(5) When an authorized insurer doing a surety business has filed a petition for receivership, is**  
 23x **in receivership, or the commissioner has reason to believe the company is in financial difficulty, or**  
 23y **has unreasonably failed to carry out any of its contracts, the commissioner shall immediately notify**  
 23z **every judge and clerk of all courts of record in the state. Upon the receipt of the notice it is the duty of**  
 23aa **the judges and clerks to notify and require every person that has filed with the court a bond on which**  
 23ab **the company is surety, to immediately file a new bond with a new surety.**

23ac **(6) The commissioner shall require an insurer that issues, sells, renews, or offers health**  
 23ad **insurance coverage in this state to comply with the Health Insurance Portability and Accountability**  
 23ae **Act, P.L. 104-191, pursuant to 110 Stat. 1968, Sec. 2722.**

23af **(7) (a) THE COMMISSIONER SHALL EXAMINE AND AUDIT EACH SUBSIDIARY OF THE**  
 23ag **WORKERS' COMPENSATION FUND TO ENSURE COMPLIANCE WITH THE PROVISIONS OF**  
 23ah **SUBSECTION 31A-33-103.5(6) RELATED TO WORKERS' COMPENSATION FUND SUBSIDIARY**  
 23ai **REQUIREMENTS AND LIMITATIONS.**

23aj **(b) THE AUDIT UNDER SUBSECTION (7)(a), SHALL BE PERFORMED AT LEAST EVERY TWO**  
 23ak **YEARS.** **ĥ**

24 Section **Ĥ [±] 2 ĥ** . Section **31A-33-102** is amended to read:

25 **31A-33-102. Establishment of the Workers' Compensation Fund and the Injury**

26 **Fund.**

27 (1) (a) There is created a nonprofit, quasi-public corporation to be known as the  
28 Workers' Compensation Fund created by this chapter.

29 (b) The purpose of the fund is to:

30 (i) insure Utah employers against liability for compensation based on job-related  
31 accidental injuries and occupational diseases; ~~and~~

32 (ii) assure payment of this compensation to Utah employees who are entitled to it under  
33 Title 34A, Chapters 2, Workers' Compensation Act, and 3, Utah Occupational Disease Act[-];  
34 and

35 (iii) write all workers' compensation insurance **H IN ACCORDANCE WITH SECTION**  
35a **31A-33-105 h** for which application is made. **H INCLUDING THE RESIDUAL MARKET. h**  
36 provided:

37 (A) the employer pays for the coverage; and

38 (B) the employer complies with reasonable contractual requirements .

39 (2) (a) There is created an Injury Fund, which shall be maintained by the Workers'  
40 Compensation Fund.

41 (b) The Injury Fund shall consist of all assets acquired from premiums and penalties  
42 paid into the Injury Fund and interest and dividends earned on those assets.

43 (c) The Injury Fund is the sole source of monies to:

44 (i) pay losses sustained on account of the insurance provided; and

45 (ii) pay salaries and other expenses of the Workers' Compensation Fund in accordance  
46 with this chapter.

46a **H (3) IN ACCORDANCE WITH TITLE 63, CHAPTER 46A, UTAH ADMINISTRATIVE RULEMAKING**  
46b **ACT, THE COMMISSIONER SHALL MAKE RULES THAT DEFINE THE RESIDUAL MARKET. h**

47 Section **H [2] 3 h** . Section **31A-33-103.5** is amended to read:

48 **31A-33-103.5. Powers of Fund -- Limitations.**

49 (1) The fund may form or acquire subsidiaries or enter into a joint enterprise:

50 (a) in accordance with Section 31A-33-107; and

51 (b) except as limited by this section and applicable insurance rules and statutes.

52 (2) Subject to applicable insurance rules and statutes, the fund may only offer:

53 (a) workers' compensation insurance in Utah;

54 (b) workers' compensation insurance in a state other than Utah to the extent necessary

55 to:

56 (i) accomplish its purpose under Subsection 31A-33-102(1)(b); and

57 (ii) provide workers' compensation or occupational disease insurance coverage to Utah  
58 employers and their employees engaged in interstate commerce; ~~It~~ **and** ~~it~~

59 (c) workers' compensation products and services in Utah or other states ~~It~~ **;** **AND**

59a **(d) REINSURANCE RELATED TO WORKERS COMPENSATION RISK OF UTAH EMPLOYERS**  
59b **AND THEIR EMPLOYEES, EXCEPT AS LIMITED BY THE LAWS OF ANOTHER JURISDICTION FOR**  
59c **EMPLOYEES OUTSIDE OF THIS STATE.** ~~It~~

60 (3) Subject to applicable insurance rules and statutes, a subsidiary of the fund may:

61 (a) offer workers' compensation insurance coverage only:

62 (i) in a state other than Utah; and

63 (ii) (A) to insure the following against liability for compensation based on job-related  
64 accidental injuries and occupational diseases:

65 (I) an employer, as defined in Section 34A-2-103, that has a majority of its employees,  
66 as defined in Section 34A-2-104, hired or regularly employed in Utah;

67 (II) an employer, as defined in Section 34A-2-103, whose principal administrative  
68 office is located in Utah;

69 (III) a subsidiary or affiliate of an employer described in Subsection (3)(a)(ii)(A)(I) or  
70 (II); or

71 (IV) an employer, as defined in Section 34A-2-103, whose purchase of insurance arises  
72 solely out of the purchase of workers' compensation products and services from the fund or a  
73 fund subsidiary; or

74 (B) for a state fund organization that is not an admitted insurer in the other state:

75 (I) on a fee for service basis; and

76 (II) without bearing any insurance risk; and

77 (b) offer workers' compensation products and services in Utah and other states.

78 (4) The fund shall write workers' compensation insurance in accordance with Section  
79 31A-22-1001 ~~It~~ **, INCLUDING FOR THE RESIDUAL MARKET** ~~it~~ .

80 (5) (a) The fund may enter into a joint enterprise that offers workers' compensation  
81 insurance and other coverage only in the state, provided:

82 (i) the joint enterprise offers only property or liability insurance in addition to workers'  
83 compensation insurance;

84 (ii) the fund may not bear any insurance risk associated with the insurance coverage  
85 other than risk associated with workers' compensation insurance; and

86 (iii) the offer of other insurance shall be part of an insurance program that includes  
87 workers' compensation insurance coverage that is provided by the fund.

88 (b) The fund or a subsidiary of the fund may not offer, or enter into a joint enterprise  
89 that offers, or otherwise participate in the offering of accident and health insurance.

90 (6) A subsidiary of the fund:

91 (a) may not:

92 (i) operate an insurance business ~~it~~ OR SELL INSURANCE ~~it~~ in Utah;

93 (ii) engage in predatory pricing or unfair competitive practices; ~~it~~ [and] OR ~~it~~

94 (iii) be operated in a manner which ~~it~~ [unjustly] UNREASONABLY ~~it~~ enriches fund officers,  
94a employees, or

95 directors;

96 (b) shall:

97 (i) operate on an arms length basis from the fund, in compliance with the provisions of  
98 Title 31A, Chapter 16, Insurance Holding Companies, with agreements between the subsidiary  
99 and the fund having terms no better than similar terms available from a third party unrelated to  
100 either the fund or the subsidiary;

101 (ii) be fully subject to and compliant with the laws and regulatory requirements of the  
102 jurisdictions where business operations occur;

103 (iii) be compliant with all federal and state tax laws, operating on a fully taxable basis  
104 that does not shelter subsidiary income under the fund's federal income tax exemption; and

105 (iv) if the subsidiary is a workers' compensation insurance business operating in a state  
106 other than Utah:

107 (A) cease, as of January 1, 2007, to receive reinsurance from the fund of any risk  
108 insured by the subsidiary not connected to Utah as described under Subsection 3(a)(ii)(A)(I),  
109 (II), or (III); and

110 (B) have a corporate structure that ~~it~~ [permits] REQUIRES ~~it~~ fund policyholders to elect  
110a ~~it~~ ALL ~~it~~ members of the  
111 subsidiary's board of directors and to approve such transactions as the subsidiary's sale, merger,  
112 or dissolution.

112a1 **~~it~~ Section 4. Section 63E-1-102 is amended to read:**

112a **63E-1-102 Definitions.**

112b **As used in this title:**

112c **(1) "Authorizing statute" means the statute creating an entity as an independent entity.**

112d **(2) "Committee" means the Retirement and Independent Entities Committee created in Section**  
112e **63E-1-201.**

112f **(3) "Independent corporation" means a corporation incorporated in accordance with Chapter**  
112g **2, Independent Corporations Act.**

- 112h           **(4) (a) "Independent entity" means an entity having a public purpose relating to the state or its**  
112i **citizens that is individually created by the state or is given by the state the right to exist and conduct**  
112j **its affairs as an:**
- 112k           **(i) independent state agency; or**  
112l           **(ii) independent corporation.**
- 112m           **(b) "Independent entity" includes the:**
- 112n           **(i) Dairy Commission created in Title 4, Chapter 22, Dairy Promotion Act;**  
112o           **(ii) Utah Technology Finance Corporation created in Title 9, Chapter 13, Utah Technology and**  
112p **Small Business Finance Act;**
- 112q           **(iii) Heber Valley Railroad Authority created in Title 9, Chapter 3, Part 3, Heber Valley Historic**  
112r **Railroad Authority;**
- 112s           **(iv) Utah Science Center Authority created in Title 9, Chapter 3, Part 4, Utah Science Center**  
112t **Authority;**
- 112u           **(v) Utah Housing Corporation created in Title 9, Chapter 4, Part 9, Utah Housing Corporation**  
112v **Act;**
- 112w           **(vi) Utah State Fair Corporation created in Title 9, Chapter 4, Part 11, Utah State Fair**  
112x **Corporation Act;**
- 112y           **(vii) Workers' Compensation Fund created in Title 31A, Chapter 33, Workers' Compensation**  
112z **Fund;**
- 112aa           **(viii) Utah State Retirement Office created in Title 49, Chapter 11, Utah State Retirement**  
112ab **Systems Administration;**
- 112ac           **(ix) School and Institutional Trust Lands Administration created in Title 53C, Chapter 1, Part 2,**  
112ad **School and Institutional Trust Lands Administration;**
- 112ae           **(x) Utah Communications Agency Network created in Title 63C, Chapter 7, Utah**  
112af **Communications Agency Network Act; and**
- 112ag           **(xi) Utah Capital Investment Corporation created in Title 9, Chapter 2, Part 19, Utah Venture**  
112ah **Capital Enhancement Act.**
- 112ai           **(c) Notwithstanding this Subsection (4), "independent entity" does not include:**
- 112aj           **(i) the Public Service Commission of Utah created in Section 54-1-1;**  
112ak           **(ii) an institution within the state system of higher education;**  
112al           **(iii) a city, county, or town;**  
112am           **(iv) a local school district;**  
112an           **(v) a special district created under the authority of Title 17A, Special Districts; or**  
112ao           **(vi) a local district created under the authority of Title 17B, Limited Purpose Local**  
112ap **Government Entities.**
- 112aq           **(5) "Independent state agency" means an entity that is created by the state, but is**  
112ar **independent of the governor's direct supervisory control.**
- 112as           **(6) "Monies held in trust" means monies maintained for the benefit of:**
- 112at           **(a) one or more private individuals, including public employees;**  
112au           **(b) one or more public or private entities; or**  
112av           **(c) the owners of a quasi-public corporation.**

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- 112aw           (7) "Public corporation" means an artificial person, public in ownership, individually created  
112ax           by the state as a body politic and corporate for the administration of a public purpose relating to the  
112ay           state or its citizens.
- 112az           (8) "Quasi-public corporation" means an artificial person, WHETHER OR NOT private in  
112ba           ownership, individually created as a corporation by the state which has accepted from the state the  
112bb           grant of a franchise or contract involving the performance of a public purpose relating to the state or  
112bc           its citizens. <sup>h</sup>