

1 **ASSESSMENT OFFSET FOR DONATIONS**
2 **PROMOTING OCCUPATIONAL HEALTH AND**
3 **SAFETY**

4 2005 GENERAL SESSION

5 STATE OF UTAH

6 **Sponsor: Ed Mayne**

7
8 **LONG TITLE**

9 **General Description:**

10 This bill provides an offset for an assessment charged a workers' compensation insurer
11 or self-insured employers.

12 **Highlighted Provisions:**

13 This bill:

- 14 ▶ defines terms;
- 15 ▶ provides for an offset against an assessment charged a self-insured employer for
16 qualified donations to an occupational health and safety center;
- 17 ▶ provides for an offset against a premium assessment charged a workers'
18 compensation insurer for qualified donations to an occupational health and safety
19 center;
- 20 ▶ provides for allocation of the offset;
- 21 ▶ imposes requirements on an occupational health and safety center;
- 22 ▶ imposes a sunset date; and
- 23 ▶ makes technical changes.

24 **Monies Appropriated in this Bill:**

25 None

26 **Other Special Clauses:**

27 This bill has retrospective operation to January 1, 2005.



28 **Utah Code Sections Affected:**

29 AMENDS:

30 **34A-2-202**, as last amended by Chapter 71, Laws of Utah 2002

31 **59-9-102**, as renumbered and amended by Chapter 2, Laws of Utah 1987

32 **63-55-234**, as last amended by Chapter 172, Laws of Utah 1999

33 **63-55-259**, as last amended by Chapter 1, Laws of Utah 2004, Third Special Session

34 ENACTS:

35 **34A-2-202.5**, Utah Code Annotated 1953

36 **59-9-102.5**, Utah Code Annotated 1953



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

39 Section 1. Section **34A-2-202** is amended to read:

40 **34A-2-202. Assessment on self-insured employers including counties, cities,**
41 **towns, or school districts paying compensation direct.**

42 (1) (a) (i) A self-insured employer, including a county, city, town, or school district,
43 who by authority of the division under Sections 34A-2-201 and 34A-2-201.5 is authorized to
44 pay compensation direct shall pay annually, on or before March 31, an assessment in
45 accordance with this section and rules made by the commission under this section.

46 (ii) For purposes of this section, "self-insured employer" is as defined in Section
47 34A-2-201.5.

48 (b) The assessment required by Subsection (1)(a) is:

49 (i) to be collected by the State Tax Commission [~~and~~];

50 (ii) paid by the State Tax Commission into the state treasury as provided in Subsection
51 59-9-101(2)[~~]; and~~

52 (iii) subject to the offset provided in Section 34A-2-202.5.

53 (c) The assessment under Subsection (1)(a) shall be based on a total calculated
54 premium multiplied by the premium assessment rate established pursuant to Subsection
55 59-9-101(2).

56 (d) The total calculated premium, for purposes of calculating the assessment under
57 Subsection (1)(a), shall be calculated by:

58 (i) multiplying the total of the standard premium for each class code calculated in

59 Subsection (1)(e) by the self-insured employer's experience modification factor; and
 60 (ii) multiplying the total under Subsection (1)(d)(i) by a safety factor determined under
 61 Subsection (1)(g).

62 (e) A standard premium shall be calculated by:

63 (i) multiplying the prospective loss cost for the year being considered, as filed with the
 64 insurance department pursuant to Section 31A-19a-406, for each applicable class code by 1.10
 65 to determine the manual rate for each class code; and

66 (ii) multiplying the manual rate for each class code under Subsection (1)(e)(i) by each
 67 \$100 of the self-insured employer's covered payroll for each class code.

68 (f) (i) Each self-insured employer paying compensation direct shall annually obtain the
 69 experience modification factor required in Subsection (1)(d)(i) by using:

70 (A) the rate service organization designated by the insurance commissioner in Section
 71 31A-19a-404; or

72 (B) for a self-insured employer that is a public agency insurance mutual, an actuary
 73 approved by the commission.

74 (ii) If a self-insured employer's experience modification factor under Subsection
 75 (1)(f)(i) is less than 0.50, the self-insured employer shall use an experience modification factor
 76 of 0.50 in determining the total calculated premium.

77 (g) To provide incentive for improved safety, the safety factor required in Subsection
 78 (1)(d)(ii) shall be determined based on the self-insured employer's experience modification
 79 factor as follows:

80 EXPERIENCE	
81 MODIFICATION FACTOR	81 SAFETY FACTOR
82 Less than or equal to 0.90	0.56
83 Greater than 0.90 but less than or equal to 1.00	0.78
84 Greater than 1.00 but less than or equal to 1.10	1.00
85 Greater than 1.10 but less than or equal to 1.20	1.22
86 Greater than 1.20	1.44

87 (h) (i) A premium or premium assessment modification other than a premium or
 88 premium assessment modification under this section may not be allowed.

89 (ii) If a self-insured employer paying compensation direct fails to obtain an experience

90 modification factor as required in Subsection (1)(f)(i) within the reasonable time period
91 established by rule by the State Tax Commission, the State Tax Commission shall use an
92 experience modification factor of 2.00 and a safety factor of 2.00 to calculate the total
93 calculated premium for purposes of determining the assessment.

94 (iii) Prior to calculating the total calculated premium under Subsection (1)(h)(ii), the
95 State Tax Commission shall provide the self-insured employer with written notice that failure
96 to obtain an experience modification factor within a reasonable time period, as established by
97 rule by the State Tax Commission:

98 (A) shall result in the State Tax Commission using an experience modification factor
99 of 2.00 and a safety factor of 2.00 in calculating the total calculated premium for purposes of
100 determining the assessment; and

101 (B) may result in the division revoking the self-insured employer's right to pay
102 compensation direct.

103 (i) The division may immediately revoke a self-insured employer's certificate issued
104 under Sections 34A-2-201 and 34A-2-201.5 that permits the self-insured employer to pay
105 compensation direct if the State Tax Commission assigns an experience modification factor
106 and a safety factor under Subsection (1)(h) because the self-insured employer failed to obtain
107 an experience modification factor.

108 (2) Notwithstanding the annual payment requirement in Subsection (1)(a), a
109 self-insured employer whose total assessment obligation under Subsection (1)(a) for the
110 preceding year was \$10,000 or more shall pay the assessment in quarterly installments in the
111 same manner provided in Section 59-9-104 and subject to the same penalty provided in Section
112 59-9-104 for not paying or underpaying an installment.

113 (3) (a) The State Tax Commission shall have access to all the records of the division
114 for the purpose of auditing and collecting any amounts described in this section.

115 (b) Time periods for the State Tax Commission to allow a refund or make an
116 assessment shall be determined in accordance with Section 59-9-106.

117 (4) (a) A review of appropriate use of job class assignment and calculation
118 methodology may be conducted as directed by the division at any reasonable time as a
119 condition of the self-insured employer's certification of paying compensation direct.

120 (b) The State Tax Commission shall make any records necessary for the review

121 available to the commission.

122 (c) The commission shall make the results of any review available to the State Tax
123 Commission.

124 Section 2. Section **34A-2-202.5** is enacted to read:

125 **34A-2-202.5. Offset for occupational health and safety related donations.**

126 (1) As used in this section:

127 (a) "Occupational health and safety center" means an entity:

128 (i) affiliated with an institution within the state system of higher education as defined

129 in Section 53B-1-102; and

130 (ii) designated as an education and research center by the National Institute for

131 Occupational Safety and Health.

132 (b) "Qualified donation" means a donation that is:

133 (i) cash;

134 (ii) given directly to an occupational health and safety center; and

135 (iii) given exclusively for the purpose of:

136 (A) supporting graduate level education and training in fields of:

137 (I) safety and ergonomics;

138 (II) industrial hygiene;

139 (III) occupational health nursing; and

140 (IV) occupational medicine;

141 (B) providing continuing education programs for employers designed to promote

142 workplace safety; and

143 (C) paying reasonable administrative, personnel, equipment, and overhead costs of the

144 occupational health and safety center.

145 (c) "Self-insured employer" is a self-insured employer as defined in Section

146 34A-2-201.5 that is required to pay the assessment imposed under Section 34A-2-202.

147 (2) (a) A self-insured employer may offset against the assessment imposed under

148 Section 34A-2-202 an amount equal to the lesser of:

149 (i) the total of qualified donations made by the self-insured employer in the calendar

150 year for which the assessment is calculated; and

151 (ii) .10% of the self-insured employer's total calculated premium calculated under

152 Subsection 34A-2-202(1)(d) for the calendar year for which the assessment is calculated.

153 (b) The offset provided under this Subsection (2) shall be allocated to the restricted
154 account and funds described in Subsection 59-9-101(2)(c) in proportion to the rates provided in
155 Subsection 59-9-101(2)(c).

156 (3) An occupational health and safety center shall:

157 (a) provide a self-insured employer a receipt for any qualified donation made by the
158 self-insured employer to the occupational health and safety center;

159 (b) expend monies received by a qualified donation:

160 (i) for the purposes described in Subsection (1)(b)(iii); and

161 (ii) in a manner that can be audited to ensure that the monies are expended for the
162 purposes described in Subsection (1)(b)(iii); and

163 (c) in conjunction with the report required by Section 59-9-102.5, report to the
164 Legislature through the Office of the Legislative Fiscal Analyst by no later than July 1 of each
165 year:

166 (i) the qualified donations received by the occupational health and safety center in the
167 previous calendar year; and

168 (ii) the expenditures during the previous calendar year of qualified donations received
169 by the occupational health and safety center.

170 Section 3. Section **59-9-102** is amended to read:

171 **59-9-102. Offsets.**

172 (1) If any authorized insurer doing business in this state during the tax year pays a
173 property tax in this state, the insurer may deduct from the tax provided under this chapter that
174 portion of the property tax paid for general state purposes.

175 (2) Any domestic insurance company paying a fee for examination under Section
176 31A-2-205 may deduct from the tax provided under this chapter the amount of the examination
177 fee paid, subject to the limitations of Subsection 31A-2-203(2)(d).

178 (3) There is offset against the taxes imposed under Section 59-9-101 the amount of any
179 assessments paid by an insurance company under the guaranty associations established under
180 Title 31A, Chapter 28, in the manner provided by Sections 31A-28-113 and 31A-28-212.

181 (4) There is an offset provided in Section 59-9-102.5 against the premium assessment
182 imposed under Subsection 59-9-101(2) against an admitted insurer writing workers'

183 compensation insurance in this state.

184 [~~4~~] (5) The state has no liability to insurers for any amount by which offsets allowed
185 under this section exceed the insurer's premium tax liability.

186 Section 4. Section **59-9-102.5** is enacted to read:

187 **59-9-102.5. Offset for occupational health and safety related donations.**

188 (1) As used in this section:

189 (a) "Occupational health and safety center" means an entity:

190 (i) affiliated with an institution within the state system of higher education as defined

191 in Section 53B-1-102; and

192 (ii) designated as an education and research center by the National Institute for

193 Occupational Safety and Health.

194 (b) "Qualified donation" means a donation that is:

195 (i) cash;

196 (ii) given directly to an occupational health and safety center; and

197 (iii) given exclusively for the purpose of:

198 (A) supporting graduate level education and training in fields of:

199 (I) safety and ergonomics;

200 (II) industrial hygiene;

201 (III) occupational health nursing; and

202 (IV) occupational medicine;

203 (B) providing continuing education programs for employers designed to promote

204 workplace safety; and

205 (C) paying reasonable administrative, personnel, equipment, and overhead costs of the

206 occupational health and safety center.

207 (c) "Workers' compensation insurer" means an admitted insurer writing workers'

208 compensation insurance in this state that is required to pay the premium assessment imposed

209 under Subsection 59-9-101(2).

210 (2) (a) A workers' compensation insurer may offset against the premium assessment

211 imposed under Subsection 59-9-101(2) an amount equal to the lesser of:

212 (i) the total of qualified donations made by the workers' compensation insurer in the

213 calender year for which the premium assessment is calculated; and

214 (ii) .10% of the workers' compensation insurer's total workers' compensation premium
215 income as defined in Subsection 59-9-101(2)(b) in the calendar year for which the premium
216 assessment is calculated.

217 (b) The offset provided under this Subsection (2) shall be allocated to the restricted
218 account and funds described in Subsection 59-9-101(2)(c) in proportion to the rates provided in
219 Subsection 59-9-101(2)(c).

220 (3) An occupational health and safety center shall:

221 (a) provide a workers' compensation insurer a receipt for any qualified donation made
222 by the workers' compensation insurer to the occupational health and safety center;

223 (b) expend monies received by a qualified donation:

224 (i) for the purposes described in Subsection (1)(b)(iii); and

225 (ii) in a manner that can be audited to ensure that the monies are expended for the
226 purposes described in Subsection (1)(b)(iii); and

227 (c) in conjunction with the report required by Section 34A-2-202.5, report to the
228 Legislature through the Office of the Legislative Fiscal Analyst by no later than July 1 of each
229 year:

230 (i) the qualified donations received by the occupational health and safety center in the
231 previous calendar year; and

232 (ii) the expenditures during the previous calendar year of qualified donations received
233 by the occupational health and safety center.

234 Section 5. Section **63-55-234** is amended to read:

235 **63-55-234. Repeal dates, Title 34A.**

236 (1) Section 34A-2-202.5 is repealed December 31, 2010.

237 (2) Title 34A, Chapter 8, Utah Injured Worker Reemployment Act, is repealed July 1,
238 2009.

239 Section 6. Section **63-55-259** is amended to read:

240 **63-55-259. Repeal dates, Title 59.**

241 (1) Title 59, Chapter 1, Part 12, Legislative Intent, is repealed July 1, 2005.

242 (2) Section 59-9-102.5 is repealed December 31, 2010.

243 ~~(2)~~ (3) Section 59-10-530.5, Homeless Trust Account, is repealed July 1, 2007.

244 Section 7. **Retrospective operation.**

245

This bill has retrospective operation to January 1, 2005.

Legislative Review Note

as of 1-27-05 12:22 PM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel

State Impact

The bill allows self-insured employers and workers' compensation insurance carriers to make donations to qualified occupational health and safety centers. These donations are off-set against premiums assessments resulting in a loss of about of \$200,000 to \$250,000 in premium revenue. Depending on investment returns within the Workers' Compensation Fund, this loss may need to be made up with higher premium tax assessments against all workers' compensation insurance carriers and self insured employers. There may be off-setting savings from lower claim costs from occupational health and safety education and training.

Individual and Business Impact

Impact is discussed in above paragraph.