

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;
- ▶ modifies provisions relating to the legal nature of the fund;
- ▶ regulates a subsidiary of the fund;
- ▶ modifies provisions relating to the fund's board of directors;
- ▶ requires a settlement agreement; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a conditional effective date.

Utah Code Sections Affected:

AMENDS:

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

31A-33-103, as last amended by Chapter 222, Laws of Utah 2000



26 31A-33-103.5, as last amended by Chapters 33 and 116, Laws of Utah 2001

27 31A-33-106, as last amended by Chapters 176 and 186, Laws of Utah 2002

28 ENACTS:

29 31A-33-119, Utah Code Annotated 1953



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

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

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

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

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

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

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

42 and

43 (iii) write all workers' compensation insurance in accordance with Section 31A-33-105
44 for which application is made, including both the voluntary and the residual market, provided:

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

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

47 (2) (a) There is created an Injury Fund, which shall be maintained by the Workers'
48 Compensation Fund for the sole benefit of its policyholders.

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

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

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

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

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

56 **31A-33-103. Legal nature of Workers' Compensation Fund.**

57 (1) The Workers' Compensation Fund is:
 58 (a) a nonprofit, self-supporting, quasi-public corporation; ~~and~~
 59 (b) a legal entity, organized under a mutual plan of ownership that:
 60 (i) may sue and be sued in its own name[-]; and
 61 (ii) is recognized and regulated under this title as a mutual insurance company; and
 62 (c) subject to the provisions of Title 63E, Independent Entities Code, including the
 63 definition of a "Quasi-public corporation" provided in Section 63E-1-102.

64 (2) All of the business and affairs of the corporation shall be conducted in the name of
 65 the Workers' Compensation Fund or if conducted through a subsidiary, such other corporate
 66 names that comply with state law.

67 (3) The rights and interests of the policyholders of the Workers' Compensation Fund
 68 shall be the same as the rights and interests of the policyholders of any mutual insurance
 69 company regulated under this title.

70 Section 3. Section **31A-33-103.5** is amended to read:

71 **31A-33-103.5. Powers of Fund -- Limitations.**

72 (1) The fund may form or acquire subsidiaries or enter into a joint enterprise:
 73 (a) in accordance with Section 31A-33-107; and
 74 (b) except as limited by this section and applicable insurance rules and statutes.
 75 (2) Subject to applicable insurance rules and statutes, the fund may only offer:
 76 (a) workers' compensation insurance in Utah;
 77 (b) workers' compensation insurance in a state other than Utah to the extent necessary
 78 to:
 79 (i) accomplish its purpose under Subsection 31A-33-102(1)(b); and
 80 (ii) provide workers' compensation or occupational disease insurance coverage to Utah
 81 employers and their employees engaged in interstate commerce; and
 82 (c) workers' compensation products and services in Utah or other states.
 83 ~~[(3) Subject to applicable insurance rules and statutes, a subsidiary of the fund may:]~~
 84 ~~[(a) offer workers' compensation insurance coverage only:]~~
 85 ~~[(i) in a state other than Utah; and]~~
 86 ~~[(ii) (A) to insure the following against liability for compensation based on job-related~~
 87 ~~accidental injuries and occupational diseases:]~~

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

90 ~~[(H) an employer, as defined in Section 34A-2-103, whose principal administrative~~
91 ~~office is located in Utah;]~~

92 ~~[(III) a subsidiary or affiliate of an employer described in Subsection (3)(a)(ii)(A)(I) or~~
93 ~~(H); or]~~

94 ~~[(IV) an employer, as defined in Section 34A-2-103, whose purchase of insurance~~
95 ~~arises solely out of the purchase of workers' compensation products and services from the fund~~
96 ~~or a fund subsidiary; or]~~

97 ~~[(B) for a state fund organization that is not an admitted insurer in the other state;]~~

98 ~~[(I) on a fee for service basis; and]~~

99 ~~[(H) without bearing any insurance risk; and]~~

100 ~~[(b) offer workers' compensation products and services in Utah and other states.]~~

101 ~~[(4)] (3) The fund shall write workers' compensation insurance in accordance with~~
102 ~~Section 31A-22-1001.~~

103 ~~[(5)] (4) (a) The fund may enter into a joint enterprise that offers workers'~~
104 ~~compensation insurance and other coverage only in the state, provided:~~

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

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

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

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

113 (5) The fund may not have a subsidiary that:

114 (a) operates an insurance business in Utah;

115 (b) engages in predatory pricing or unfair competitive practices; or

116 (c) operates in a manner which unjustly enriches fund or subsidiary officers,
117 employees, or directors.

118 (6) The fund may only have a subsidiary that:

119 (a) operates on an arms length basis from the fund with agreements between the
120 subsidiary and the fund having terms no better than similar terms available from a third party
121 unrelated to either the fund or the subsidiary;

122 (b) is fully subject to and compliant with the laws and regulatory requirements of the
123 jurisdictions where business operations occur;

124 (c) is compliant with all federal and state tax laws, operating on a fully taxable basis
125 that does not shelter subsidiary income under the fund's federal income tax exemption; and

126 (d) if the subsidiary is a workers' compensation insurance business operating in a state
127 other than Utah, has a corporate structure that permits fund policyholders to elect members of
128 the subsidiary's board of directors and to approve such transactions as the subsidiary's sale,
129 merger, or dissolution.

130 (7) The fund may, if the fund has a subsidiary that is a workers' compensation
131 insurance business operating in a state other than Utah, reinsure the fund subsidiary provided
132 that the fund will not reinsure any policies of insurance written by the subsidiary which become
133 effective on or after January 1, 2007, unless connected to Utah because the insured is:

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

136 (b) an employer, as defined in Section 34A-2-103, whose principal administrative
137 office is located in Utah; or

138 (c) a subsidiary or affiliate of an employer described in Subsection (7)(a) or (b).

139 Section 4. Section **31A-33-106** is amended to read:

140 **31A-33-106. Board of directors -- Status of the fund in relationship to the state.**

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

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

143 (3) One director:

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

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

148 (4) One director shall be the chief executive officer of the fund.

149 (5) (a) In accordance with a plan that meets the requirements of this section, the

150 governor, with the consent of the Senate, shall appoint five public directors as follows:

151 (i) three directors who are owners, officers, or employees of policyholders other than
152 the state, each of whom is an owner, officer, or employee of a policyholder that has been
153 insured by the Workers' Compensation Fund for at least one year before the appointment of the
154 director representing the policyholder; and

155 (ii) two directors from the public in general.

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

158 (6) No two directors may represent the same policyholder.

159 (7) At least four directors appointed by the governor shall have had previous
160 experience in:

161 (a) the actuarial profession;

162 (b) accounting;

163 (c) investments;

164 (d) risk management;

165 (e) occupational safety;

166 (f) casualty insurance; or

167 (g) the legal profession.

168 (8) Any director who represents a policyholder that fails to maintain workers'
169 compensation insurance through the Workers' Compensation Fund shall immediately resign
170 from the board.

171 (9) A person may not be a director if that person:

172 (a) has any interest as a stockholder, employee, attorney, or contractor of a competing
173 insurance carrier providing workers' compensation insurance in Utah;

174 (b) fails to meet or comply with the conflict of interest policies established by the
175 board; or

176 (c) is not bondable.

177 (10) After notice and a hearing, the governor may remove any director for cause which
178 includes:

179 (a) neglect of duty; or

180 (b) malfeasance.

181 (11) (a) Except as required by Subsection (11)(b), the term of office of the directors
182 appointed by the governor shall be four years, beginning July 1 of the year of appointment.

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

186 (12) Each director shall hold office until the director's successor is appointed and
187 qualified.

188 (13) When a vacancy occurs in the membership of the board for any reason, the
189 replacement shall be appointed for the unexpired term.

190 (14) The board shall annually elect a chair and other officers as needed from its
191 membership.

192 (15) (a) The board shall meet at least quarterly at a time and place designated by the
193 chair.

194 (b) The chair:

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

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

197 (16) Four directors are a quorum for the purpose of transacting all business of the
198 board.

199 (17) Each decision of the board requires the affirmative vote of at least four directors
200 for approval.

201 (18) (a) (i) [~~Directors shall~~] With the approval of the commissioner, directors may
202 receive [~~no~~] reasonable compensation or benefits for their services[~~, but may receive per diem~~]
203 and reasonable expenses incurred in the performance of the director's official duties [~~at the~~
204 ~~rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107~~].

205 (ii) All compensation, benefits, and expenses shall be reported pursuant to Section
206 31A-5-416.

207 (b) Directors may decline to receive [~~per diem~~] compensation and expenses for their
208 service.

209 (c) The fund shall pay the [~~per diem~~] compensation allowance and expenses from the
210 Injury Fund upon vouchers drawn in the same manner as the Workers' Compensation Fund
211 pays its normal operating expenses.

212 (d) The executive director of the Department of Administrative Services, or the
213 executive director's designee, and the chief executive officer of the Workers' Compensation
214 Fund shall serve on the board without a [~~per diem~~] compensation allowance.

215 (19) The requirement that the governor, with the consent of the Senate, appoint the
216 directors of the Workers' Compensation Fund specified in Subsection (5), does not:

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

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

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

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

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

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

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

226 (ii) an insurer organized under a mutual plan of ownership:

227 (A) recognized and regulated under this title as a mutual insurance company;

228 (B) that is structured to operate in perpetuity; and

229 (C) domiciled in the state; or

230 (e) alter the requirement that the Workers' Compensation Fund provide workers'
231 compensation:

232 (i) for the purposes set forth in Section 31A-33-102;

233 (ii) consistent with Section 34A-2-201; and

234 (iii) as provided in Section 31A-22-1001.

235 Section 5. Section **31A-33-119** is enacted to read:

236 **31A-33-119. State of Utah settlement.**

237 (1) The state and the Workers' Compensation Fund have addressed the value of any
238 rights, title, or interests that each may have in the property of the other, of all kinds whatsoever,
239 real and personal, tangible and intangible, including the Injury Fund.

240 (2) The state and the Workers' Compensation Fund have settled all such claims, each
241 against the other, arising on or before May 3, 2004, including any claim arising under
242 Subsection (1), for and in consideration of the Workers' Compensation Fund's payment to the

243 state of Utah of \$50,000,000.

244 (3) The settlement described under Subsection (1):

245 (a) confirms the legal nature of the Workers' Compensation Fund as described in
246 Section 31A-33-103; and

247 (b) does not apply to any claim by the state as a policyholder of the Workers'
248 Compensation Fund arising out of the ordinary course of the Workers' Compensation Fund's
249 insurance business.

250 **Section 6. Effective date.**

251 (1) This bill shall take effect if a settlement agreement and release is executed between
252 the Workers' Compensation Fund and the state which meets the requirements described under
253 Section 31A-33-119 in this bill.

254 (2) The effective date of this bill shall be the later of:

255 (a) the date the agreement described under Subsection (1) is executed; or

256 (b) May 3, 2004.

257 (3) If the agreement described under Subsection (1) is not executed, this bill may not
258 take effect.