

UNINSURED EMPLOYERS' FUND

AMENDMENTS

2004 GENERAL SESSION

STATE OF UTAH

Sponsor: Ed P. Mayne

LONG TITLE

General Description:

This bill modifies provisions related to the Uninsured Employers' Fund.

Highlighted Provisions:

This bill:

- ▶ clarifies the monies deposited into the Uninsured Employers' Fund;
- ▶ clarifies application of the section to employers that are unable to cover workers'

compensation liabilities;

- ▶ modifies the limitation of a three-year period for assessing self-insured employers;

and

- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

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-2-704** is amended to read:

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

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

S.B. 83

Enrolled Copy

Fund has the purpose of 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) The Uninsured Employers' Fund succeeds to all monies previously held in the Default Indemnity Fund.

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

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

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

(c) (i) The state treasurer is the custodian of the Uninsured Employers' Fund[~~, and the~~].

(ii) The administrator shall make provisions for and direct [its] distribution from the Uninsured Employers' Fund.

(3) Reasonable costs of administering the Uninsured Employers' Fund or other fees required to be paid by the Uninsured Employers' Fund may be paid from the Uninsured Employers' Fund.

(4) The state treasurer shall:

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

and

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

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

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

(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 meeting a condition listed in Subsection (1)(a)(i)(B) 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 meeting a condition listed in Subsection (1)(a)(i)(B).

(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 that meets a condition listed in Subsection (1)(a)(i)(B);

(ii) [~~an insolvent~~] a public agency insurance mutual, as defined in Section 31A-1-103, that meets a condition listed in Subsection (1)(a)(i)(B); 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 that meets a condition listed in Subsection (1)(a)(i)(B).

(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 that meets a condition listed in Subsection (1)(a)(i)(B) was duly joined as a party, shall:

(i) order the [~~uninsured~~] employer that meets a condition listed in Subsection (1)(a)(i)(B) 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 that meets a condition listed in Subsection (1)(a)(i)(B) 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~~] a condition listed in Subsection (1)(a)(i)(B) occurring;

(B) the expenses of handling covered claims subsequent to [~~an insolvency~~] a condition listed in Subsection (1)(a)(i)(B) occurring;

(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~~] meets a condition listed in Subsection (1)(a)(i)(B); or

(B) if the [~~insolvent~~] self-insured employer that meets a condition described in Subsection (1)(a)(i)(B) 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 self-insured employer's assessment not later than 30 days before the day on which 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 that meet a condition listed in Subsection (1)(a)(i)(B), 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~~] the day on which the Uninsured Employers' Fund first pays benefits to an employee described in Subsection (14)(a)(ii) for the self-insured employer that meets a condition listed in Subsection (1)(a)(i)(B).

(f) This Subsection (14) does not apply to claims made against [~~an insolvent~~] a self-insured employer that meets a condition listed in Subsection (1)(a)(i)(B) if the [~~insolvency~~] condition listed in Subsection (1)(a)(i)(B) 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 against all self-insured employers as provided in Subsection (14).

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

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

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

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

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

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

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

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

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

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

(19) The Uninsured Employers' Fund:

(a) shall be:

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

(A) the purpose of assisting in the payment of workers' compensation benefits in accordance with Subsection (1); and

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

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

- (II) fees required to be paid by the Uninsured Employers' Fund; 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 Uninsured Employers' Fund; or
 - (ii) any activity of the commission other than an activity described in Subsection (19)(a).

(20) (a) For purposes of Subsection (1), an employment relationship is localized in the state if:

- (i) (A) the employer who is liable for the benefits has a business premise in the state; and
- (B) (I) the contract for hire is entered into in the state; or
- (II) the employee regularly performs work duties in the state for the employer who is liable for the benefits; or
- (ii) the employee is:
 - (A) a resident of the state; and
 - (B) regularly performs work duties in the state for the employer who is liable for the benefits.

(b) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the commission shall by rule define what constitutes regularly performing work duties in the state.