

Representative Greg J. Curtis 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 the Workers' Compensation Fund's responsibilities for the residual market;
- ▶ amends definitions;
- ▶ limits the Workers' Compensation Fund's subsidiaries and the fund's transactions with those subsidiaries;
- ▶ requires certain officer and director gross salary information to be public information;
- ▶ modifies the membership of the fund's board of directors; and
- ▶ authorizes the fund to hire its own legal counsel.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:



- 26 **31A-33-102**, as last amended by Chapter 222, Laws of Utah 2000
- 27 **31A-33-103**, as last amended by Chapter 222, Laws of Utah 2000
- 28 **31A-33-103.5**, as last amended by Chapters 33 and 116, Laws of Utah 2001
- 29 **31A-33-104**, as last amended by Chapter 33, Laws of Utah 2001
- 30 **31A-33-106**, as last amended by Chapters 176 and 186, Laws of Utah 2002
- 31 **31A-33-107**, as last amended by Chapter 130, Laws of Utah 1999
- 32 **31A-33-108**, as last amended by Chapter 252, Laws of Utah 2003



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

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

36 **31A-33-102. Establishment of the Workers' Compensation Fund and the Injury**
37 **Fund.**

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

40 (b) The purpose of the ~~[fund]~~ Workers' Compensation Fund is to:

41 (i) insure Utah employers against liability for compensation based on job-related
42 accidental injuries and occupational diseases; ~~[and]~~

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

46 (iii) be the insurance carrier through which the residual market may obtain workers'
47 compensation coverage.

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

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

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

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

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

56 Section 2. Section **31A-33-103** is amended to read:

57 **31A-33-103. Legal nature of Workers' Compensation Fund.**

58 (1) The Workers' Compensation Fund is:

59 (a) a nonprofit, self-supporting, quasi-public corporation; and

60 (b) a legal entity, that may sue and be sued in its own name.

61 (2) All of the business and affairs of the corporation shall be conducted in the name of
62 the Workers' Compensation Fund or if conducted through a subsidiary, such other corporate
63 names that comply with state law.64 (3) The definition of a "Quasi-public corporation" provided in Section 63E-1-102 does
65 not apply to a nonprofit quasi-public corporation.66 Section 3. Section **31A-33-103.5** is amended to read:67 **31A-33-103.5. Powers of Fund -- Limitations.**

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

69 (a) in accordance with Section 31A-33-107; [~~and~~]70 (b) except as limited by this section and applicable insurance rules and statutes[~~;~~]; and71 (c) provided that the policyholders of the Workers' Compensation Fund shall:72 (i) elect the members of the board of directors of a subsidiary;73 (ii) approve the articles of incorporation of a subsidiary, including amendments to the
74 articles; and75 (iii) approve any extraordinary transactions, including a sale, merger, or dissolution.

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

77 (a) workers' compensation insurance in Utah;

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

79 to:

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

81 (ii) provide workers' compensation or occupational disease insurance coverage to Utah
82 employers and their employees engaged in interstate commerce; and

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

84 (3) [~~Subject to applicable insurance rules and statutes, a subsidiary of the~~] The fund
85 may[~~:(a) offer~~] not own a subsidiary that offers workers' compensation insurance coverage
86 [~~only~~] or any other kind of coverage in Utah, however, the fund may own subsidiaries that
87 offer workers' compensation products and services in Utah and other states.

88 (4) To avoid enabling a subsidiary to compete unfairly with other workers'
89 compensation insurers:
90 (a) a subsidiary of the Workers' Compensation Fund shall be self supporting and may
91 not be subsidized by Workers' Compensation Fund; and
92 (b) a transaction between a subsidiary and Workers' Compensation Fund shall be an
93 arms length transaction and may not give the subsidiary any of the benefit of the Workers'
94 Compensation Fund's tax exempt status.
95 ~~[(i) in a state other than Utah; and]~~
96 ~~[(ii) (A) to insure the following against liability for compensation based on job-related~~
97 ~~accidental injuries and occupational diseases:]~~
98 ~~[(I) an employer, as defined in Section 34A-2-103, that has a majority of its employees,~~
99 ~~as defined in Section 34A-2-104, hired or regularly employed in Utah;]~~
100 ~~[(H) an employer, as defined in Section 34A-2-103, whose principal administrative~~
101 ~~office is located in Utah;]~~
102 ~~[(III) a subsidiary or affiliate of an employer described in Subsection (3)(a)(ii)(A)(I) or~~
103 ~~(H); or]~~
104 ~~[(IV) an employer, as defined in Section 34A-2-103, whose purchase of insurance~~
105 ~~arises solely out of the purchase of workers' compensation products and services from the fund~~
106 ~~or a fund subsidiary; or]~~
107 ~~[(B) for a state fund organization that is not an admitted insurer in the other state:]~~
108 ~~[(I) on a fee for service basis; and]~~
109 ~~[(H) without bearing any insurance risk; and]~~
110 ~~[(b) offer workers' compensation products and services in Utah and other states:]~~
111 ~~[(4)]~~ (5) The fund shall write workers' compensation insurance in accordance with
112 Section 31A-22-1001[-] and shall provide coverage for an employer that:
113 (a) has been declined workers' compensation coverage in the Utah market by two or
114 more workers' compensation carriers;
115 (b) requests coverage from the fund or one of its agents; and
116 (c) pays a reasonable premium.
117 ~~[(5)]~~ (6) (a) The fund may enter into a joint enterprise that offers workers'
118 compensation insurance and other coverage only in the state, provided:

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

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

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

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

127 (7) The fund may not bear any insurance risk associated with a subsidiary or enter a
128 transaction with a subsidiary that would place the fund or the assets it administers at risk,
129 except:

130 (a) the fund may reinsure workers' compensation insurance written in other states by a
131 subsidiary or other insurance company for workers' compensation coverage of:

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

134 (ii) an employer, as defined in Section 34A-2-103, whose principal administrative
135 office is located in Utah; or

136 (iii) a subsidiary of an employer described in Subsection (7)(a)(i) or 7(a)(ii); and

137 (b) until July 1, 2006, the fund may continue to reinsure out-of-state workers'
138 compensation insurance risk of a subsidiary of the fund in any state in which the fund was
139 providing, as of January 1, 2004, reinsurance of workers' compensation risk of employers other
140 than those described in Subsection (7)(a).

141 Section 4. Section **31A-33-104** is amended to read:

142 **31A-33-104. Workers' Compensation Fund exempted.**

143 (1) The Workers' Compensation Fund is exempt from the provisions of:

144 (a) Title 52, Chapter 4, Open and Public Meetings;

145 (b) Title 63, Chapter 2, Government Records Access and Management Act, except that
146 the gross compensation of the officers and directors of the Workers' Compensation Fund and
147 its subsidiaries shall be public information; and

148 (c) Title 63A, Utah Administrative Services Code.

149 (2) The board may specifically exempt the Workers' Compensation Fund from any

150 provisions of:

151 (a) Title 67, Chapter 19, Utah State Personnel Management Act; and

152 (b) Title 63, Chapter 56, Utah Procurement Code.

153 (3) The provisions of Title 63, Chapter 46b, Administrative Procedures Act, do not
154 govern the initial determination of any person's eligibility for benefits under Title 34A, Chapter
155 2, Workers' Compensation Act, and Title 34A, Chapter 3, Utah Occupational Disease Act.

156 Section 5. Section **31A-33-106** is amended to read:

157 **31A-33-106. Board of directors -- Status of the fund in relationship to the state.**

158 (1) There is created a board of directors of the Workers' Compensation Fund.

159 (2) The board shall consist of seven directors.

160 (3) One director:

161 (a) shall be the executive director of the Department of Administrative Services or the
162 executive director's designee; and

163 (b) acts as the representative of the state as a policyholder of the Workers'
164 Compensation Fund.

165 [~~4~~] ~~One director shall be the chief executive officer of the fund.~~]

166 [~~5~~] (4) (a) In accordance with a plan that meets the requirements of this section, the
167 governor, with the consent of the Senate, shall appoint [~~five~~] six public directors as follows:

168 (i) three directors who are owners, officers, or employees of policyholders other than
169 the state, each of whom is an owner, officer, or employee of a policyholder that has been
170 insured by the Workers' Compensation Fund for at least one year before the appointment of the
171 director representing the policyholder, and one of whom represents each of the following:

172 (A) a residual market policyholder;

173 (B) a small to medium size business with less than 150 employees; and

174 (C) a large business with 150 or more employees; and

175 (ii) [~~two~~] three directors from the public in general.

176 (b) The plan described in Subsection (5)(a) shall comply with Section 31A-5-409 to the
177 extent that Section 31A-5-409 does not conflict with this section.

178 [~~6~~] (5) No two directors may represent the same policyholder.

179 [~~7~~] (6) At least four directors appointed by the governor shall have had previous
180 experience in:

- 181 (a) the actuarial profession;
182 (b) accounting;
183 (c) investments;
184 (d) risk management;
185 (e) occupational safety;
186 (f) casualty insurance; or
187 (g) the legal profession.

188 ~~[(8)]~~ (7) Any director who represents a policyholder that fails to maintain workers'
189 compensation insurance through the Workers' Compensation Fund shall immediately resign
190 from the board.

191 ~~[(9)]~~ (8) A person may not be a director if that person:

- 192 (a) has any interest as a stockholder, employee, attorney, or contractor of a competing
193 insurance carrier providing workers' compensation insurance in Utah;
194 (b) fails to meet or comply with the conflict of interest policies established by the
195 board; or
196 (c) is not bondable.

197 ~~[(10)]~~ (9) After notice and a hearing, the governor may remove any director for cause
198 which includes:

- 199 (a) neglect of duty; or
200 (b) malfeasance.

201 ~~[(11)]~~ (10) (a) Except as required by Subsection ~~[(11)]~~ (10)(b), the term of office of the
202 directors appointed by the governor shall be four years, beginning July 1 of the year of
203 appointment.

204 (b) Notwithstanding the requirements of Subsection ~~[(11)]~~ (10)(a), the governor shall,
205 at the time of appointment or reappointment, adjust the length of terms to ensure that the terms
206 of directors are staggered so that approximately half of the board is appointed every two years.

207 ~~[(12)]~~ (11) Each director shall hold office until the director's successor is appointed and
208 qualified.

209 ~~[(13)]~~ (12) When a vacancy occurs in the membership of the board for any reason, the
210 replacement shall be appointed for the unexpired term.

211 ~~[(14)]~~ (13) The board shall annually elect a chair and other officers as needed from its

212 membership.

213 ~~[(15)]~~ (14) (a) The board shall meet at least quarterly at a time and place designated by
214 the chair.

215 (b) The chair:

216 (i) may call board meetings more frequently than quarterly; and

217 (ii) shall call additional board meetings if requested to do so by a majority of the board.

218 ~~[(16)]~~ (15) Four directors are a quorum for the purpose of transacting all business of
219 the board.

220 ~~[(17)]~~ (16) Each decision of the board requires the affirmative vote of at least four
221 directors for approval.

222 ~~[(18)]~~ (17) (a) Directors shall receive no compensation or benefits for their services, but
223 may receive per diem and expenses incurred in the performance of the director's official duties
224 at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

225 (b) Directors may decline to receive per diem and expenses for their service.

226 (c) The fund shall pay the per diem allowance and expenses from the Injury Fund upon
227 vouchers drawn in the same manner as the Workers' Compensation Fund pays its normal
228 operating expenses.

229 (d) The executive director of the Department of Administrative Services, or the
230 executive director's designee, and the chief executive officer of the Workers' Compensation
231 Fund shall serve on the board without a per diem allowance.

232 ~~[(19)]~~ (18) The requirement that the governor, with the consent of the Senate, appoint
233 the directors of the Workers' Compensation Fund specified in Subsection ~~[(5)]~~ (4), does not:

234 (a) remove from the board of directors the managerial, financial, or operational control
235 of the Workers' Compensation Fund;

236 (b) give to the state or the governor managerial, financial, or operational control of the
237 Workers' Compensation Fund;

238 (c) consistent with Section 31A-33-105, cause the state to be liable for any:

239 (i) obligation of the Workers' Compensation Fund; or

240 (ii) expense, liability, or debt described in Section 31A-33-105;

241 (d) alter the legal status of the Workers' Compensation Fund as:

242 (i) a nonprofit, self-supporting, quasi-public corporation; and

- 243 (ii) an insurer:
- 244 (A) regulated under this title;
- 245 (B) that is structured to operate in perpetuity; and
- 246 (C) domiciled in the state; or
- 247 (e) alter the requirement that the Workers' Compensation Fund provide workers'
- 248 compensation:

- 249 (i) for the purposes set forth in Section 31A-33-102;
- 250 (ii) consistent with Section 34A-2-201; and
- 251 (iii) as provided in Section 31A-22-1001.

252 Section 6. Section **31A-33-107** is amended to read:

253 **31A-33-107. Duties of board -- Creation of subsidiaries -- Entering into joint**
254 **enterprises.**

- 255 (1) The board shall:
- 256 (a) appoint a chief executive officer to administer the Workers' Compensation Fund;
- 257 (b) receive and act upon financial, management, and actuarial reports covering the
- 258 operations of the Workers' Compensation Fund;
- 259 (c) ensure that the Workers' Compensation Fund is administered according to law;
- 260 (d) examine and approve an annual operating budget for the Workers' Compensation
- 261 Fund;
- 262 (e) serve as investment trustees and fiduciaries of the Injury Fund;
- 263 (f) receive and act upon recommendations of the chief executive officer;
- 264 (g) develop broad policy for the long-term operation of the Workers' Compensation
- 265 Fund, consistent with its mission and fiduciary responsibility;
- 266 (h) subject to Chapter 19a, Part 4, Workers' Compensation Rates, approve any rating
- 267 plans that would modify a policyholder's premium;
- 268 (i) subject to Chapter 19a, Part 4, Workers' Compensation Rates, approve the amount
- 269 of deviation, if any, from standard insurance rates;
- 270 (j) approve the amount of the dividends, if any, to be returned to policyholders;
- 271 (k) adopt a procurement policy consistent with the provisions of Title 63, Chapter 56,
- 272 Utah Procurement Code;
- 273 (l) develop and publish an annual report to policyholders, the governor, the Legislature,

274 and interested parties that describes the financial condition of the Injury Fund, including a
275 statement of expenses and income and what measures were taken or will be necessary to keep
276 the Injury Fund actuarially sound;

277 (m) establish a fiscal year;

278 (n) determine and establish an actuarially sound price for insurance offered by the
279 fund;

280 (o) establish conflict of interest requirements that govern the board, officers, and
281 employees; and

282 (p) perform all other acts necessary for the policymaking and oversight of the Workers'
283 Compensation Fund.

284 (2) Subject to board review and its responsibilities under Subsection (1)(e), the board
285 may delegate authority to make daily investment decisions.

286 (3) The fund may form or acquire a subsidiary [or], enter into a joint enterprise, or
287 divest itself of ownership of a subsidiary:

288 (a) only if that action is approved by the board; and

289 (b) subject to the limitations in Section 31A-33-103.5.

290 (4) The board may not authorize the fund to own a subsidiary or enter into a joint
291 enterprise that detracts from the purposes of the fund described under Subsection
292 31A-33-102(1)(b).

293 (5) The board may not authorize the fund to own or divest itself of ownership of a
294 subsidiary that would be, or might be expected to be, a competitor to the fund in Utah without
295 prior legislative approval by joint resolution.

296 (6) The board may hire its own legal counsel.

297 Section 7. Section **31A-33-108** is amended to read:

298 **31A-33-108. Powers and duties of chief executive officer.**

299 (1) The chief executive officer shall:

300 (a) administer all operations of the Workers' Compensation Fund under the direction of
301 the board;

302 (b) recommend to the board any necessary or desirable changes in the workers'
303 compensation law;

304 (c) recommend to the board an annual administrative budget covering the operations of

305 the Workers' Compensation Fund and, upon approval, submit the administrative budget,
306 financial status, and actuarial condition of the fund to the governor and the Legislature for their
307 examination;

308 (d) direct and control all expenditures of the approved budget;

309 (e) from time to time, upon the recommendation of a consulting actuary, recommend to
310 the board rating plans, the amount of deviation, if any, from standard rates, and the amount of
311 dividends, if any, to be returned to policyholders;

312 (f) invest the Injury Fund's assets under the guidance of the board and in accordance
313 with Chapter 18;

314 (g) recommend general policies and procedures to the board to guide the operations of
315 the fund;

316 (h) formulate and administer a system of personnel administration and employee
317 compensation that uses merit principles of personnel management, includes employee benefits
318 and grievance procedures consistent with those applicable to state agencies, and includes
319 inservice training programs;

320 (i) prepare and administer fiscal, payroll, accounting, data processing, and procurement
321 procedures for the operation of the Workers' Compensation Fund;

322 (j) conduct studies of the workers' compensation insurance business, including the
323 preparation of recommendations and reports;

324 (k) develop uniform procedures for the management of the Workers' Compensation
325 Fund;

326 (l) maintain contacts with governmental and other public or private groups having an
327 interest in workers' compensation insurance;

328 (m) within the limitations of the budget, employ necessary staff personnel and
329 consultants, including actuaries, attorneys, medical examiners, adjusters, investment
330 counselors, accountants, and clerical and other assistants to accomplish the purpose of the
331 Workers' Compensation Fund;

332 (n) maintain appropriate levels of property, casualty, and liability insurance as
333 approved by the board to protect the fund, its directors, officers, employees, and assets; and

334 (o) develop self-insurance programs as approved by the board to protect the fund, its
335 directors, officers, employees, and assets to supersede or supplement insurance maintained

336 under Subsection (1)(n).

337 (2) The chief executive officer may:

338 (a) enter into contracts of workers' compensation and occupational disease insurance,
339 which may include employer's liability insurance to cover the exposure of a policyholder to his
340 Utah employees and their dependents for liability claims, including the cost of defense in the
341 event of suit, for claims based upon bodily injury to the policyholder's Utah employees;

342 (b) [~~reinsure~~] procure reinsurance to cover any fund risk or part of any fund risk;

343 (c) cause to be inspected and audited the payrolls of policyholders or employers
344 applying to the Workers' Compensation Fund for insurance;

345 (d) establish procedures for adjusting claims against the Workers' Compensation Fund
346 that comply with Title 34A, Chapters 2 and 3, and determine the persons to whom and through
347 whom the payments of compensation are to be made;

348 (e) contract with physicians, surgeons, hospitals, and other health care providers for
349 medical and surgical treatment and the care and nursing of injured persons entitled to benefits
350 from the Workers' Compensation Fund;

351 (f) require policyholders to maintain an adequate deposit to provide security for periods
352 of coverage for which premiums have not been paid;

353 (g) contract with self-insured entities for the administration of workers' compensation
354 claims and safety consultation services; and

355 (h) with the approval of the board, adopt the calendar year or any other reporting period
356 to report claims and payments made or reserves established on claims that are necessary to
357 accommodate the reporting requirements of the Labor Commission, department, State Tax
358 Commission, or National Council on Compensation Insurance.