

Representative Jeff Alexander proposes the following substitute bill:

WORKERS' COMPENSATION AMENDMENTS

2004 GENERAL SESSION

STATE OF UTAH

Sponsor: Curtis S. Bramble

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; and
- ▶ regulates a subsidiary of the fund.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

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

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

Section 1. Section **31A-33-102** is amended to read:

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 for which application is made,
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.

47 Section 2. 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; and

59 (c) workers' compensation products and services in Utah or other states.

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.

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 in Utah;

93 (ii) engage in predatory pricing or unfair competitive practices; and

94 (iii) be operated in a manner which unjustly enriches fund officers, 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 permits fund policyholders to elect members of the
111 subsidiary's board of directors and to approve such transactions as the subsidiary's sale, merger,
112 or dissolution.