

28 **34A-2-704. Uninsured Employers' Fund.**

29 (1) (a) There is created an Uninsured Employers' Fund. The Uninsured Employers'
30 Fund has the purpose of assisting in the payment of workers' compensation benefits to any
31 person entitled to the benefits, if:

32 (i) that person's employer:

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

34 (B) (I) becomes or is insolvent;

35 (II) appoints or has appointed a receiver; or

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

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

40 (b) The Uninsured Employers' Fund succeeds to all monies previously held in the
41 Default Indemnity Fund.

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

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

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

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

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

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

56 (4) The state treasurer shall:

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

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

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

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

66 (i) the attorney general; or

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

68 (A) any investigation, hearing, or trial under this chapter or Chapter 3, Utah
69 Occupational Disease Act, is pending;

70 (B) the employee resides; or

71 (C) an employer:

72 (I) resides; or

73 (II) is doing business.

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

79 (7) (a) The receiver, trustee, liquidator, or statutory successor of an [~~insolvent~~]
80 employer meeting a condition listed in Subsection (1)(a)(i)(B) is bound by settlements of
81 covered claims by the Uninsured Employers' Fund.

82 (b) The court with jurisdiction shall grant all payments made under this section a
83 priority equal to that to which the claimant would have been entitled in the absence of this
84 section against the assets of the [~~insolvent~~] employer meeting a condition listed in Subsection
85 (1)(a)(i)(B).

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

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

- 90 (i) an [~~insolvent~~] employer that meets a condition listed in Subsection (1)(a)(i)(B);
- 91 (ii) [~~an insolvent~~] a public agency insurance mutual, as defined in Section 31A-1-103,
92 that meets a condition listed in Subsection (1)(a)(i)(B); or
- 93 (iii) an insolvent insurance carrier.
- 94 (b) The information required to be filed under Subsection (8)(a) is:
- 95 (i) statements of the covered claims paid by the Uninsured Employers' Fund; and
- 96 (ii) estimates of anticipated claims against the Uninsured Employers' Fund.
- 97 (c) The filings under this Subsection (8) shall preserve the rights of the Uninsured
98 Employers' Fund for claims against the assets of the [~~insolvent~~] employer that meets a
99 condition listed in Subsection (1)(a)(i)(B).
- 100 (9) When any injury or death for which compensation is payable from the Uninsured
101 Employers' Fund has been caused by the wrongful act or neglect of another person not in the
102 same employment, the Uninsured Employers' Fund has the same rights as allowed under
103 Section 34A-2-106.
- 104 (10) The Uninsured Employers' Fund, subject to approval of the administrator, shall
105 discharge its obligations by:
- 106 (a) adjusting its own claims; or
- 107 (b) contracting with an adjusting company, risk management company, insurance
108 company, or other company that has expertise and capabilities in adjusting and paying workers'
109 compensation claims.
- 110 (11) (a) For the purpose of maintaining the Uninsured Employers' Fund, an
111 administrative law judge, upon rendering a decision with respect to any claim for workers'
112 compensation benefits in which an [~~uninsured~~] employer that meets a condition listed in
113 Subsection (1)(a)(i)(B) was duly joined as a party, shall:
- 114 (i) order the [~~uninsured~~] employer that meets a condition listed in Subsection
115 (1)(a)(i)(B) to reimburse the Uninsured Employers' Fund for all benefits paid to or on behalf of
116 an injured employee by the Uninsured Employers' Fund along with interest, costs, and
117 attorneys' fees; and
- 118 (ii) impose a penalty against the [~~uninsured~~] employer that meets a condition listed in
119 Subsection (1)(a)(i)(B) of 15% of the value of the total award in connection with the claim that
120 shall be paid into the Uninsured Employers' Fund.

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

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

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

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

132 (A) the obligations of the Uninsured Employers' Fund subsequent to [~~an insolvency~~] a
133 condition listed in Subsection (1)(a)(i)(B) occurring;

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

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

137 (D) other expenses authorized by this section.

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

139 (A) a self-insured employer, as defined in Section 34A-2-201.5, that [~~is insolvent~~]
140 meets a condition listed in Subsection (1)(a)(i)(B); or

141 (B) if the [~~insolvent~~] self-insured employer that meets a condition described in
142 Subsection (1)(a)(i)(B) is a public agency insurance mutual, a member of the public agency
143 insurance mutual.

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

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

149 (d) (i) A self-insured employer may not be assessed in any year an amount greater than
150 2% of that self-insured employer's manual premium for the preceding calendar year.

151 (ii) If the maximum assessment does not provide in any one year an amount sufficient

152 to make all necessary payments from the Uninsured Employers' Fund for one or more
153 [~~insolvent~~] self-insured employers that meet a condition listed in Subsection (1)(a)(i)(B), the
154 unpaid portion shall be paid as soon as funds become available.

155 (e) All self-insured employers are liable under this section for a period not to exceed
156 three years after [~~the self-insured employer's voluntary or involuntary termination of~~
157 ~~self-insurance privileges within this state~~] the day on which the Uninsured Employers' Fund
158 first pays benefits to an employee described in Subsection (14)(a)(ii) for the self-insured
159 employer that meets a condition listed in Subsection (1)(a)(i)(B).

160 (f) This Subsection (14) does not apply to claims made against [~~an insolvent~~] a
161 self-insured employer that meets a condition listed in Subsection (1)(a)(i)(B) if the [~~insolvency~~]
162 condition listed in Subsection (1)(a)(i)(B) occurred prior to July 1, 1986.

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

166 (i) a self-insured employer; or

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

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

171 (i) that self-insured employer; or

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

174 (c) The cost of the examination ordered under Subsection (15)(b) shall be assessed
175 against all self-insured employers as provided in Subsection (14).

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

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

182 (b) The claim described in Subsection (16)(a) is presumed to be valid up to the full

183 amount of workers' compensation benefits claimed by the employee or the employee's
184 dependents.

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

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

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

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

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

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

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

198 (19) The Uninsured Employers' Fund:

199 (a) shall be:

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

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

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

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

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

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

207 (b) may not be used for:

208 (i) administrative costs unrelated to the Uninsured Employers' Fund; or

209 (ii) any activity of the commission other than an activity described in Subsection
210 (19)(a).

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

213 (i) (A) the employer who is liable for the benefits has a business premise in the state;

214 and
215 (B) (I) the contract for hire is entered into in the state; or
216 (II) the employee regularly performs work duties in the state for the employer who is
217 liable for the benefits; or
218 (ii) the employee is:
219 (A) a resident of the state; and
220 (B) regularly performs work duties in the state for the employer who is liable for the
221 benefits.
222 (b) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
223 commission shall by rule define what constitutes regularly performing work duties in the state.

Legislative Review Note
as of 12-17-03 2:31 PM

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

Office of Legislative Research and General Counsel

Fiscal Note
Bill Number SB0083

Uninsured Employers' Fund Amendments

23-Jan-04

3:52 PM

AMENDED NOTE

State Impact

No significant fiscal impact. Amounts recovered by the Fund from self insured entities will in most years not increase, but in some years there could be several thousand dollars additional recovered.

Individual and Business Impact

The bill will result in savings for employers in general while increasing costs for self insured employers when covered by the criteria outlined in the bill.

Office of the Legislative Fiscal Analyst