

WORKERS' COMPENSATION AMENDMENTS

2007 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Ron Bigelow

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies provisions in the Insurance Code, Independent Entities Code, Utah Labor Code, and other statutes to provide for the privatization of the Workers' Compensation Fund and to provide for an assigned risk plan to cover the residual workers' compensation insurance market.

Highlighted Provisions:

This bill:

- ▶ removes references to the Workers' Compensation Fund throughout the code effective on the transition date;
- ▶ enacts the Workers' Compensation Insurance Regulation chapter to provide for the creation of a Utah Workers' Compensation Assigned Risk Plan including:
 - defining terms;
 - providing for selection of a plan administrator and one or more servicing carriers;
 - addressing rates;
 - providing for a reserve for the plan; and
 - addressing deficits;
- ▶ provides a process for the privatization of the Workers' Compensation Fund including:
 - superseding the requirements of the Independent Entities Code;



- 28 • requiring financial audits and actuarial studies;
- 29 • requiring a ruling from the Internal Revenue Service;
- 30 • providing for the creation of a successor mutual insurance company;
- 31 • providing for a transition date;
- 32 • requiring the transfer of assets to the reserve for the assigned risk plan;
- 33 • requiring the return of certain surpluses, if any; and
- 34 • providing for the assumption of liabilities and transfer of assets to the successor
- 35 mutual insurance company;
- 36 ▶ provides for the repeal of the privatization process after the transition date;
- 37 ▶ lists outstanding issues related to the implementation of this bill; and
- 38 ▶ makes technical and conforming amendments.

39 **Monies Appropriated in this Bill:**

40 None

41 **Other Special Clauses:**

42 This bill has multiple effective dates and requires further action by the Legislature in
43 the 2008 Annual General Session to take effect.

44 This bill provides revisor instructions.

45 **Utah Code Sections Affected:**

46 AMENDS:

- 47 **11-8-3**, as last amended by Chapter 222, Laws of Utah 2000
- 48 **31A-1-105**, as last amended by Chapter 222, Laws of Utah 2000
- 49 **31A-15-103**, as last amended by Chapter 90, Laws of Utah 2004
- 50 **31A-19a-401**, as last amended by Chapter 222, Laws of Utah 2000
- 51 **31A-21-101**, as last amended by Chapter 197, Laws of Utah 2006
- 52 **31A-22-309**, as last amended by Chapter 59, Laws of Utah 2001
- 53 **31A-26-103**, as last amended by Chapter 222, Laws of Utah 2000
- 54 **31A-35-103**, as enacted by Chapter 293, Laws of Utah 1998
- 55 **34A-2-102**, as last amended by Chapter 222, Laws of Utah 2000
- 56 **34A-2-103**, as last amended by Chapter 295, Laws of Utah 2006
- 57 **34A-2-107**, as last amended by Chapter 114, Laws of Utah 2001
- 58 **34A-2-201**, as last amended by Chapter 222, Laws of Utah 2000

- 59 **34A-2-203**, as last amended by Chapter 275, Laws of Utah 2006
- 60 **34A-2-209**, as renumbered and amended by Chapter 375, Laws of Utah 1997
- 61 **34A-2-210**, as enacted by Chapter 375, Laws of Utah 1997
- 62 **34A-2-211**, as last amended by Chapter 222, Laws of Utah 2000
- 63 **34A-2-406**, as last amended by Chapter 222, Laws of Utah 2000
- 64 **51-7-2**, as last amended by Chapter 277, Laws of Utah 2006
- 65 **51-7-4**, as last amended by Chapters 71 and 178, Laws of Utah 2005
- 66 **58-59-306**, as repealed and reenacted by Chapter 260, Laws of Utah 2003
- 67 **59-9-101**, as last amended by Chapter 44, Laws of Utah 2006
- 68 **63-5b-102**, as last amended by Chapter 139, Laws of Utah 2006
- 69 **63-38a-102**, as last amended by Chapter 71, Laws of Utah 2005
- 70 **63-55b-131**, as last amended by Chapter 82, Laws of Utah 2006
- 71 **63E-1-102**, as last amended by Chapter 46, Laws of Utah 2006
- 72 **63E-1-203**, as last amended by Chapter 159, Laws of Utah 2002
- 73 **67-4-2**, as last amended by Chapter 222, Laws of Utah 2000

74 ENACTS:

- 75 **31A-40-101**, Utah Code Annotated 1953
- 76 **31A-40-102**, Utah Code Annotated 1953
- 77 **31A-40-201**, Utah Code Annotated 1953
- 78 **31A-40-202**, Utah Code Annotated 1953
- 79 **31A-40-203**, Utah Code Annotated 1953
- 80 **31A-40-204**, Utah Code Annotated 1953
- 81 **31A-40-205**, Utah Code Annotated 1953
- 82 **31A-40-301**, Utah Code Annotated 1953
- 83 **31A-40-302**, Utah Code Annotated 1953
- 84 **31A-40-303**, Utah Code Annotated 1953
- 85 **31A-40-304**, Utah Code Annotated 1953
- 86 **31A-40-305**, Utah Code Annotated 1953
- 87 **31A-40-306**, Utah Code Annotated 1953
- 88 **31A-40-307**, Utah Code Annotated 1953
- 89 **31A-40-308**, Utah Code Annotated 1953

90 31A-40-309, Utah Code Annotated 1953
91 31A-40-310, Utah Code Annotated 1953

92 REPEALS:

- 93 31A-22-1001, as last amended by Chapter 222, Laws of Utah 2000
- 94 31A-33-101, as last amended by Chapter 222, Laws of Utah 2000
- 95 31A-33-102, as last amended by Chapter 222, Laws of Utah 2000
- 96 31A-33-103, as last amended by Chapter 222, Laws of Utah 2000
- 97 31A-33-103.5, as last amended by Chapters 33 and 116, Laws of Utah 2001
- 98 31A-33-104, as last amended by Chapter 14, Laws of Utah 2006
- 99 31A-33-105, as last amended by Chapter 107, Laws of Utah 1998
- 100 31A-33-106, as last amended by Chapter 275, Laws of Utah 2006
- 101 31A-33-107, as last amended by Chapter 130, Laws of Utah 1999
- 102 31A-33-108, as last amended by Chapter 252, Laws of Utah 2003
- 103 31A-33-109, as renumbered and amended by Chapter 240, Laws of Utah 1996
- 104 31A-33-110, as last amended by Chapter 204, Laws of Utah 1997
- 105 31A-33-111, as last amended by Chapter 130, Laws of Utah 1999
- 106 31A-33-112, as renumbered and amended by Chapter 240, Laws of Utah 1996
- 107 31A-33-113, as last amended by Chapter 116, Laws of Utah 2001
- 108 31A-33-114, as renumbered and amended by Chapter 240, Laws of Utah 1996
- 109 31A-33-115, as renumbered and amended by Chapter 240, Laws of Utah 1996
- 110 31A-33-116, as renumbered and amended by Chapter 240, Laws of Utah 1996
- 111 31A-33-117, as last amended by Chapter 375, Laws of Utah 1997
- 112 31A-33-118, as last amended by Chapter 107, Laws of Utah 1998

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

115 Section 1. Section 11-8-3 is amended to read:

116 **11-8-3. Department of Environmental Quality to negotiate loans for sewage**
117 **facilities.**

118 (1) The Department of Environmental Quality may negotiate loans from the Retirement
119 Systems Fund, State Land Principal Fund, [~~Workers' Compensation Fund,~~] or any state trust
120 and agency fund which has sums available for loaning, as these funds are defined in Title 51,

121 Chapter 5, Funds Consolidation Act, not to exceed \$1,000,000 in any fiscal year for the
122 purposes of providing the funding for the loans provided for in Section 11-8-2.

123 (2) The terms of any borrowing and repayment shall be negotiated between the
124 borrower and the lender consistent with the legal duties of the lender.

125 Section 2. Section **31A-1-105** is amended to read:

126 **31A-1-105. Presumption of jurisdiction.**

127 (1) Any insurer~~[, including the Workers' Compensation Fund created under Chapter~~
128 ~~33,]~~ that provides coverage of a resident of this state, property located in this state, or a
129 business activity conducted in this state, or that engages in any activity described in
130 Subsections 31A-15-102(2)(a) through (h), is:

131 (a) doing an insurance business in this state; and

132 (b) subject to the jurisdiction of the [~~insurance~~] commissioner and the courts of this
133 state under Sections 31A-2-309 and 31A-2-310 to the extent of that coverage or activity.

134 (2) Any person doing or purporting to do [~~an insurance~~] business in this state as
135 defined in Section 31A-1-301 is subject to the jurisdiction of the insurance commissioner and
136 this title, unless the insurer can establish that the exemptions of Section 31A-1-103 apply.

137 (3) This section does not limit the jurisdiction of the courts of this state under other
138 applicable law.

139 Section 3. Section **31A-15-103** is amended to read:

140 **31A-15-103. Surplus lines insurance -- Unauthorized insurers.**

141 (1) Notwithstanding Section 31A-15-102, a foreign insurer that has not obtained a
142 certificate of authority to do business in this state under Section 31A-14-202 may negotiate for
143 and make insurance contracts with persons in this state and on risks located in this state,
144 subject to the limitations and requirements of this section.

145 (2) For contracts made under this section, the insurer may, in this state, inspect the
146 risks to be insured, collect premiums and adjust losses, and do all other acts reasonably
147 incidental to the contract, through employees or through independent contractors.

148 (3) (a) Subsections (1) and (2) do not permit any person to solicit business in this state
149 on behalf of an insurer that has no certificate of authority.

150 (b) Any insurance placed with a nonadmitted insurer shall be placed with a surplus
151 lines producer licensed under Chapter 23a, Insurance Marketing - Licensing Producers,

152 Consultants, and Reinsurance Intermediaries.

153 (c) The commissioner may by rule prescribe how a surplus lines producer may:

154 (i) pay or permit the payment, commission, or other remuneration on insurance placed
155 by the surplus lines producer under authority of the surplus lines producer's license to one
156 holding a license to act as an insurance producer; and

157 (ii) advertise the availability of the surplus lines producer's services in procuring, on
158 behalf of persons seeking insurance, contracts with nonadmitted insurers.

159 (4) For contracts made under this section, nonadmitted insurers are subject to Sections
160 31A-23a-402 and 31A-23a-403 and the rules adopted under those sections.

161 (5) A nonadmitted insurer may not issue workers' compensation insurance coverage to
162 employers located in this state, except for stop loss coverages issued to employers securing
163 workers' compensation under Subsection 34A-2-201[~~(3)~~] (2).

164 (6) (a) The commissioner may by rule prohibit making contracts under Subsection (1)
165 for a specified class of insurance if authorized insurers provide an established market for the
166 class in this state that is adequate and reasonably competitive.

167 (b) The commissioner may by rule place restrictions and limitations on and create
168 special procedures for making contracts under Subsection (1) for a specified class of insurance
169 if:

170 (i) there have been abuses of placements in the class; or [if]

171 (ii) the policyholders in the class, because of limited financial resources, business
172 experience, or knowledge, cannot protect their own interests adequately.

173 (c) The commissioner may prohibit an individual insurer from making any contract
174 under Subsection (1) and all insurance producers from dealing with the insurer if:

175 (i) the insurer [has] willfully [~~violated~~] violates this section, Section 31A-4-102,
176 31A-23a-402, or 31A-26-303, or any rule adopted under any of these sections;

177 (ii) the insurer [~~has failed~~] fails to pay the fees and taxes specified under Section
178 31A-3-301; or

179 (iii) the commissioner has reason to believe that the insurer is in an unsound condition
180 or is operated in a fraudulent, dishonest, or incompetent manner or in violation of the law of its
181 domicile.

182 (d) (i) The commissioner may issue lists of unauthorized foreign insurers whose

183 solidity the commissioner doubts, or whose practices the commissioner considers
184 objectionable.

185 (ii) The commissioner shall issue lists of unauthorized foreign insurers the
186 commissioner considers to be reliable and solid.

187 (iii) In addition to the lists described in Subsections (6)(d)(i) and (ii), the commissioner
188 may issue other relevant evaluations of unauthorized insurers.

189 (iv) An action may not lie against the commissioner or any employee of the department
190 for any written or oral communication made in, or in connection with the issuance of, the lists
191 or evaluations described in this Subsection (6)(d).

192 (e) A foreign unauthorized insurer shall be listed on the commissioner's "reliable" list
193 only if the unauthorized insurer:

194 (i) ~~[has delivered]~~ delivers a request to the commissioner to be on the list;

195 (ii) ~~[has established]~~ establishes satisfactory evidence of good reputation and financial
196 integrity;

197 (iii) ~~[has delivered]~~ delivers to the commissioner a copy of ~~[its]~~ the foreign
198 unauthorized insurer's current annual statement certified by the foreign unauthorized insurer
199 and continues each subsequent year to file its annual statements with the commissioner within
200 60 days of its filing with the insurance regulatory authority where it is domiciled;

201 (iv) (A) (I) is in substantial compliance with the greater of:

202 (Aa) the solvency standards in Chapter 17, Part 6, Risk-Based Capital~~[-];~~; or ~~[maintains]~~

203 (Bb) maintaining capital and surplus of at least \$15,000,000~~[-, whichever is greater,];~~

204 and

205 (II) maintains in the United States an irrevocable trust fund in either a national bank or
206 a member of the Federal Reserve System, or maintains a deposit meeting the statutory deposit
207 requirements for insurers in the state where it is made, which trust fund or deposit:

208 ~~[(F)]~~ (Aa) shall be in an amount not less than \$2,500,000 for the protection of all of the
209 insurer's policyholders in the United States;

210 ~~[(H)]~~ (Bb) may consist of cash, securities, or investments of substantially the same
211 character and quality as those which are "qualified assets" under Section 31A-17-201; and

212 ~~[(H)]~~ (Cc) may include as part of the trust arrangement a letter of credit that qualifies
213 as acceptable security under Subsection 31A-17-404(3)(c)(iii); or

214 (B) in the case of any "Lloyd's" or other similar incorporated or unincorporated group
215 of alien individual insurers, maintains a trust fund that:

216 (I) shall be in an amount not less than \$50,000,000 as security to its full amount for all
217 policyholders and creditors in the United States of each member of the group;

218 (II) may consist of cash, securities, or investments of substantially the same character
219 and quality as those which are "qualified assets" under Section 31A-17-201; and

220 (III) may include as part of this trust arrangement a letter of credit that qualifies as
221 acceptable security under Subsection 31A-17-404(3)(c)(iii); and

222 (v) for an alien insurer not domiciled in the United States or a territory of the United
223 States, is listed on the Quarterly Listing of Alien Insurers maintained by the National
224 Association of Insurance Commissioners International Insurers Department.

225 (7) (a) ~~[A]~~ Unless the producer gives an applicant notice in writing of the known
226 deficiencies of one of the following insurers on the producer's investigation, and explains the
227 need to place the business with that insurer, a surplus lines producer may not, either knowingly
228 or without reasonable investigation of the financial condition and general reputation of the
229 insurer, place insurance under this section with:

230 (i) a financially unsound ~~[insurers or with insurers]~~ insurer;

231 (ii) an insurer engaging in unfair practices[-]; or ~~[with]~~

232 (iii) an otherwise substandard ~~[insurers, unless the producer gives the applicant notice~~
233 in writing of the known deficiencies of the insurer or the limitations on his investigation, and
234 explains the need to place the business with that insurer] insurer.

235 (b) A copy of ~~[this]~~ the notice required by Subsection (7)(a) shall be kept in the office
236 of the producer for at least five years.

237 (c) To be financially sound, an insurer shall satisfy standards that are comparable to
238 those applied under the laws of this state to authorized insurers. ~~[Insurers]~~

239 (d) An insurer on the "doubtful or objectionable" list under Subsection (6)(d) and
240 ~~[insurers]~~ an insurer not on the commissioner's "reliable" list under Subsection (6)(e) are
241 presumed substandard.

242 (8) (a) A policy issued under this section shall:

243 (i) include a description of the subject of the insurance ~~[and]~~;

244 (ii) indicate the coverage, conditions, and term of the insurance[-];

245 (iii) indicate the premium charged and premium taxes to be collected from the
246 policyholder[;]; and

247 (iv) state the name and address of the policyholder and insurer.

248 (b) If the direct risk is assumed by more than one insurer, the policy shall state the
249 names and addresses of all insurers and the portion of the entire direct risk each has assumed.

250 (c) All policies issued under the authority of this section shall have attached or affixed
251 to the policy the following statement: "The insurer issuing this policy does not hold a certificate
252 of authority to do business in this state and thus is not fully subject to regulation by the Utah
253 insurance commissioner. This policy receives no protection from any of the guaranty
254 associations created under Title 31A, Chapter 28, Guaranty Associations."

255 (9) Upon placing a new or renewal coverage under this section, the surplus lines
256 producer shall promptly deliver to the policyholder or [~~his~~] the policyholder's agent evidence of
257 the insurance consisting either of the policy as issued by the insurer or, if the policy is not then
258 available, a certificate, cover note, or other confirmation of insurance complying with
259 Subsection (8).

260 (10) If the commissioner finds it necessary to protect the interests of insureds and the
261 public in this state, the commissioner may by rule subject policies issued under this section to
262 as much of the regulation provided by this title as is required for comparable policies written by
263 authorized foreign insurers.

264 (11) (a) Each surplus lines transaction in this state shall be examined to determine
265 whether [~~it~~] the surplus lines transaction complies with:

266 (i) the surplus lines tax levied under Chapter 3, Administration of the Insurance Laws;

267 (ii) the solicitation limitations of Subsection (3);

268 (iii) the requirement of Subsection (3) that placement be through a surplus lines
269 producer;

270 (iv) placement limitations imposed under Subsections (6)(a), (b), and (c); and

271 (v) the policy form requirements of Subsections (8) and (10).

272 (b) The examination described in Subsection (11)(a) shall take place as soon as
273 practicable after the transaction. The surplus lines producer shall submit to the examiner
274 information necessary to conduct the examination within a period specified by rule.

275 (c) (i) The examination described in Subsection (11)(a) may be conducted by the

276 commissioner or by an advisory organization created under Section 31A-15-111 and authorized
277 by the commissioner to conduct these examinations. The commissioner is not required to
278 authorize any additional advisory organizations to conduct examinations under this Subsection
279 (11)(c).

280 (ii) The commissioner's authorization of one or more advisory organizations to act as
281 examiners under this Subsection (11)(c) shall be:

282 (A) by rule[~~— In addition, the authorization shall be~~]; and

283 (B) evidenced by a contract, on a form provided by the commissioner, between the
284 authorized advisory organization and the department.

285 (d) (i) The person conducting the examination described in Subsection (11)(a) shall
286 collect a stamping fee of an amount not to exceed 1% of the policy premium payable in
287 connection with the transaction.

288 (ii) Stamping fees collected by the commissioner shall be deposited in the General
289 Fund. The commissioner shall establish this stamping fee by rule. Stamping fees collected by
290 an advisory organization are the property of the advisory organization to be used in paying the
291 expenses of the advisory organization.

292 (iii) Liability for paying the stamping fee is as required under Subsection 31A-3-303(1)
293 for taxes imposed under Section 31A-3-301. The commissioner shall adopt a rule dealing with
294 the payment of stamping fees. If stamping fees are not paid when due, the commissioner or
295 advisory organization may impose a penalty of 25% of the fee due, plus 1-1/2% per month
296 from the time of default until full payment of the fee.

297 (iv) Fees relative to policies covering risks located partially in this state shall be
298 allocated in the same manner as under Subsection 31A-3-303(4).

299 (e) The commissioner, representatives of the department, advisory organizations,
300 representatives and members of advisory organizations, authorized insurers, and surplus lines
301 insurers are not liable for damages on account of statements, comments, or recommendations
302 made in good faith in connection with their duties under this Subsection (11)(e) or under
303 Section 31A-15-111.

304 (f) Examinations conducted under this Subsection (11) and the documents and
305 materials related to the examinations are confidential.

306 Section 4. Section **31A-19a-401** is amended to read:

307 **31A-19a-401. Scope of part.**

308 (1) This part applies to workers' compensation insurance and employers' liability
309 insurance written in connection with [it] workers' compensation insurance.

310 (2) All insurers writing workers' compensation coverage[, including the Workers'
311 ~~Compensation Fund created under Chapter 33;~~] are subject to this part.

312 Section 5. Section **31A-21-101** is amended to read:

313 **31A-21-101. Scope of Chapters 21 and 22.**

314 (1) Except as provided in Subsections (2) through (6), this chapter and Chapter 22,
315 Contracts in Specific Lines, apply to all insurance policies, applications, and certificates:

- 316 (a) delivered or issued for delivery in this state;
317 (b) on property ordinarily located in this state;
318 (c) on persons residing in this state when the policy is issued; or
319 (d) on business operations in this state.

320 (2) This chapter and Chapter 22 do not apply to:

- 321 (a) an exemption provided in Section 31A-1-103;
322 (b) an insurance policy procured under Sections 31A-15-103 and 31A-15-104;
323 (c) an insurance policy on business operations in this state:
324 (i) if:
325 (A) the contract is negotiated primarily outside this state; and
326 (B) the operations in this state are incidental or subordinate to operations outside this
327 state; and
328 (ii) except that insurance required by a Utah statute must conform to the statutory
329 requirements; or
330 (d) other exemptions provided in this title.

331 (3) (a) Sections 31A-21-102, 31A-21-103, 31A-21-104, Subsections 31A-21-107 (1)
332 and (3), and Sections 31A-21-306, 31A-21-308, 31A-21-312, and 31A-21-314 apply to ocean
333 marine and inland marine insurance.

334 (b) Section 31A-21-201 applies to inland marine insurance that is written according to
335 manual rules or rating plans.

336 (4) A group or blanket policy is subject to this chapter and Chapter 22, except:

337 (a) a group or blanket policy outside the scope of this title under Subsection

338 31A-1-103(3)(h); and

339 (b) other exemptions provided under Subsection (5).

340 (5) The commissioner may by rule exempt any class of insurance contract or class of
341 insurer from any or all of the provisions of this chapter and Chapter 22 if the interests of the
342 Utah insureds, creditors, or the public would not be harmed by the exemption.

343 (6) Workers' compensation insurance~~[, including that written by the Workers'~~
344 ~~Compensation Fund created under Chapter 33, Workers' Compensation Fund,]~~ is subject to this
345 chapter and Chapter 22.

346 (7) Unless clearly inapplicable, any provision of this chapter or Chapter 22 applicable
347 to either a policy or a contract is applicable to both.

348 Section 6. Section **31A-22-309** is amended to read:

349 **31A-22-309. Limitations, exclusions, and conditions to personal injury**
350 **protection.**

351 (1) (a) A person who has or is required to have direct benefit coverage under a policy
352 which includes personal injury protection may not maintain a cause of action for general
353 damages arising out of personal injuries alleged to have been caused by an automobile
354 accident, except where the person has sustained one or more of the following:

355 (i) death;

356 (ii) dismemberment;

357 (iii) permanent disability or permanent impairment based upon objective findings;

358 (iv) permanent disfigurement; or

359 (v) medical expenses to a person in excess of \$3,000.

360 (b) Subsection (1)(a) does not apply to a person making an uninsured motorist claim.

361 (2) (a) Any insurer issuing personal injury protection coverage under this part may only
362 exclude from this coverage benefits:

363 (i) for any injury sustained by the insured while occupying another motor vehicle
364 owned by or furnished for the regular use of the insured or a resident family member of the
365 insured and not insured under the policy;

366 (ii) for any injury sustained by any person while operating the insured motor vehicle
367 without the express or implied consent of the insured or while not in lawful possession of the
368 insured motor vehicle;

369 (iii) to any injured person, if the person's conduct contributed to ~~[his]~~ that person's
370 injury:

371 (A) by intentionally causing injury to ~~[himself]~~ the person; or

372 (B) while committing a felony;

373 (iv) for any injury sustained by any person arising out of the use of any motor vehicle
374 while located for use as a residence or premises;

375 (v) for any injury due to war, whether or not declared, civil war, insurrection, rebellion
376 or revolution, or to any act or condition incident to any of the foregoing; or

377 (vi) for any injury resulting from the radioactive, toxic, explosive, or other hazardous
378 properties of nuclear materials.

379 (b) ~~[The provisions of this Subsection do]~~ This Subsection (2) does not limit the
380 exclusions which may be contained in other types of coverage.

381 (3) The benefits payable to any injured person under Section 31A-22-307 are reduced
382 by:

383 (a) any benefits which that person receives or is entitled to receive as a result of an
384 accident covered in this code under any workers' compensation or similar statutory plan; and

385 (b) any amounts which that person receives or is entitled to receive from the United
386 States or any of its agencies because that person is on active duty in the military service.

387 (4) When a person injured is also an insured party under any other policy, including
388 those policies complying with this part, primary coverage is given by the policy insuring the
389 motor vehicle in use during the accident.

390 (5) (a) Payment of the benefits provided for in Section 31A-22-307 shall be made on a
391 monthly basis as expenses are incurred.

392 (b) Benefits for any period are overdue if they are not paid within 30 days after the
393 insurer receives reasonable proof of the fact and amount of expenses incurred during the
394 period. If reasonable proof is not supplied as to the entire claim, the amount supported by
395 reasonable proof is overdue if not paid within 30 days after that proof is received by the
396 insurer. Any part or all of the remainder of the claim that is later supported by reasonable proof
397 is also overdue if not paid within 30 days after the proof is received by the insurer.

398 (c) If the insurer fails to pay the expenses when due, these expenses shall bear interest
399 at the rate of 1-1/2% per month after the due date.

400 (d) The person entitled to the benefits may bring an action in contract to recover the
401 expenses plus the applicable interest. If the insurer is required by the action to pay any overdue
402 benefits and interest, the insurer is also required to pay a reasonable ~~[attorney's]~~ attorney fee to
403 the claimant.

404 (6) Every policy providing personal injury protection coverage is subject to the
405 following:

406 (a) that where the insured under the policy is or would be held legally liable for the
407 personal injuries sustained by any person to whom benefits required under personal injury
408 protection have been paid by another insurer, ~~[including the Workers' Compensation Fund~~
409 ~~created under Chapter 33,]~~ the insurer of the person who would be held legally liable shall
410 reimburse the other insurer for the payment, but not in excess of the amount of damages
411 recoverable; and

412 (b) that the issue of liability for that reimbursement and its amount shall be decided by
413 mandatory, binding arbitration between the insurers.

414 Section 7. Section **31A-26-103** is amended to read:

415 **31A-26-103. Workers' compensation claims.**

416 In addition to being subject to this and other chapters of this title, insurers writing
417 workers' compensation insurance in this state ~~[-including the Workers' Compensation Fund~~
418 ~~created under Chapter 33,]~~ are subject to the Labor Commission with respect to claims for and
419 payment of compensation and benefits.

420 Section 8. Section **31A-35-103** is amended to read:

421 **31A-35-103. Exemption from other sections of this title.**

422 Bail bond surety companies are ~~[exempted]~~ exempt from:

423 (1) Title 31A, Chapter 3, Department Funding, Fees, and Taxes, except Section
424 31A-3-103;

425 (2) Title 31A, Chapter 4, Insurance in General, except Sections 31A-4-102, 31A-4-103,
426 31A-4-104, and 31A-4-107;

427 (3) Title 31A, Chapter 5, Domestic Stock and Mutual Insurance Corporations, except
428 Section 31A-5-103, and

429 (4) Title 31A, Chapters 6, 6a, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 24, 25,
430 26, 27, 28, 29, 30, 31, 32, ~~[33, and]~~ 34, and 40.

431 Section 9. Section **31A-40-101** is enacted to read:

432 **CHAPTER 40. WORKERS' COMPENSATION INSURANCE REGULATION**

433 **Part 1. General Provisions**

434 **31A-40-101. Title.**

435 This chapter is known as "Workers' Compensation Insurance Regulation."

436 Section 10. Section **31A-40-102** is enacted to read:

437 **31A-40-102. Definitions.**

438 As used in this chapter:

439 (1) Notwithstanding Section 31A-1-301, "employer" is as defined in Section
440 34A-2-103.

441 (2) "Plan" means the Utah Workers' Compensation Assigned Risk Plan created by rule
442 in accordance with Section 31A-40-202.

443 (3) "Plan administrator" is the organization selected under Subsection 31A-40-202(4).

444 (4) "Plan reserve" means the Workers' Compensation Assigned Risk Plan Reserve
445 created in Section 31A-40-204.

446 (5) "Policy servicing and claims administration support" shall be defined by the
447 commissioner by rule made in accordance with Title 63, Chapter 46a, Utah Administrative
448 Rulemaking Act.

449 (6) "Residual market employer" means an employer who:

450 (a) is required to obtain workers' compensation coverage under Title 34A, Chapters 2
451 and 3; and

452 (b) can verify in writing in accordance with the plan that the employer is unable, except
453 under the plan, to obtain workers' compensation insurance from at least two workers'
454 compensation insurers.

455 (7) "Servicing carrier" means a workers' compensation insurer selected as a servicing
456 carrier in accordance with Subsection 31A-40-202(5).

457 (8) "Transition date" means the date determined in accordance with Section
458 31A-40-307.

459 (9) "Workers' compensation insurer" means an insurer licensed to write workers'
460 compensation insurance in this state.

461 Section 11. Section **31A-40-201** is enacted to read:

462 **Part 2. Workers' Compensation Assigned Risk Plan Act**

463 **31A-40-201. Title.**

464 This part is known as the "Workers' Compensation Assigned Risk Plan Act."

465 Section 12. Section **31A-40-202** is enacted to read:

466 **31A-40-202. Utah Workers' Compensation Assigned Risk Plan creation.**

467 (1) (a) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act,
468 the commissioner shall by rule create an assigned risk plan known as the "Utah Workers'
469 Compensation Assigned Risk Plan":

470 (i) to provide workers' compensation insurance for a residual market employer who:

471 (A) applies for workers' compensation insurance under the plan; and

472 (B) qualifies for workers' compensation insurance under the plan; and

473 (ii) that takes effect on the transition date.

474 (b) The plan is not an agency or division of the department.

475 (2) The plan shall provide for the equitable apportionment among the workers'
476 compensation insurers of the workers' compensation insurance provided in accordance with
477 Subsection (1).

478 (3) A workers' compensation insurer shall participate in the plan.

479 (4) In accordance with Title 63, Chapter 56, Utah Procurement Code, the
480 commissioner shall select a person to be the plan administrator who:

481 (a) is authorized to provide actuarial and administrative support for the plan; and

482 (b) shall be a nationally recognized rating and administrative organization.

483 (5) (a) The commissioner shall establish eligibility criteria for a workers' compensation
484 insurer to qualify as a servicing carrier to provide policy servicing and claims administration
485 support under the plan including requiring that a servicing carrier be:

486 (i) licensed and actively writing workers' compensation insurance in the state; and

487 (ii) in good standing in its participation in the plan.

488 (b) The plan administrator shall solicit bids from workers' compensation insurers to act
489 as a servicing carrier.

490 (c) After the bid process under Subsection (5)(b), the commissioner shall select one or
491 more workers' compensation insurers to be servicing carriers.

492 (d) A servicing carrier shall begin servicing its workers' compensation insurance

493 obligations under the plan as of the transfer date.

494 (6) The commissioner may adopt a premium adjustment plan for any risk insured
495 through the plan that:

496 (a) has frequency or severity problems; or

497 (b) has any exposure that is greater than average for the class.

498 Section 13. Section **31A-40-203** is enacted to read:

499 **31A-40-203. Rates.**

500 (1) (a) A servicing carrier shall submit rates for the plan to the commissioner for
501 approval by no later than 30 days before the transition date.

502 (b) After initial rates are approved by the commissioner, new or modified rates may be
503 submitted to the commissioner for the commissioner's approval.

504 (c) The commissioner may approve a retrospective rating plan for any risk insured
505 under the plan.

506 (2) (a) A rate may not be used under the plan unless approved by the commissioner.

507 (b) An approved rate may not take effect less than 30 days after the day on which the
508 commissioner approves the rate.

509 (c) A rate filing is considered approved if the commissioner fails to make a
510 determination within 30 days after the day on which a rate filing is made.

511 (3) A rate approved by the commissioner shall reflect:

512 (a) loss experience for residual market employers; and

513 (b) expenses and cost of capital needed to support the provision of workers'

514 compensation insurance under the plan to the extent that it is actuarially appropriate so that the
515 plan is self-supporting.

516 (4) In accordance with Chapter 19a, Part 2, General Rate Regulation, the commissioner
517 may:

518 (a) approve a rate filing that meets the requirements of Section 31A-19a-201;

519 (b) approve an assessment submitted by the plan administrator on workers'

520 compensation insurance offered under the plan; or

521 (c) disapprove a rate filing in accordance with Section 31A-19a-206.

522 (5) Notwithstanding any other provisions of this part, a rating organization may make
523 rate filings under this section.

524 Section 14. Section **31A-40-204** is enacted to read:

525 **31A-40-204. Workers' Compensation Assigned Risk Plan Reserve.**

526 (1) (a) There is created the "Workers' Compensation Assigned Risk Plan Reserve" to
527 assist in maintaining the financial stability of the plan.

528 (b) The plan reserve shall consist of:

529 (i) assets deposited in accordance with Section 31A-40-308;

530 (ii) assets deposited in accordance with Subsection (4); and

531 (iii) interest and earnings on the plan reserve.

532 (2) The commissioner shall act as trustee of the plan reserve, except that the state
533 treasurer shall:

534 (a) invest the plan reserve by following the procedures and requirements of Title 51,
535 Chapter 7, State Money Management Act; and

536 (b) deposit all interest or other earnings derived from the plan reserve into the plan
537 reserve.

538 (3) The assets of the plan reserve are for the exclusive benefit of the plan and may not
539 be diverted or appropriated for any purpose other than as provided in Section 31A-40-205.

540 (4) If the successor mutual insurance company, as defined in Section 31A-40-302,
541 ceases to write workers' compensation insurance in this state, within 30 days from the day on
542 which the successor mutual insurance company no longer writes a policy of workers'
543 compensation insurance in this state, the successor mutual company shall transfer to the plan
544 reserve all assets held in trust for the purpose of providing workers' compensation in Utah for
545 injuries and diseases including all administrative expenses.

546 Section 15. Section **31A-40-205** is enacted to read:

547 **31A-40-205. Deficits.**

548 (1) The commissioner shall determine whether or not there is a deficit for the plan in a
549 fiscal year within 24 months of the end of the fiscal year.

550 (2) A deficit in the plan in any single fiscal year shall be eliminated, by the
551 commissioner at the commissioner's discretion:

552 (a) directing the Division of Finance to transfer monies from the accumulated interest
553 and earnings from the plan reserve;

554 (b) imposing an assessment on workers' compensation insurance offered under the

555 plan, which may include an assessment that constitutes a separate charge on a policy issued
556 under the plan; or

557 (c) doing a combination of Subsections (2)(a) and (b).

558 Section 16. Section **31A-40-301** is enacted to read:

559 **Part 3. Privatization of the Workers' Compensation Fund Act**

560 **31A-40-301. Title.**

561 This part is known as the "Privatization of the Workers' Compensation Fund Act."

562 Section 17. Section **31A-40-302** is enacted to read:

563 **31A-40-302. Definitions.**

564 As used in this part:

565 (1) "Assets" means property of all kinds, real and personal, tangible and intangible, and
566 includes:

567 (a) cash;

568 (b) stock or other investments;

569 (c) goodwill;

570 (d) real property;

571 (e) an ownership interest;

572 (f) a license;

573 (g) a cause of action; and

574 (h) any similar property.

575 (2) "Injury Fund" means the Injury Fund as defined in Section 31A-33-101.

576 (3) "Subsidiary of the Workers' Compensation Fund" means:

577 (a) a subsidiary of the Workers' Compensation Fund;

578 (b) an entity controlled by the Workers' Compensation Fund; or

579 (c) a joint enterprise controlled by the Workers' Compensation Fund.

580 (4) "Successor mutual insurance company" means the mutual insurance company
581 granted the certificate of authority or license under Section 31A-40-306.

582 (5) "Workers' Compensation Fund" means the nonprofit, quasi-public corporation
583 established by Chapter 33, Workers' Compensation Fund.

584 Section 18. Section **31A-40-303** is enacted to read:

585 **31A-40-303. Relationship to Independent Entities Code.**

586 This part supersedes Title 63E, Independent Entities Code, as to requirements for:

587 (1) the privatization of the Workers' Compensation Fund; and

588 (2) the transfer of the Injury Fund.

589 Section 19. Section **31A-40-304** is enacted to read:

590 **31A-40-304. Financial audits and actuarial studies.**

591 (1) (a) On or before September 1, 2007, the commissioner shall contract with a
592 nationally recognized accounting firm and a nationally recognized actuarial consulting firm to
593 conduct:

594 (i) one or more financial audits of the Workers' Compensation Fund and all
595 subsidiaries of the Workers' Compensation Fund; and

596 (ii) one or more actuarial studies of the adequacy of the reserve of the Workers'
597 Compensation Fund and of all the subsidiaries of the Workers' Compensation Fund.

598 (b) At a minimum, the audits and studies required by this section shall provide the
599 information required by Sections 31A-40-308 and 31A-40-309.

600 (2) The cost of any audit or study conducted under this section shall be paid by the
601 Workers' Compensation Fund from the Injury Fund.

602 (3) (a) After the completion of the audits and studies conducted under this section, the
603 commissioner shall make a report to the governor.

604 (b) The commissioner's report shall include:

605 (i) a discussion of the findings of the audits and studies; and

606 (ii) a statement as to whether the assets of the Workers' Compensation Fund and the
607 monies from the Injury Fund that are to be transferred to the successor mutual insurance
608 company in accordance with Sections 31A-40-307 and 31A-40-310 are adequate to:

609 (A) permit the payment of all liabilities under policies of insurance assumed by the
610 successor mutual insurance company as determined on the basis of sound actuarial principles;
611 and

612 (B) cover all outstanding indebtedness or other liabilities of the Workers'
613 Compensation Fund.

614 Section 20. Section **31A-40-305** is enacted to read:

615 **31A-40-305. Internal Revenue Service ruling.**

616 The Workers' Compensation Fund shall obtain a private letter ruling from the United

617 States Internal Revenue Service indicating that neither the state nor the successor mutual
618 insurance company will have any tax liability as the result of the privatization of the Workers'
619 Compensation Fund in accordance with this part.

620 Section 21. Section **31A-40-306** is enacted to read:

621 **31A-40-306. Creation of a successor mutual insurance company.**

622 (1) In accordance with Chapter 5, Domestic Stock and Mutual Insurance Corporations,
623 the board of directors of the Workers' Compensation Fund shall:

624 (a) on or before September 30, 2008, submit a mutualization plan to the commissioner;
625 and

626 (b) after submitting a mutualization plan as required by Subsection (1)(a), organize a
627 mutual insurance company to:

628 (i) write workers' compensation insurance, including workers' compensation insurance
629 in this state; and

630 (ii) be the successor organization to the Workers' Compensation Fund.

631 (2) (a) The successor mutual insurance company organized under this section shall
632 apply for a certificate of authority or license under this title to write workers' compensation
633 insurance in this state.

634 (b) If the commissioner determines that the successor mutual insurance company meets
635 the requirements of this title to obtain the certificate of authority or license described in
636 Subsection (2)(a), the commissioner shall grant the successor mutual insurance company the
637 certificate of authority or license.

638 (3) The certificate of authority of the Workers' Compensation Fund expires on the
639 transition date.

640 Section 22. Section **31A-40-307** is enacted to read:

641 **31A-40-307. Transition date.**

642 (1) (a) The Legislature may enact during the 2008 Annual General Session a process to
643 determine a transition date as provided in this section.

644 (b) The transition date process may provide for:

645 (i) a certification by the governor that the requirements of this part have been complied
646 with by all persons required to take an action under this part and Section 31A-40-202
647 including:

648 (A) the commissioner;
649 (B) the Workers' Compensation Fund; and
650 (C) the successor mutual insurance company;
651 (ii) a period of time after the certification of not less than 30 days to prepare for the
652 implementation of the transition; and
653 (iii) a process by which the governor provides a copy of the governor's certification to:
654 (A) the speaker of the House of Representatives;
655 (B) the president of the Senate;
656 (C) the commissioner;
657 (D) the Workers' Compensation Fund;
658 (E) the successor mutual insurance company; and
659 (F) the Office of Legislative Research and General Counsel; and
660 (iv) a deadline by which the persons take the actions required by this part and Section
661 31A-40-202.
662 (2) On the transition date:
663 (a) the Workers' Compensation Fund shall transfer the assets of the Injury Fund to the
664 successor mutual insurance company in accordance with Section 31A-40-310;
665 (b) the Workers' Compensation Fund shall transfer the assets of the Workers'
666 Compensation Fund to the successor mutual insurance company;
667 (c) the successor mutual insurance company shall assume all debts and liabilities of the
668 Workers' Compensation Fund;
669 (d) the Workers' Compensation Fund is dissolved and shall file any necessary
670 dissolution documents with the Division of Corporations and Commercial Code; and
671 (e) the plan shall take effect including the plan administrator and any servicing carrier
672 assuming their obligations under the plan.
673 Section 23. Section **31A-40-308** is enacted to read:
674 **31A-40-308. Transfer of assets to plan reserve.**
675 (1) As part of an actuarial study required by Section 31A-40-304, the Workers'
676 Compensation Fund shall identify all policies that are risks associated with residual market
677 employers that may be required to seek workers' compensation insurance from the plan.
678 (2) The nationally recognized actuarial consulting firm performing the actuarial study

679 described in Subsection (1) shall determine the percentage of the annual premium volume
680 currently paid by policyholders to the Workers' Compensation Fund that is represented by the
681 risks identified under Subsection (1).

682 (3) Based on the determination under Subsection (2), the successor mutual insurance
683 company shall deposit into the plan reserve no later than two years after the transition date
684 assets that are equal in value to a proportional share of the Workers' Compensation Fund's
685 assets for any policy of record with the Workers' Compensation Fund on the transition date
686 that:

687 (a) is nonrenewed due to risk characteristics; and

688 (b) becomes a risk related to a residual market employer in the 24 months following
689 the transition date.

690 Section 24. Section **31A-40-309** is enacted to read:

691 **31A-40-309. Return of excess surplus.**

692 (1) If an audit or study conducted under Section 31A-40-304 finds that the premium to
693 surplus ratio of the Workers' Compensation Fund is 2 to 1 or less, the commissioner may order
694 the successor mutual insurance company to issue an extraordinary dividend to policyholders of
695 record of the Workers' Compensation Fund on January 1, 2008.

696 (2) The successor mutual insurance company shall issue a dividend required by the
697 commissioner under this section within 30 days of the transition date.

698 Section 25. Section **31A-40-310** is enacted to read:

699 **31A-40-310. Assumption of liabilities and transfer of assets by the successor**
700 **mutual insurance company.**

701 As of the transition date, the successor mutual insurance company shall:

702 (1) assume all debts and liabilities of the Workers' Compensation Fund; and

703 (2) subject to Subsection 31A-40-204(4), hold in an irrevocable trust the Injury Fund
704 assets for the purpose of providing workers' compensation in Utah for injuries and diseases
705 including all administrative expenses.

706 Section 26. Section **34A-2-102** is amended to read:

707 **34A-2-102. Definition of terms.**

708 As used in this chapter:

709 (1) "Average weekly wages" means the average weekly wages as determined under

710 Section 34A-2-409.

711 (2) "Award" means a final order of the commission as to the amount of compensation
712 due:

713 (a) any injured employee; or

714 (b) the dependents of any deceased employee.

715 (3) "Compensation" means the payments and benefits provided for in this chapter or
716 Chapter 3, Utah Occupational Disease Act.

717 (4) (a) "Decision" means the ruling of:

718 (i) an administrative law judge; or

719 (ii) in accordance with Section 34A-2-801, the commissioner or Appeals Board; and

720 (b) may include:

721 ~~(a)~~ (i) an award or denial of medical, disability, death, or other related benefits under
722 this chapter or Chapter 3, Utah Occupational Disease Act; or

723 ~~(b)~~ (ii) another adjudicative ruling in accordance with this chapter or Chapter 3, Utah
724 Occupational Disease Act.

725 (5) "Director" means the director of the division, unless the context requires otherwise.

726 (6) "Disability" means an administrative determination that may result in an
727 entitlement to compensation as a consequence of becoming medically impaired as to function.
728 Disability can be total or partial, temporary or permanent, industrial or nonindustrial.

729 (7) "Division" means the Division of Industrial Accidents.

730 (8) "Impairment" is a purely medical condition reflecting any anatomical or functional
731 abnormality or loss. Impairment may be either temporary or permanent, industrial or
732 nonindustrial.

733 (9) "Order" means an action of the commission that determines the legal rights, duties,
734 privileges, immunities, or other interests of one or more specific persons, but not a class of
735 persons.

736 (10) (a) "Personal injury by accident arising out of and in the course of employment"
737 includes any injury caused by the willful act of a third person directed against an employee
738 because of the employee's employment.

739 (b) "Personal injury by accident arising out of and in the course of employment" does
740 not include a disease, except as the disease results from the injury.

741 (11) "Safe" and "safety," as applied to any employment or place of employment, means
742 the freedom from danger to the life or health of employees reasonably permitted by the nature
743 of the employment.

744 [~~(12) "Workers' Compensation Fund" means the nonprofit, quasi-public corporation~~
745 ~~created in Title 31A, Chapter 33, Workers' Compensation Fund.~~]

746 Section 27. Section **34A-2-103** is amended to read:

747 **34A-2-103. Employers enumerated and defined -- Regularly employed --**
748 **Statutory employers.**

749 (1) (a) The state, and each county, city, town, and school district in the state are
750 considered employers under this chapter and Chapter 3, Utah Occupational Disease Act.

751 (b) For the purposes of the exclusive remedy in this chapter and Chapter 3, Utah
752 Occupational Disease Act, prescribed in Sections 34A-2-105 and 34A-3-102, the state is
753 considered to be a single employer and includes any office, department, agency, authority,
754 commission, board, institution, hospital, college, university, or other instrumentality of the
755 state.

756 (2) (a) Except as provided in Subsection (4), each person, including each public utility
757 and each independent contractor, who regularly employs one or more workers or operatives in
758 the same business, or in or about the same establishment, under any contract of hire, express or
759 implied, oral or written, is considered an employer under this chapter and Chapter 3, Utah
760 Occupational Disease Act.

761 (b) As used in this Subsection (2):

762 (i) "Independent contractor" means any person engaged in the performance of any work
763 for another who, while so engaged, is:

764 (A) independent of the employer in all that pertains to the execution of the work;

765 (B) not subject to the routine rule or control of the employer;

766 (C) engaged only in the performance of a definite job or piece of work; and

767 (D) subordinate to the employer only in effecting a result in accordance with the
768 employer's design.

769 (ii) "Regularly" includes all employments in the usual course of the trade, business,
770 profession, or occupation of the employer, whether continuous throughout the year or for only a
771 portion of the year.

772 (3) (a) The client company in an employee leasing arrangement under Title 58, Chapter
773 59, Professional Employer Organization Registration Act, is considered the employer of leased
774 employees and shall secure workers' compensation benefits for them by complying with
775 Subsection 34A-2-201(1) [~~or (2)~~] and commission rules.

776 (b) An insurance carrier may underwrite workers' compensation secured in accordance
777 with Subsection (3)(a) showing the leasing company as the named insured and each client
778 company as an additional insured by means of individual endorsements.

779 (c) Endorsements shall be filed with the division as directed by commission rule.

780 (d) The division shall promptly inform the Division of Occupation and Professional
781 Licensing within the Department of Commerce if the division has reason to believe that [~~an~~
782 ~~employee leasing company~~] a professional employer organization is not in compliance with
783 Subsection 34A-2-201(1) [~~or (2)~~] and commission rules.

784 (4) A domestic employer who does not employ one employee or more than one
785 employee at least 40 hours per week is not considered an employer under this chapter and
786 Chapter 3, Utah Occupational Disease Act.

787 (5) (a) As used in this Subsection (5):

788 (i) (A) "agricultural employer" means a person who employs agricultural labor as
789 defined in Subsections 35A-4-206(1) and (2) and does not include employment as provided in
790 Subsection 35A-4-206(3); and

791 (B) notwithstanding Subsection (5)(a)(i)(A), only for purposes of determining who is a
792 member of the employer's immediate family under Subsection (5)(a)(ii), if the agricultural
793 employer is a corporation, partnership, or other business entity, "agricultural employer" means
794 an officer, director, or partner of the business entity;

795 (ii) "employer's immediate family" means:

796 (A) an agricultural employer's:

797 (I) spouse;

798 (II) grandparent;

799 (III) parent;

800 (IV) sibling;

801 (V) child;

802 (VI) grandchild;

- 803 (VII) nephew; or
804 (VIII) niece;
805 (B) a spouse of any person provided in Subsection (5)(a)(ii)(A)(II) through (VIII); or
806 (C) an individual who is similar to those listed in Subsections (5)(a)(ii)(A) or (B) as
807 defined by rules of the commission; and
808 (iii) "nonimmediate family" means a person who is not a member of the employer's
809 immediate family.
- 810 (b) For purposes of this chapter and Chapter 3, Utah Occupational Disease Act, an
811 agricultural employer is not considered an employer of a member of the employer's immediate
812 family.
- 813 (c) For purposes of this chapter and Chapter 3, Utah Occupational Disease Act, an
814 agricultural employer is not considered an employer of a nonimmediate family employee if:
- 815 (i) for the previous calendar year the agricultural employer's total annual payroll for all
816 nonimmediate family employees was less than \$8,000; or
817 (ii) (A) for the previous calendar year the agricultural employer's total annual payroll
818 for all nonimmediate family employees was equal to or greater than \$8,000 but less than
819 \$50,000; and
820 (B) the agricultural employer maintains insurance that covers job-related injuries of the
821 employer's nonimmediate family employees in at least the following amounts:
822 (I) \$300,000 liability insurance, as defined in Section 31A-1-301; and
823 (II) \$5,000 for health care benefits similar to benefits under health care insurance as
824 defined in Section 31A-1-301.
- 825 (d) For purposes of this chapter and Chapter 3, Utah Occupational Disease Act, an
826 agricultural employer is considered an employer of a nonimmediate family employee if:
- 827 (i) for the previous calendar year the agricultural employer's total annual payroll for all
828 nonimmediate family employees is equal to or greater than \$50,000; or
829 (ii) (A) for the previous year the agricultural employer's total payroll for nonimmediate
830 family employees was equal to or exceeds \$8,000 but is less than \$50,000; and
831 (B) the agricultural employer fails to maintain the insurance required under Subsection
832 (5)(c)(ii)(B).
- 833 (6) An employer of agricultural laborers or domestic servants who is not considered an

834 employer under this chapter and Chapter 3, Utah Occupational Disease Act, may come under
835 this chapter and Chapter 3, Utah Occupational Disease Act, by complying with:

- 836 (a) this chapter and Chapter 3, Utah Occupational Disease Act; and
- 837 (b) the rules of the commission.

838 (7) (a) If any person who is an employer procures any work to be done wholly or in
839 part for the employer by a contractor over whose work the employer retains supervision or
840 control, and this work is a part or process in the trade or business of the employer, the
841 contractor, all persons employed by the contractor, all subcontractors under the contractor, and
842 all persons employed by any of these subcontractors, are considered employees of the original
843 employer for the purposes of this chapter and Chapter 3, Utah Occupational Disease Act.

844 (b) Any person who is engaged in constructing, improving, repairing, or remodelling a
845 residence that the person owns or is in the process of acquiring as the person's personal
846 residence may not be considered an employee or employer solely by operation of Subsection
847 (7)(a).

848 (c) A partner in a partnership or an owner of a sole proprietorship is not considered an
849 employee under Subsection (7)(a) if the employer who procures work to be done by the
850 partnership or sole proprietorship obtains and relies on either:

851 (i) a valid certification of the partnership's or sole proprietorship's compliance with
852 Section 34A-2-201 indicating that the partnership or sole proprietorship secured the payment of
853 workers' compensation benefits pursuant to Section 34A-2-201; or

854 (ii) if a partnership or sole proprietorship with no employees other than a partner of the
855 partnership or owner of the sole proprietorship, a workers' compensation policy issued by an
856 insurer pursuant to Subsection 31A-21-104(8) stating that:

857 (A) the partnership or sole proprietorship is customarily engaged in an independently
858 established trade, occupation, profession, or business; and

859 (B) the partner or owner personally waives the partner's or owner's entitlement to the
860 benefits of this chapter and Chapter 3, Utah Occupational Disease Act, in the operation of the
861 partnership or sole proprietorship.

862 (d) A director or officer of a corporation is not considered an employee under
863 Subsection (7)(a) if the director or officer is excluded from coverage under Subsection
864 34A-2-104(4).

865 (e) A contractor or subcontractor is not an employee of the employer under Subsection
866 (7)(a), if the employer who procures work to be done by the contractor or subcontractor obtains
867 and relies on either:

868 (i) a valid certification of the contractor's or subcontractor's compliance with Section
869 34A-2-201; or

870 (ii) if a partnership, corporation, or sole proprietorship with no employees other than a
871 partner of the partnership, officer of the corporation, or owner of the sole proprietorship, a
872 workers' compensation policy issued by an insurer pursuant to Subsection 31A-21-104(8)
873 stating that:

874 (A) the partnership, corporation, or sole proprietorship is customarily engaged in an
875 independently established trade, occupation, profession, or business; and

876 (B) the partner, corporate officer, or owner personally waives the partner's, corporate
877 officer's, or owner's entitlement to the benefits of this chapter and Chapter 3, Utah
878 Occupational Disease Act, in the operation of the partnership's, corporation's, or sole
879 proprietorship's enterprise under a contract of hire for services.

880 (f) (i) For purposes of this Subsection (7)(f), "eligible employer" means a person who:

881 (A) is an employer; and

882 (B) procures work to be done wholly or in part for the employer by a contractor,
883 including:

884 (I) all persons employed by the contractor;

885 (II) all subcontractors under the contractor; and

886 (III) all persons employed by any of these subcontractors.

887 (ii) Notwithstanding the other provisions in this Subsection (7), if the conditions of
888 Subsection (7)(f)(iii) are met, an eligible employer is considered an employer for purposes of
889 Section 34A-2-105 of the contractor, subcontractor, and all persons employed by the contractor
890 or subcontractor described in Subsection (7)(f)(i)(B).

891 (iii) Subsection (7)(f)(ii) applies if the eligible employer:

892 (A) under Subsection (7)(a) is liable for and pays workers' compensation benefits as an
893 original employer under Subsection (7)(a) because the contractor or subcontractor fails to
894 comply with Section 34A-2-201;

895 (B) (I) secures the payment of workers' compensation benefits for the contractor or

896 subcontractor pursuant to Section 34A-2-201;

897 (II) procures work to be done that is part or process of the trade or business of the
898 eligible employer; and

899 (III) does the following with regard to a written workplace accident and injury
900 reduction program that meets the requirements of Subsection 34A-2-111(3)(d):

901 (Aa) adopts the workplace accident and injury reduction program;

902 (Bb) posts the workplace accident and injury reduction program at the work site at
903 which the eligible employer procures work; and

904 (Cc) enforces the workplace accident and injury reduction program according to the
905 terms of the workplace accident and injury reduction program; or

906 (C) (I) obtains and relies on:

907 (Aa) a valid certification described in Subsection (7)(c)(i) or (7)(e)(i);

908 (Bb) a workers' compensation policy described in Subsection (7)(c)(ii) or (7)(e)(ii); or

909 (Cc) proof that a director or officer is excluded from coverage under Subsection
910 34A-2-104(4);

911 (II) is liable under Subsection (7)(a) for the payment of workers' compensation benefits
912 if the contractor or subcontractor fails to comply with Section 34A-2-201;

913 (III) procures work to be done that is part or process in the trade or business of the
914 eligible employer; and

915 (IV) does the following with regard to a written workplace accident and injury
916 reduction program that meets the requirements of Subsection 34A-2-111(3)(d):

917 (Aa) adopts the workplace accident and injury reduction program;

918 (Bb) posts the workplace accident and injury reduction program at the work site at
919 which the eligible employer procures work; and

920 (Cc) enforces the workplace accident and injury reduction program according to the
921 terms of the workplace accident and injury reduction program.

922 Section 28. Section **34A-2-107** is amended to read:

923 **34A-2-107. Workers' compensation advisory council.**

924 (1) The commissioner shall appoint a workers' compensation advisory council
925 composed of:

926 (a) the following voting members:

- 927 (i) five employer representatives; and
 928 (ii) five employee representatives; and
 929 (b) the following nonvoting members:
 930 [~~(i) a representative of the Workers' Compensation Fund;~~
 931 ~~[(ii)] (i) a representative of [a] two private insurance [~~carrier~~] carriers;~~
 932 ~~[(iii)] (ii) a representative of health care providers;~~
 933 ~~[(iv)] (iii) the Utah insurance commissioner or the insurance commissioner's designee;~~

934 and

- 935 ~~[(v)] (iv) the commissioner or the commissioner's designee.~~

936 (2) Employers and employees shall consider nominating members of groups who
 937 historically may have been excluded from the council, such as women, minorities, and
 938 individuals with disabilities.

939 (3) (a) Except as required by Subsection (3)(b), as terms of current council members
 940 expire, the commissioner shall appoint each new member or reappointed member to a two-year
 941 term beginning July 1 and ending June 30.

942 (b) Notwithstanding the requirements of Subsection (3)(a), the commissioner shall, at
 943 the time of appointment or reappointment, adjust the length of terms to ensure that the terms of
 944 council members are staggered so that approximately half of the council is appointed every two
 945 years.

946 (4) (a) When a vacancy occurs in the membership for any reason, the replacement shall
 947 be appointed for the unexpired term.

948 (b) The commissioner shall terminate the term of any council member who ceases to be
 949 representative as designated by the member's original appointment.

950 (5) The council shall confer at least quarterly for the purpose of advising the
 951 commission, the division, and the Legislature on:

- 952 (a) the Utah workers' compensation and occupational disease laws;
 953 (b) the administration of the laws described in Subsection (5)(a); and
 954 (c) rules related to the laws described in Subsection (5)(a).

955 (6) Regarding workers' compensation, rehabilitation, and reemployment of employees
 956 who are disabled because of an industrial injury or occupational disease the council shall:

- 957 (a) offer advice on issues requested by:

958 (i) the commission;

959 (ii) the division; and

960 (iii) the Legislature; and

961 (b) make recommendations to:

962 (i) the commission; and

963 (ii) the division.

964 (7) The commissioner or the commissioner's designee shall serve as the chair of the
965 council and call the necessary meetings.

966 (8) The commission shall provide staff support to the council.

967 (9) (a) (i) ~~[Members who are not government employees]~~ A member of the council
968 who is not a government employee may not receive compensation or benefits for ~~[their]~~ the
969 member's services, but may receive per diem and expenses incurred in the performance of the
970 member's official duties at the rates established by the Division of Finance under Sections
971 63A-3-106 and 63A-3-107.

972 (ii) ~~[Members]~~ A member of the council who is not a government employee may
973 decline to receive per diem and expenses for ~~[their]~~ the member's service.

974 (b) (i) ~~[State]~~ A state government officer [and] or employee [members] member who
975 ~~[do]~~ does not receive salary, per diem, or expenses from ~~[their]~~ the state government officer's
976 or employee's agency for ~~[their]~~ the member's service may receive per diem and expenses
977 incurred in the performance of ~~[their]~~ the member's official duties from the council at the rates
978 established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

979 (ii) ~~[State]~~ A state government officer [and] or employee [members] member may
980 decline to receive per diem and expenses for ~~[their]~~ the member's service.

981 Section 29. Section **34A-2-201** is amended to read:

982 **34A-2-201. Employers to secure workers' compensation benefits for employees.**

983 An employer shall secure the payment of workers' compensation benefits for its
984 employees by:

985 ~~[(1) insuring, and keeping insured, the payment of this compensation with the Workers'~~
986 ~~Compensation Fund;]~~

987 ~~[(2)]~~ (1) insuring, and keeping insured, the payment of this compensation with any
988 ~~[stock corporation or mutual association]~~ insurer authorized to transact the business of workers'

989 compensation insurance in this state; or

990 ~~[(3)]~~ (2) obtaining approval from the division in accordance with Section 34A-2-201.5
 991 to pay direct compensation as a self-insured employer in the amount, in the manner, and when
 992 due as provided for in this chapter or Chapter 3, Utah Occupational Disease Act.

993 Section 30. Section **34A-2-203** is amended to read:

994 **34A-2-203. Payment of premiums for workers' compensation.**

995 ~~[(1) Until June 30, 2007, a department, commission, board, or other agency of the state
 996 shall pay the insurance premium on its employees direct to the Workers' Compensation Fund.]~~

997 ~~[(2)]~~ (1) Beginning July 1, 2007, the state shall secure the payment of workers'
 998 compensation benefits for its employees:

999 (a) by:

1000 ~~[(i) insuring, and keeping insured, the payment of this compensation with the Workers'
 1001 Compensation Fund;]~~

1002 ~~[(ii)]~~ (i) insuring, and keeping insured, the payment of this compensation with [~~any~~
 1003 ~~stock corporation or mutual association]~~ an insurer authorized to transact the business of
 1004 workers' compensation insurance in this state; or

1005 ~~[(iii)]~~ (ii) paying direct compensation as a self-insured employer in the amount, in the
 1006 manner, and when due as provided for in this chapter or Chapter 3, Utah Occupational Disease
 1007 Act;

1008 (b) in accordance with Title 63A, Chapter 4, Risk Management; and

1009 (c) subject to Subsection ~~[(3)]~~ (2).

1010 ~~[(3)]~~ (2) (a) If the state determines to secure the payment of workers' compensation
 1011 benefits for its employees by paying direct compensation as a self-insured employer in the
 1012 amount, in the manner, and due as provided for in this chapter or Chapter 3, Utah Occupational
 1013 Disease Act, the state is:

1014 (i) exempt from Section 34A-2-202.5 and Subsection 34A-2-704(14); and

1015 (ii) required to pay a premium assessment as provided in Section 34A-2-202.

1016 (b) If the state chooses to pay workers' compensation benefits for its employees
 1017 through insuring under Subsection ~~[(2)(a)(i) or (ii)]~~ (1)(a)(i), the state shall obtain that
 1018 insurance in accordance with Title 63, Chapter 56, Utah Procurement Code.

1019 Section 31. Section **34A-2-209** is amended to read:

1020 **34A-2-209. Employer's penalty for violation -- Notice of noncompliance -- Proof**
1021 **required -- Admissible evidence -- Criminal prosecution.**

1022 (1) (a) (i) Any employer who fails to comply, and every officer of a corporation or
1023 association that fails to comply, with Section 34A-2-201 is guilty of a class B misdemeanor.

1024 (ii) Each day's failure to comply with Subsection (1)(a)(i) is a separate offense.

1025 (b) All funds, fines, or penalties collected or assessed under Subsection (1)(a) shall be
1026 deposited in the Uninsured Employers' Fund created by Section 34A-2-704 and used for the
1027 purposes of that fund.

1028 (c) If the division sends written notice of noncompliance by certified mail to the
1029 last-known address of the employer, corporation, or officers of a corporation or association,
1030 and the employer, corporation, or officers do not within ten days provide to the division proof
1031 of compliance, the notice and failure to provide proof constitutes prima facie evidence that the
1032 employer, corporation, or officers are in violation of this section.

1033 (2) (a) (i) If the division has reason to believe that an employer is conducting business
1034 without securing the payment of compensation [~~in one of the three ways~~] as provided in
1035 Section 34A-2-201, the division may give the employer, or in the case of an employer
1036 corporation, the corporation or the officers of the corporation, notice of noncompliance by
1037 certified mail to the last-known address of the employer, corporation, or officers, and if the
1038 employer, corporation, or officers do not, within ten days, provide to the division proof of
1039 compliance, the employer and every officer of an employer corporation is guilty of a class B
1040 misdemeanor.

1041 (ii) Each day's failure to comply with Subsection (2)(a)(i) is a separate offense.

1042 (b) All funds, fines, or penalties collected or assessed under Subsection (2)(a) shall be
1043 deposited in the Uninsured Employers' Fund created by Section 34A-2-704 and used for the
1044 purposes of that fund.

1045 (3) All forms and records kept by the division or its designee pursuant to Section
1046 34A-2-205 are admissible as evidence to establish noncompliance under this section.

1047 (4) The commission or division on behalf of the commission is authorized to prosecute
1048 or request the attorney general or district attorney to prosecute a criminal action in the name of
1049 the state to enforce the provisions of this chapter or Chapter 3, Utah Occupational Disease Act.

1050 Section 32. Section **34A-2-210** is amended to read:

1051 **34A-2-210. Power to bring suit for noncompliance.**

1052 (1) (a) The commission or the division on behalf of the commission may maintain a
1053 suit in any court of the state to enjoin any employer, within this chapter or Chapter 3, Utah
1054 Occupational Disease Act, from further operation of the employer's business, when the
1055 employer fails to provide for the payment of benefits [~~in one of the three ways~~] as provided in
1056 Section 34A-2-201.

1057 (b) Upon a showing of failure to provide for the payment of benefits, the court shall
1058 enjoin the further operation of the employer's business until the payment of these benefits has
1059 been secured by the employer as required by Section 34A-2-201. The court may enjoin the
1060 employer without requiring bond from the commission or division.

1061 (2) If the division has reason to believe that an employer is conducting a business
1062 without securing the payment of compensation [~~in one of the three ways~~] as provided in
1063 Section 34A-2-201, the division may give the employer five days written notice by registered
1064 mail of the noncompliance and if the employer within the five days written notice does not
1065 remedy the default:

1066 (a) the commission or the division on behalf of the commission may file suit under
1067 Subsection (1); and

1068 (b) the court may, ex parte, issue without bond a temporary injunction restraining the
1069 further operation of the employer's business.

1070 Section 33. Section **34A-2-211** is amended to read:

1071 **34A-2-211. Noncompliance by employer.**

1072 (1) (a) In addition to the remedies specified in Section 34A-2-210, if the division has
1073 reason to believe that an employer is conducting business without securing the payment of
1074 benefits [~~in one of the three ways provided in~~] as required under Section 34A-2-201, the
1075 division may give that employer written notice of the noncompliance by certified mail to the
1076 last-known address of the employer.

1077 (b) If the employer does not remedy the default within 15 days after [~~delivery of~~] the
1078 day on which the notice is delivered, the division may issue an order requiring the employer to
1079 appear before the division and show cause why the employer should not be ordered to comply
1080 with Section 34A-2-201.

1081 (c) If it is found that the employer [~~has~~] failed to provide for the payment of benefits

1082 [~~in one of the three ways provided in~~] in accordance with Section 34A-2-201, the division may
1083 require any employer to comply with Section 34A-2-201.

1084 (2) (a) Notwithstanding Subsection (1), the division may impose a penalty against the
1085 employer under this Subsection (2):

1086 (i) subject to the notice and other requirements of Title 63, Chapter 46b,
1087 Administrative Procedures Act; and

1088 (ii) if the division believes that an employer of one or more employees is conducting
1089 business without securing the payment of benefits [~~in one of the three ways provided in~~] in
1090 accordance with Section 34A-2-201.

1091 (b) The penalty imposed under Subsection (2)(a) shall be the greater of:

1092 (i) \$1,000; or

1093 (ii) three times the amount of the premium the employer would have paid for workers'
1094 compensation insurance based on the rate filing [~~of the Workers' Compensation Fund~~]
1095 designated by the commissioner of a servicing carrier under Title 31A, Chapter 40, Workers'
1096 Compensation Insurance Regulation, during the period of noncompliance.

1097 (c) For purposes of Subsection (2)(b)(ii), the premium is calculated by applying rates
1098 and rate multipliers to the payroll basis under Subsection (2)(d), using the highest rated
1099 employee class code applicable to the employer's operations.

1100 (d) The payroll basis for the purpose of calculating the premium penalty shall be 150%
1101 of the state's average weekly wage multiplied by the highest number of workers employed by
1102 the employer during the period of the employer's noncompliance multiplied by the number of
1103 weeks of the employer's noncompliance up to a maximum of 156 weeks.

1104 (3) The penalty imposed under Subsection (2) shall be deposited in the Uninsured
1105 Employers' Fund created by Section 34A-2-704 and used for the purposes of that fund.

1106 (4) (a) An employer who disputes the determination, imposition, or amount of a
1107 penalty imposed under Subsection (2) shall request a hearing before an administrative law
1108 judge within 30 days of:

1109 (i) the date [~~of issuance of~~] on which the administrative action imposing the penalty is
1110 issued; or

1111 (ii) the administrative action becomes a final order of the commission.

1112 (b) The employer's request for a hearing under Subsection (4)(a) shall specify the facts

1113 and grounds that are the basis of the employer's objection to the determination, imposition, or
1114 amount of the penalty.

1115 (c) An administrative law judge's decision under this Subsection (4) may be reviewed
1116 pursuant to Part 8, Adjudication.

1117 (5) (a) After a penalty has been issued and becomes a final order of the commission,
1118 the division on behalf of the commission may file an abstract for any uncollected penalty in the
1119 district court.

1120 (b) The abstract filed under Subsection (5)(a) shall state:

1121 (i) the amount of the uncollected penalty;

1122 (ii) reasonable [~~attorneys'~~ attorney fees;

1123 (iii) costs of collection; and

1124 (iv) court costs.

1125 (c) The filed abstract shall have the effect of a judgment of that court.

1126 (6) Any administrative action issued by the division under this section shall:

1127 (a) be in writing;

1128 (b) be sent by certified mail to the last-known address of the employer;

1129 (c) state the findings and administrative action of the division; and

1130 (d) specify its effective date, which may be immediate or may be at a later date.

1131 (7) The final order of the commission under this section, upon application by the
1132 division on behalf of the commission made on or after the effective date of the order to a court
1133 of general jurisdiction in any county in this state, may be enforced by an order to comply
1134 entered ex parte and without notice by the court.

1135 Section 34. Section **34A-2-406** is amended to read:

1136 **34A-2-406. Exemptions from chapter for employees temporarily in state.**

1137 (1) Any employee who has been hired in another state and the employee's employer are
1138 exempt from this chapter and Chapter 3, Utah Occupational Disease Act, while the employee is
1139 temporarily within this state doing work for the employee's employer if:

1140 (a) the employer has furnished workers' compensation insurance coverage under the
1141 workers' compensation or similar laws of the other state;

1142 (b) the coverage covers the employee's employment while in this state; and

1143 (c) [(†)] the extraterritorial provisions of this chapter and Chapter 3 are recognized in

1144 the other state and employers and employees who are covered in this state are likewise
 1145 exempted from the application of the workers' compensation or similar laws of the other state[;
 1146 or].

1147 [~~(ii) the Workers' Compensation Fund;~~]

1148 [~~(A) is an admitted insurance carrier in the other state; or]~~

1149 [~~(B) has agreements with a carrier and is able to furnish workers' compensation
 1150 insurance or similar coverage to Utah employers and their subsidiaries or affiliates doing
 1151 business in the other state.]~~

1152 (2) The benefits under the workers' compensation or similar laws of the other state are
 1153 the exclusive remedy against an employer for any injury, whether resulting in death or not,
 1154 received by an employee while working for the employer in this state.

1155 (3) A certificate from an authorized officer of the industrial commission or similar
 1156 department of the other state certifying that the employer is insured in the other state and has
 1157 provided extraterritorial coverage insuring the employer's employees while working in this
 1158 state is prima facie evidence that the employer carries compensation insurance.

1159 Section 35. Section **51-7-2** is amended to read:

1160 **51-7-2. Exemptions from chapter.**

1161 The following funds are exempt from this chapter:

1162 (1) funds invested in accordance with the participating employees' designation or
 1163 direction pursuant to a public employees' deferred compensation plan established and operated
 1164 in compliance with Section 457 of the Internal Revenue Code of 1986, as amended;

1165 [~~(2) funds of the Workers' Compensation Fund;~~]

1166 [~~(3)~~ (2) funds of the Utah State Retirement Board;

1167 [~~(4)~~ (3) funds of the Utah Housing Corporation;

1168 [~~(5)~~ (4) endowment funds of higher education institutions; and

1169 [~~(6)~~ (5) permanent and other land grant trust funds established pursuant to the Utah

1170 Enabling Act and the Utah Constitution.

1171 Section 36. Section **51-7-4** is amended to read:

1172 **51-7-4. Transfer of functions, powers, and duties relating to public funds to state
 1173 treasurer -- Exceptions -- Deposit of income from investment of state money.**

1174 (1) Unless otherwise required by the Utah Constitution or applicable federal law, the

1175 functions, powers, and duties vested by law in each and every state officer, board, commission,
 1176 institution, department, division, agency, and other similar instrumentalities relating to the
 1177 deposit, investment, or reinvestment of public funds, and the purchase, sale, or exchange of any
 1178 investments or securities of or for any funds or accounts under the control and management of
 1179 these instrumentalities, are transferred to and shall be exercised by the state treasurer, except:

1180 (a) funds assigned to the Utah State Retirement Board for investment under Section
 1181 49-11-302;

1182 (b) funds of member institutions of the state system of higher education:

1183 (i) acquired by gift, devise, or bequest, or by federal or private contract or grant;

1184 (ii) derived from student fees or from income from operations of auxiliary enterprises,
 1185 which fees and income are pledged or otherwise dedicated to the payment of interest and
 1186 principal of bonds issued by such institutions; and

1187 (iii) any other funds which are not included in the institution's work program as
 1188 approved by the State Board of Regents;

1189 (c) inmate funds as provided in Section 64-13-23 or in Title 64, Chapter 9b, Work
 1190 Programs for Prisoners;

1191 (d) trust funds established by judicial order;

1192 [~~(e) funds of the Workers' Compensation Fund;~~]

1193 [~~(f)~~] (e) funds of the Utah Housing Corporation; and

1194 [~~(g)~~] (f) endowment funds of higher education institutions.

1195 (2) All public funds held or administered by the state or any of its boards,
 1196 commissions, institutions, departments, divisions, agencies, or similar instrumentalities and not
 1197 transferred to the state treasurer as provided by this section shall be:

1198 (a) deposited and invested by the custodian in accordance with this chapter, unless
 1199 otherwise required by statute or by applicable federal law; and

1200 (b) reported to the state treasurer in a form prescribed by the state treasurer.

1201 (3) Unless otherwise provided by the constitution or laws of this state or by contractual
 1202 obligation, the income derived from the investment of state money by the state treasurer shall
 1203 be deposited in and become part of the General Fund.

1204 Section 37. Section **58-59-306** is amended to read:

1205 **58-59-306. Financial requirements, contractual relations, and allocation of rights,**

1206 **duties, and obligations.**

1207 (1) Nothing contained in this chapter or in any professional employer agreement shall
1208 affect, modify, or amend any collective bargaining agreement, or the rights or obligations of
1209 any client, PEO, or covered employee under the federal National Labor Relations Act, the
1210 federal Railway Labor Act, or similar state law.

1211 (2) Nothing contained in this chapter or any professional employer agreement shall
1212 affect, modify, or amend any state, local, or federal licensing, registration, or certification
1213 requirement applicable to any client or covered employee.

1214 (a) A covered employee who must be licensed, registered, or certified according to law
1215 or regulation is considered solely an employee of the client for purposes of license, registration,
1216 or certification requirement.

1217 (b) A PEO may not be considered to engage in any occupation, trade, profession, or
1218 other activity that is subject to licensing, registration, or certification requirements, or is
1219 otherwise regulated by a governmental entity solely by entering into and maintaining a
1220 coemployment relationship with a covered employee who is subject to the requirements or
1221 regulation.

1222 (c) Unless otherwise expressly agreed to by the client in the professional employer
1223 agreement, a client has the sole right to direct and control the professional or licensed activities
1224 of covered employees and of the client's business.

1225 (3) With respect to a bid, contract, purchase order, or agreement entered into with the
1226 state or a political subdivision of the state, a client company's status or certification as a small,
1227 minority-owned, disadvantaged, or woman-owned business enterprise or as a historically
1228 underutilized business is not affected because the client company has entered into an agreement
1229 with a registrant or uses the services of a registrant.

1230 (4) (a) At least quarterly, a PEO shall have an independent certified public accountant,
1231 licensed to practice in the jurisdiction in which the PEO is domiciled, review the PEO's records
1232 and prepare a statement indicating whether all federal, state, and local withholding taxes,
1233 unemployment taxes, FICA taxes, workers' compensation premiums, and employee benefit
1234 plan premiums have been paid.

1235 (b) The PEO must provide the statement to a client upon request from the client.

1236 (5) (a) Except as specifically provided in this chapter, the coemployment relationship

1237 between the client and the PEO, and between each coemployer and each covered employee,
1238 shall be governed by the professional employer agreement.

1239 (b) Nothing contained in any professional employer agreement or this chapter shall be
1240 considered to:

1241 (i) diminish, abolish, or remove the rights of covered employees as to clients or
1242 obligations of the client as to a covered employee, existing prior to the effective date of a
1243 professional employer agreement;

1244 (ii) terminate an employment relationship existing prior to the effective date of a
1245 professional employer agreement; or

1246 (iii) create any new or additional enforceable right of a covered employee against a
1247 PEO not specifically allocated to the PEO in the professional employer agreement or this
1248 chapter.

1249 (c) Each professional employer agreement shall include the following:

1250 (i) (A) the PEO shall reserve a right of direction and control over the covered
1251 employees; and

1252 (B) the client may retain the right to exercise the direction and control over covered
1253 employees as is necessary to conduct the client's business, to discharge any fiduciary
1254 responsibility which it may have, or to comply with any applicable licensure requirements;

1255 (ii) the PEO shall have responsibility to:

1256 (A) pay agreed upon wages and salaries to covered employees;

1257 (B) withhold, collect, report, and remit payroll-related and unemployment taxes; and

1258 (C) the extent the PEO has assumed responsibility in the professional employer
1259 agreement, to make payments for employee benefits for covered employees;

1260 (iii) the PEO and the client shall both have a right to hire, terminate, and discipline the
1261 covered employees; and

1262 (iv) the responsibility to obtain workers' compensation coverage for covered
1263 employees, from a carrier licensed to do business in Utah and otherwise in compliance with all
1264 applicable requirements, shall be specifically allocated to the client in the professional
1265 employer agreement.

1266 (d) Except as specifically provided in this chapter or in the professional employer
1267 agreement, in each coemployment relationship:

1268 (i) the client may exercise all rights and is obligated to perform all duties and
1269 responsibilities otherwise applicable to an employer in an employment relationship;

1270 (ii) (A) the PEO may exercise only those rights, and is obligated to perform only those
1271 duties and responsibilities, specifically required by this chapter or set forth in the professional
1272 employer agreement; and

1273 (B) the rights, duties, and obligations of the PEO as coemployer with respect to any
1274 covered employee is limited to those arising under the professional employer agreement and
1275 this chapter during the term of coemployment by the PEO of the covered employee; and

1276 (iii) unless otherwise expressly agreed by the PEO and the client in a professional
1277 employer agreement, the client retains the exclusive right to direct and control the covered
1278 employees as is necessary to conduct the client's business, to discharge any of the client's
1279 fiduciary responsibilities, or to comply with any licensure requirements applicable to the client
1280 or to the covered employees.

1281 (e) With respect to each professional employer agreement entered into by a PEO, the
1282 PEO shall provide written notice to each covered employee affected by the agreement of the
1283 general nature of the coemployment relationship between and among the PEO, the client, and
1284 the covered employee.

1285 (f) (i) Except to the extent otherwise expressly provided by the applicable professional
1286 employer agreement:

1287 (A) a client is solely responsible for the quality, adequacy, or safety of the goods or
1288 services produced or sold in the client's business;

1289 (B) a client is solely responsible for directing, supervising, training, and controlling the
1290 work of the covered employees with respect to the business activities of the client and solely
1291 responsible for the acts, errors, or omissions of the covered employees with regard to those
1292 activities; and

1293 (C) a client is not liable for the acts, errors, or omissions of a PEO, or of any covered
1294 employee of the client and a PEO when the covered employee is acting under the express
1295 direction and control of the PEO.

1296 (ii) Nothing in this Subsection (5)(f) shall serve to limit any contractual liability or
1297 obligation specifically provided in a professional employer agreement, nor shall this Subsection
1298 (5)(f) in any way limit the liabilities and obligations of any PEO or client as defined elsewhere

1299 in this chapter.

1300 (iii) A covered employee is not, solely as the result of being a covered employee of a
1301 PEO, an employee of the PEO for purposes of general liability insurance, fidelity bonds, surety
1302 bonds, employer's liability which is not covered by workers' compensation, or liquor liability
1303 insurance carried by the PEO, unless the covered employee is included by specific reference in
1304 the professional employer agreement and applicable prearranged employment contract,
1305 insurance contract, or bond.

1306 (g) A registrant under this chapter is not engaged in the sale of insurance by offering,
1307 marketing, selling, administering, or providing PEO services or employee benefit plans for
1308 covered employees.

1309 (h) (i) (A) Covered employees whose services are subject to sales tax are considered
1310 the employees of the client for purposes of collecting and levying sales tax on the services
1311 performed by the covered employees.

1312 (B) Nothing contained in this chapter shall relieve a client of any sales tax liability with
1313 respect to its goods or services.

1314 (ii) No portion of a PEO fee to a client that represents pass-through amounts to be paid
1315 for covered employee wages, employment-related taxes, withholding, or benefits is subject to
1316 any sales or excise tax.

1317 (i) (i) A client and a PEO shall each be considered an employer for purposes of
1318 sponsoring retirement and welfare benefit plans for its covered employees.

1319 (ii) A fully insured welfare benefit plan offered to the covered employees of a single
1320 PEO is considered a single employer welfare benefit plan and may not be considered a multiple
1321 employer welfare arrangement, and is exempt from the licensing requirements contained in
1322 Title 31A, Insurance Code.

1323 (iii) PEOs are exempt from Title 31A, Chapter 30, Individual, Small, and Group
1324 Employer Health Insurance Act.

1325 (iv) (A) Any PEO offering workers' compensation coverage, a health benefit plan, or
1326 any other insurance plan, must comply with all federal and state laws applicable to these
1327 products.

1328 (B) If the PEO chooses to use a third-party administrator for the receipt and payment of
1329 health benefit claims, that third-party administrator must be licensed to do business in the state

1330 under Title 31A, Insurance Code.

1331 (C) Anything pertaining to the insurance products referred to in this section or the use
1332 of an unlicensed third-party administrator is subject to administrative penalties and forfeitures
1333 under Title 31A, Insurance Code.

1334 (v) If a PEO offers to its covered employees any health benefit plan which is not fully
1335 insured by an authorized insurer, the plan shall:

1336 (A) utilize a third-party administrator licensed by the Utah State Insurance Department;
1337 and

1338 (B) hold all plan assets, including participant contributions, in a trust account.

1339 (vi) If a PEO offers to its covered employees any health benefit plan which is not fully
1340 insured by an authorized insurer, the PEO shall:

1341 (A) represent that such plan is not fully insured; and

1342 (B) deliver to each plan participant a summary plan description that accurately
1343 describes the terms of the plan, including disclosure that the plan is self-funded or partially
1344 self-funded.

1345 (vii) (A) The Department of Insurance may audit on a random basis, or upon finding a
1346 reasonable need, any health benefit plan which is not fully insured by an authorized insurer.

1347 (B) The cost of the audit shall be borne by the PEO if there is material noncompliance.

1348 (j) (i) The client in a coemployment relationship shall secure workers' compensation
1349 benefits for the covered employees by complying with Subsection 34A-2-201(1) [~~or (2)~~] and
1350 commission rules under Subsection 34A-2-103(3)(a).

1351 (ii) Every authorized insurer who offers or provides Workers' Compensation Insurance
1352 coverage to a PEO, its client companies, or both shall comply with Title 31A, Chapter 19a,
1353 Utah Rate Regulation Act, and Chapter 21, Insurance Contracts in General, prior to the
1354 issuance of an insurance policy.

1355 (iii) The exclusive remedy provisions of Sections 34A-2-105 and 34A-3-102 apply to
1356 both the client company and the PEO in a coemployer relationship under this section.

1357 (k) (i) For purposes of Title 35A, Chapter 4, Employment Security Act, covered
1358 employees of a registered PEO are considered the employees of the PEO, which shall be
1359 responsible for the payment of contributions, penalties, and interest on wages paid by the PEO
1360 to its covered employees during the term of the applicable professional employer agreement.

1361 (ii) The PEO shall report and pay all required contributions to the unemployment
1362 compensation fund using its state employer account number and the contribution rate of the
1363 PEO.

1364 (iii) On the termination of a contract between a PEO and a client or the failure by a
1365 PEO to submit reports or make tax payments as required by this chapter, the client shall be
1366 treated as a new employer without a previous experience record unless that client is otherwise
1367 eligible for an experience rating.

1368 Section 38. Section **59-9-101** is amended to read:

1369 **59-9-101. Tax basis -- Rates -- Exemptions -- Rate reductions.**

1370 (1) (a) Except as provided in Subsection (1)(b), (1)(d), or (5), every admitted insurer
1371 shall pay to the commission on or before March 31 in each year, a tax of 2-1/4% of the total
1372 premiums received by it during the preceding calendar year from insurance covering property
1373 or risks located in this state.

1374 (b) This Subsection (1) does not apply to:

1375 (i) workers' compensation insurance, assessed under Subsection (2);

1376 (ii) title insurance premiums taxed under Subsection (3);

1377 (iii) annuity considerations;

1378 (iv) insurance premiums paid by an institution within the state system of higher
1379 education as specified in Section 53B-1-102; and

1380 (v) ocean marine insurance.

1381 (c) The taxable premium under this Subsection (1) shall be reduced by:

1382 (i) all premiums returned or credited to policyholders on direct business subject to tax
1383 in this state;

1384 (ii) all premiums received for reinsurance of property or risks located in this state; and

1385 (iii) the dividends, including premium reduction benefits maturing within the year:

1386 (A) paid or credited to policyholders in this state; or

1387 (B) applied in abatement or reduction of premiums due during the preceding calendar
1388 year.

1389 (d) (i) For purposes of this Subsection (1)(d):

1390 (A) "Utah variable life insurance premium" means an insurance premium paid:

1391 (I) by:

- 1392 (Aa) a corporation; or
1393 (Bb) a trust established or funded by a corporation; and
1394 (II) for variable life insurance covering risks located within the state.
- 1395 (B) "Variable life insurance" means an insurance policy that provides for life
1396 insurance, the amount or duration of which varies according to the investment experience of
1397 one or more separate accounts that are established and maintained by the insurer pursuant to
1398 Title 31A, Insurance Code.
- 1399 (ii) Notwithstanding Subsection (1)(a), beginning on January 1, 2006, the tax on that
1400 portion of the total premiums subject to a tax under Subsection (1)(a) that is a Utah variable
1401 life insurance premium shall be calculated as follows:
- 1402 (A) 2-1/4% of the first \$100,000 of Utah variable life insurance premiums:
1403 (I) paid for each variable life insurance policy; and
1404 (II) received by the admitted insurer in the preceding calendar year; and
1405 (B) 0.08% of the Utah variable life insurance premiums that exceed \$100,000:
1406 (I) paid for the policy described in Subsection (1)(d)(ii)(A); and
1407 (II) received by the admitted insurer in the preceding calendar year.
- 1408 (iii) (A) On or before October 1, 2009, and every three years after October 1, 2009, the
1409 Revenue and Taxation Interim Committee shall study the rate reduction contained in this
1410 Subsection (1)(d).
- 1411 (B) As part of the study required by Subsection (1)(d)(iii)(A) the Revenue and
1412 Taxation Interim Committee shall:
- 1413 (I) hear testimony from the commission and industry representatives;
1414 (II) make recommendations concerning whether the rate reduction should be continued,
1415 modified, or repealed; and
1416 (III) make findings regarding:
1417 (Aa) the cost of the rate reduction;
1418 (Bb) the purpose and effectiveness of the rate reduction; and
1419 (Cc) any benefits of the rate reduction to the state.
- 1420 (2) (a) Every admitted insurer writing workers' compensation insurance in this state[;
1421 ~~including the Workers' Compensation Fund created under Title 31A, Chapter 33, Workers'~~
1422 ~~Compensation Fund,~~] shall pay to the tax commission, on or before March 31 in each year, a

1423 premium assessment of between 1% and 8% of the total workers' compensation premium
1424 income received by the insurer from workers' compensation insurance in this state during the
1425 preceding calendar year.

1426 (b) Total workers' compensation premium income means the net written premium as
1427 calculated before any premium reduction for any insured employer's deductible, retention, or
1428 reimbursement amounts and also those amounts equivalent to premiums as provided in Section
1429 34A-2-202.

1430 (c) The percentage of premium assessment applicable for a calendar year shall be
1431 determined by the Labor Commission under Subsection (2)(d). The total premium income
1432 shall be reduced in the same manner as provided in Subsections (1)(c)(i) and (1)(c)(ii), but not
1433 as provided in Subsection (1)(c)(iii). The tax commission shall promptly remit from the
1434 premium assessment collected under Subsection (2):

1435 (i) an amount of up to 7.25% of the premium income to the state treasurer for credit to
1436 the Employers' Reinsurance Fund created under Subsection 34A-2-702(1);

1437 (ii) an amount equal to 0.25% of the premium income to the state treasurer for credit to
1438 the restricted account in the General Fund, created by Section 34A-2-701; and

1439 (iii) an amount of up to 0.50% and any remaining assessed percentage of the premium
1440 income to the state treasurer for credit to the Uninsured Employers' Fund created under Section
1441 34A-2-704.

1442 (d) (i) The Labor Commission shall determine the amount of the premium assessment
1443 for each year on or before each October 15 of the preceding year. The Labor Commission shall
1444 make this determination following a public hearing. The determination shall be based upon the
1445 recommendations of a qualified actuary.

1446 (ii) The actuary shall recommend a premium assessment rate sufficient to provide
1447 payments of benefits and expenses from the Employers' Reinsurance Fund and to project a
1448 funded condition with assets greater than liabilities by no later than June 30, 2025.

1449 (iii) The actuary shall recommend a premium assessment rate sufficient to provide
1450 payments of benefits and expenses from the Uninsured Employers' Fund and to maintain it at a
1451 funded condition with assets equal to or greater than liabilities.

1452 (iv) At the end of each fiscal year the minimum approximate assets in the Employers'
1453 Reinsurance Fund shall be \$5,000,000 which amount shall be adjusted each year beginning in

1454 1990 by multiplying by the ratio that the total workers' compensation premium income for the
1455 preceding calendar year bears to the total workers' compensation premium income for the
1456 calendar year 1988.

1457 (v) The requirements of Subsection (2)(d)(iv) cease when the future annual
1458 disbursements from the Employers' Reinsurance Fund are projected to be less than the
1459 calculations of the corresponding future minimum required assets. The Labor Commission
1460 shall, after a public hearing, determine if the future annual disbursements are less than the
1461 corresponding future minimum required assets from projections provided by the actuary.

1462 (vi) At the end of each fiscal year the minimum approximate assets in the Uninsured
1463 Employers' Fund shall be \$2,000,000, which amount shall be adjusted each year beginning in
1464 1990 by multiplying by the ratio that the total workers' compensation premium income for the
1465 preceding calendar year bears to the total workers' compensation premium income for the
1466 calendar year 1988.

1467 (e) A premium assessment that is to be transferred into the General Fund may be
1468 collected on premiums received from Utah public agencies.

1469 (3) Every admitted insurer writing title insurance in this state shall pay to the
1470 commission, on or before March 31 in each year, a tax of .45% of the total premium received
1471 by either the insurer or by its agents during the preceding calendar year from title insurance
1472 concerning property located in this state. In calculating this tax, "premium" includes the
1473 charges made to an insured under or to an applicant for a policy or contract of title insurance
1474 for:

1475 (a) the assumption by the title insurer of the risks assumed by the issuance of the policy
1476 or contract of title insurance; and

1477 (b) abstracting title, title searching, examining title, or determining the insurability of
1478 title, and every other activity, exclusive of escrow, settlement, or closing charges, whether
1479 denominated premium or otherwise, made by a title insurer, an agent of a title insurer, a title
1480 insurance producer, or any of them.

1481 (4) Beginning July 1, 1986, former county mutuals and former mutual benefit
1482 associations shall pay the premium tax or assessment due under this chapter. All premiums
1483 received after July 1, 1986, shall be considered in determining the tax or assessment.

1484 (5) The following insurers are not subject to the premium tax on health care insurance

1485 that would otherwise be applicable under Subsection (1):

1486 (a) insurers licensed under Title 31A, Chapter 5, Domestic Stock and Mutual Insurance
1487 Corporations;

1488 (b) insurers licensed under Title 31A, Chapter 7, Nonprofit Health Service Insurance
1489 Corporations;

1490 (c) insurers licensed under Title 31A, Chapter 8, Health Maintenance Organizations
1491 and Limited Health Plans;

1492 (d) insurers licensed under Title 31A, Chapter 9, Insurance Fraternal;

1493 (e) insurers licensed under Title 31A, Chapter 11, Motor Clubs;

1494 (f) insurers licensed under Title 31A, Chapter 13, Employee Welfare Funds and Plans;

1495 and

1496 (g) insurers licensed under Title 31A, Chapter 14, Foreign Insurers.

1497 (6) An insurer issuing multiple policies to an insured may not artificially allocate the
1498 premiums among the policies for purposes of reducing the aggregate premium tax or
1499 assessment applicable to the policies.

1500 (7) The retaliatory provisions of Title 31A, Chapter 3, Department Funding, Fees, and
1501 Taxes, apply to the tax or assessment imposed under this chapter.

1502 Section 39. Section **63-5b-102** is amended to read:

1503 **63-5b-102. Definitions.**

1504 (1) (a) "Absent" means:

1505 (i) not physically present or not able to be communicated with for 48 hours; or

1506 (ii) for local government officers, as defined by local ordinances.

1507 (b) "Absent" does not include a person who can be communicated with via telephone,
1508 radio, or telecommunications.

1509 (2) "Attack" means a nuclear, conventional, biological, or chemical warfare action
1510 against the United States of America or this state.

1511 (3) "Department" means the Department of Administrative Services, the Department of
1512 Agriculture and Food, the Alcoholic Beverage Control Commission, the Department of
1513 Commerce, the Department of Community and Culture, the Department of Corrections, the
1514 Department of Environmental Quality, the Department of Financial Institutions, the
1515 Department of Health, the Department of Human Resource Management, the Department of

1516 Workforce Services, the Labor Commission, the National Guard, the Department of Insurance,
1517 the Department of Natural Resources, the Department of Public Safety, the Public Service
1518 Commission, the Department of Human Services, the State Tax Commission, the Department
1519 of Technology Services, the Department of Transportation, any other major administrative
1520 subdivisions of state government, the State Board of Education, the State Board of Regents, the
1521 Utah Housing Corporation, [~~the Workers' Compensation Fund,~~] the State Retirement Board,
1522 and each institution of higher education within the system of higher education.

1523 (4) "Disaster" means a situation causing, or threatening to cause, widespread damage,
1524 social disruption, or injury or loss of life or property resulting from attack, internal disturbance,
1525 natural phenomenon, or technological hazard.

1526 (5) "Division" means the Division of Emergency Services and Homeland Security
1527 established in Title 53, Chapter 2, Part 1, Emergency Services and Homeland Security Act.

1528 (6) "Emergency interim successor" means a person designated by this chapter to
1529 exercise the powers and discharge the duties of an office when the person legally exercising the
1530 powers and duties of the office is unavailable.

1531 (7) "Executive director" means the person with ultimate responsibility for managing
1532 and overseeing the operations of each department, however denominated.

1533 (8) "Internal disturbance" means a riot, prison break, disruptive terrorism, or strike.

1534 (9) "Natural phenomenon" means any earthquake, tornado, storm, flood, landslide,
1535 avalanche, forest or range fire, drought, epidemic, or other catastrophic event.

1536 (10) (a) "Office" includes all state and local offices, the powers and duties of which are
1537 defined by constitution, statutes, charters, optional plans, ordinances, articles, or by-laws.

1538 (b) "Office" does not include the office of governor or the legislative or judicial offices.

1539 (11) "Place of governance" means the physical location where the powers of an office
1540 are being exercised.

1541 (12) "Political subdivision" includes counties, cities, towns, townships, districts,
1542 authorities, and other public corporations and entities whether organized and existing under
1543 charter or general law.

1544 (13) "Political subdivision officer" means a person holding an office in a political
1545 subdivision.

1546 (14) "State officer" means the attorney general, the state treasurer, the state auditor, and

1547 the executive director of each department.

1548 (15) "Technological hazard" means any hazardous materials accident, mine accident,
1549 train derailment, air crash, radiation incident, pollution, structural fire, or explosion.

1550 (16) "Unavailable" means:

1551 (a) absent from the place of governance during a disaster that seriously disrupts normal
1552 governmental operations, whether or not that absence or inability would give rise to a vacancy
1553 under existing constitutional or statutory provisions; or

1554 (b) as otherwise defined by local ordinance.

1555 Section 40. Section **63-38a-102** is amended to read:

1556 **63-38a-102. Definitions.**

1557 As used in this chapter:

1558 (1) (a) "Agency" means each department, commission, board, council, agency,
1559 institution, officer, corporation, fund, division, office, committee, authority, laboratory, library,
1560 unit, bureau, panel, or other administrative unit of the state.

1561 (b) "Agency" does not include the legislative branch, the board of regents, the Utah
1562 Higher Education Assistance Authority, the board of trustees of each higher education
1563 institution, each higher education institution and its associated branches, centers, divisions,
1564 institutes, foundations, hospitals, colleges, schools, or departments, a public education entity,
1565 or an independent agency.

1566 (2) (a) "Dedicated credits revenues" means revenues from collections by an agency that
1567 are deposited directly into an account for expenditure on a separate line item and program.

1568 (b) "Dedicated credits" does not mean:

1569 (i) federal revenues and the related pass through or the related state match paid by one
1570 agency to another;

1571 (ii) revenues that are not deposited in governmental funds;

1572 (iii) revenues from any contracts; and

1573 (iv) revenues received by the Attorney General's Office from billings for professional
1574 services.

1575 (3) "Fees" means revenue collected by an agency for performing a service or providing
1576 a function that the agency deposits or accounts for as dedicated credits or fixed collections.

1577 (4) (a) "Fixed collections revenues" means revenue from collections:

- 1578 (i) fixed by law or by the appropriation act at a specific amount; and
- 1579 (ii) required by law to be deposited into a separate line item and program.
- 1580 (b) "Fixed collections" does not mean:
- 1581 (i) federal revenues and the related pass through or the related state match paid by one
- 1582 agency to another;
- 1583 (ii) revenues that are not deposited in governmental funds;
- 1584 (iii) revenues from any contracts; and
- 1585 (iv) revenues received by the Attorney General's Office from billings for professional
- 1586 services.
- 1587 (5) (a) "Governmental fund" means funds used to account for the acquisition, use, and
- 1588 balances of expendable financial resources and related liabilities using a measurement focus
- 1589 that emphasizes the flow of financial resources.
- 1590 (b) "Governmental fund" does not include internal service funds, enterprise funds,
- 1591 capital projects funds, debt service funds, or trust and agency funds as established in Section
- 1592 51-5-4.
- 1593 (6) "Independent agency" means the Utah State Retirement Office[;] and the Utah
- 1594 Housing Corporation[; ~~and the Workers' Compensation Fund~~].
- 1595 (7) "Program" means the function or service provided by an agency for which the
- 1596 agency collects fees.
- 1597 (8) "Revenue types" means the categories established by the Division of Finance under
- 1598 the authority of this chapter that classify revenue according to the purpose for which it is
- 1599 collected.

Section 41. Section **63-55b-131** is amended to read:

63-55b-131. Repeal dates, Title 31A.

(1) Section 31A-23a-415 is repealed July 1, 2011.

(2) Title 31A, Chapter 40, Part 3, Privatization of the Workers' Compensation Fund Act, is repealed 30 days after the transition date determined under Section 31A-40-307.

Section 42. Section **63E-1-102** is amended to read:

63E-1-102. Definitions.

As used in this title:

- (1) "Authorizing statute" means the statute creating an entity as an independent entity.

1609 (2) "Committee" means the Retirement and Independent Entities Committee created in
 1610 Section 63E-1-201.

1611 (3) "Independent corporation" means a corporation incorporated in accordance with
 1612 Chapter 2, Independent Corporations Act.

1613 (4) (a) "Independent entity" means an entity having a public purpose relating to the
 1614 state or its citizens that is individually created by the state or is given by the state the right to
 1615 exist and conduct its affairs as an:

1616 (i) independent state agency; or

1617 (ii) independent corporation.

1618 (b) "Independent entity" includes the:

1619 (i) Dairy Commission created in Title 4, Chapter 22, Dairy Promotion Act;

1620 (ii) Heber Valley Railroad Authority created in Title 9, Chapter 3, Part 3, Heber Valley
 1621 Historic Railroad Authority;

1622 (iii) Utah Science Center Authority created in Title 9, Chapter 3, Part 4, Utah Science
 1623 Center Authority;

1624 (iv) Utah Housing Corporation created in Title 9, Chapter 4, Part 9, Utah Housing
 1625 Corporation Act;

1626 (v) Utah State Fair Corporation created in Title 9, Chapter 4, Part 11, Utah State Fair
 1627 Corporation Act;

1628 [~~(vi) Workers' Compensation Fund created in Title 31A, Chapter 33, Workers'~~
 1629 ~~Compensation Fund;~~]

1630 [~~(vii)~~ (vi) Utah State Retirement Office created in Title 49, Chapter 11, Utah State
 1631 Retirement Systems Administration;

1632 [~~(viii)~~ (vii) School and Institutional Trust Lands Administration created in Title 53C,
 1633 Chapter 1, Part 2, School and Institutional Trust Lands Administration;

1634 [~~(ix)~~ (viii) Utah Communications Agency Network created in Title 63C, Chapter 7,
 1635 Utah Communications Agency Network Act; and

1636 [~~(x)~~ (ix) Utah Capital Investment Corporation created in Title 63, Chapter 38f, Part
 1637 12, Utah Venture Capital Enhancement Act.

1638 (c) Notwithstanding this Subsection (4), "independent entity" does not include:

1639 (i) the Public Service Commission of Utah created in Section 54-1-1;

- 1640 (ii) an institution within the state system of higher education;
- 1641 (iii) a city, county, or town;
- 1642 (iv) a local school district;
- 1643 (v) a special district created under the authority of Title 17A, Special Districts; or
- 1644 (vi) a local district created under the authority of Title 17B, Limited Purpose Local
- 1645 Government Entities.

1646 (5) "Independent state agency" means an entity that is created by the state, but is
 1647 independent of the governor's direct supervisory control.

1648 (6) "Monies held in trust" means monies maintained for the benefit of:

- 1649 (a) one or more private individuals, including public employees;
- 1650 (b) one or more public or private entities; or
- 1651 (c) the owners of a quasi-public corporation.

1652 (7) "Public corporation" means an artificial person, public in ownership, individually
 1653 created by the state as a body politic and corporate for the administration of a public purpose
 1654 relating to the state or its citizens.

1655 (8) "Quasi-public corporation" means an artificial person, private in ownership,
 1656 individually created as a corporation by the state which has accepted from the state the grant of
 1657 a franchise or contract involving the performance of a public purpose relating to the state or its
 1658 citizens.

1659 Section 43. Section **63E-1-203** is amended to read:

1660 **63E-1-203. Exemptions from committee activities.**

1661 Notwithstanding the other provisions of this Part 2 and Subsection 63E-1-102(4), the
 1662 ~~[following independent entities are]~~ Utah Housing Corporation created in Title 9, Chapter 4,
 1663 Part 9, Utah Housing Corporation Act, is exempt from the study by the committee under
 1664 Section 63E-1-202[+].

1665 ~~[(1) the Utah Housing Corporation created in Title 9, Chapter 4, Part 9, Utah Housing~~
 1666 ~~Corporation Act, and]~~

1667 ~~[(2) the Workers' Compensation Fund created in Title 31A, Chapter 33, Workers'~~
 1668 ~~Compensation Fund.]~~

1669 Section 44. Section **67-4-2** is amended to read:

1670 **67-4-2. Definitions.**

1671 As used in this chapter:

1672 (1) "Federal funds" means cash received from the United States government or from
1673 other individuals or entities for or on behalf of the United States and deposited with the state
1674 treasurer or any agency of the state.

1675 (2) "General Fund" means monies received into the treasury and not specially
1676 appropriated to any other fund.

1677 (3) "Maintain custody" means to direct the safekeeping and investment of state funds.

1678 (4) (a) "State entity" means each department, commission, board, council, agency,
1679 institution, officer, corporation, fund, division, office, committee, authority, laboratory, library,
1680 unit, bureau, panel, or other administrative unit of the state.

1681 (b) "State entity" includes independent state agencies and public corporations.

1682 (5) (a) "State funds" means funds that are owned, held, or administered by a state
1683 entity, regardless of the source of the funds.

1684 (b) "State funds" includes funds of independent state agencies or public corporations,
1685 regardless of the source of funds.

1686 (c) "State funds" does not include funds held by the Utah State Retirement Board [~~or~~
1687 ~~the Workers' Compensation Fund~~].

1688 (6) "Warrant" means an order in a specific amount drawn upon the treasurer by the
1689 Division of Finance or another state agency.

1690 Section 45. **Repealer.**

1691 This bill repeals:

1692 Section **31A-22-1001, Obligation to write workers' compensation insurance.**

1693 Section **31A-33-101, Definitions.**

1694 Section **31A-33-102, Establishment of the Workers' Compensation Fund and the**
1695 **Injury Fund.**

1696 Section **31A-33-103, Legal nature of Workers' Compensation Fund.**

1697 Section **31A-33-103.5, Powers of Fund -- Limitations.**

1698 Section **31A-33-104, Workers' Compensation Fund exempted.**

1699 Section **31A-33-105, Price of insurance -- Liability of state.**

1700 Section **31A-33-106, Board of directors -- Status of the fund in relationship to the**
1701 **state.**

1702 Section 31A-33-107, Duties of board -- Creation of subsidiaries -- Entering into
1703 joint enterprises.

1704 Section 31A-33-108, Powers and duties of chief executive officer.

1705 Section 31A-33-109, Liability limited.

1706 Section 31A-33-110, Audits and examinations required.

1707 Section 31A-33-111, Adoption of rates.

1708 Section 31A-33-112, Withdrawal of policyholders.

1709 Section 31A-33-113, Cancellation of policies.

1710 Section 31A-33-114, Premium assessment.

1711 Section 31A-33-115, Interest and costs of collecting delinquent premium.

1712 Section 31A-33-116, Dividends.

1713 Section 31A-33-117, Availability of employers' reports.

1714 Section 31A-33-118, Scope of chapter.

1715 Section 46. Effective date.

1716 (1) The amendments in this bill to the following sections take effect on the transition
1717 date determined in accordance with Section 31A-40-307 if the Legislature enacts during the
1718 2008 Annual General Session a process to determine a transition date in Section 31A-40-307:

1719 (a) Section 11-8-3;

1720 (b) Section 31A-1-105;

1721 (c) Section 31A-15-103;

1722 (d) Section 31A-19a-401;

1723 (e) Section 31A-21-101;

1724 (f) Section 31A-22-309;

1725 (g) Section 31A-26-103;

1726 (h) Section 31A-35-103;

1727 (i) Section 34A-2-102;

1728 (j) Section 34A-2-103;

1729 (k) Section 34A-2-107;

1730 (l) Section 34A-2-201;

1731 (m) Section 34A-2-203;

1732 (n) Section 34A-2-211;

1733 (o) Section 34A-2-406;

1734 (p) Section 51-7-2;

1735 (q) Section 51-7-4;

1736 (r) Section 58-59-306;

1737 (s) Section 59-9-101;

1738 (t) Section 63-5b-102;

1739 (u) Section 63-38a-102;

1740 (v) Section 63E-1-102;

1741 (w) Section 63E-1-203; and

1742 (x) Section 67-4-2.

1743 (2) The amendments to Section 63-55b-131 in this bill take effect on May 4, 2008, if

1744 the Legislature enacts during the 2008 Annual General Session a process to determine a

1745 transition date in Section 31A-40-307.

1746 (3) The sections in Title 31A, Chapter 40, enacted in this bill take effect on May 4,

1747 2008, if the Legislature enacts during the 2008 Annual General Session a process to determine

1748 a transition date in Section 31A-40-307.

1749 (4) The repeal of the following sections takes effect on the transition date determined

1750 in accordance with Section 31A-40-307, if the Legislature enacts during the 2008 Annual

1751 General Session a process to determine a transition date in Section 31A-40-307:

1752 (a) Section 31A-22-1001;

1753 (b) Section 31A-33-101;

1754 (c) Section 31A-33-102;

1755 (d) Section 31A-33-103;

1756 (e) Section 31A-33-103.5;

1757 (f) Section 31A-33-104;

1758 (g) Section 31A-33-105;

1759 (h) Section 31A-33-106;

1760 (i) Section 31A-33-107;

1761 (j) Section 31A-33-108;

1762 (k) Section 31A-33-109;

1763 (l) Section 31A-33-110;

1764 (m) Section 31A-33-111;

1765 (n) Section 31A-33-112;

1766 (o) Section 31A-33-113;

1767 (p) Section 31A-33-114;

1768 (q) Section 31A-33-115;

1769 (r) Section 31A-33-116;

1770 (s) Section 31A-33-117; and

1771 (t) Section 31A-33-118.

1772 (5) (a) In determining whether or not to enact during the 2008 Annual General Session
1773 a process to determine a transition date in Section 31A-40-307, the Legislature may consider
1774 issues related to both the assigned risk plan and the privatization process and make any
1775 modifications to Title 31A, Chapter 40, Workers' Compensation Insurance Regulation, as part
1776 of any legislation enacting a process to determine a transition date.

1777 (b) Issues described in Subsection (5)(a) include:

1778 (i) as to an assigned risk plan:

1779 (A) the degree to which the assigned risk plan should be established by statute and the
1780 extent to which it should be established by rule;

1781 (B) the nature of the plan and the plan reserve, including for purposes of accounting
1782 and legal responsibility in relation to the Insurance Department and the state;

1783 (C) how to address employers who may be residual market employers and who employ
1784 individuals in more than one state;

1785 (D) the appropriate method to address deficits, if any, with the assigned risk plan
1786 including use of a reserve, imposition of assessments, or use of a reinsurance pool;

1787 (E) rating issues such as requiring merit rating or addressing small or new employers;
1788 and

1789 (F) ensuring that employers who are insured under the assigned risk plan are residual
1790 market employers;

1791 (ii) as to the privatization process:

1792 (A) how to address constitutional issues, if any, related to directing how assets and
1793 contracts of the Workers' Compensation Fund are treated under a privatization process;

1794 (B) how to address issues, if any, related to liability of the state under a privatization

1795 process;

1796 (C) whether all conditions required by Title 31A, Chapter 40, Part 3, Privatization of
 1797 the Workers' Compensation Fund Act, can be complied with such as the requirement to obtain
 1798 a specific type of Internal Revenue Service ruling;

1799 (D) the time it would require to accomplish the privatization and the transition to an
 1800 assigned risk plan;

1801 (E) whether or not Title 31A, Chapter 40, Part 3, Privatization of the Workers'
 1802 Compensation Fund Act, should supersede Title 63E, Chapter 1, Part 4, Privatization of
 1803 Independent Entities, in all aspects;

1804 (F) how subsidiaries of the Workers' Compensation Fund should be treated;

1805 (G) whether issues related to antitrust or monopolies are raised by the privatization;

1806 (H) whether, and if so, how to address use of the name Workers' Compensation Fund;

1807 and

1808 (I) whether, and if so, how to inform the public of the privatization; and

1809 (iii) miscellaneous issues such as:

1810 (A) how to adjust the membership of the Workers' Compensation Advisory Council;

1811 and

1812 (B) how the penalty for noncompliance by an employer with workers' compensation
 1813 obligations should be determined.

1814 **Section 47. Revisor instructions.**

1815 It is the intent of the Legislature that if this bill takes effect because the Legislature
 1816 enacts during the 2008 Annual General Session a process to determine a transition date in
 1817 Section 31A-40-307, the Office of Legislative Research and General Counsel in preparing the
 1818 Utah Code database for publication:

1819 (1) on the transition date determined in accordance with Section 31A-40-307 make the
 1820 following changes:

1821 (a) replace the phrase "the date determined in accordance with Section 31A-40-307" in
 1822 Subsection 31A-40-102(8) with the actual transition date;

1823 (b) modify Subsection 31A-40-204(1)(b) to read:

1824 "(b) The plan reserve shall consist of:

1825 (i) assets deposited into the plan reserve on [insert the date that is the day after the

1826 actual transition date, but two years later];
1827 (ii) assets deposited in accordance with Subsection (4); and
1828 (iii) interest and earnings on the plan reserve."; and
1829 (c) replace the phrases "successor mutual insurance company, as defined in Section
1830 31A-40-302" and "successor mutual insurance company" in Subsection 31A-40-204(4) with
1831 the actual name of the successor mutual insurance company; and
1832 (2) repeal Title 31A, Chapter 40, Part 3, Privatization of the Workers' Compensation
1833 Fund Act, in accordance with Section 63-55b-131.

Legislative Review Note

as of 2-9-07 7:27 AM

As required by legislative rule and practice, the Office of Legislative Research and General Counsel provides the following legislative review note to assist the Legislature in making its own determination as to the constitutionality of the bill. The note is based on an analysis of relevant state and federal constitutional law as applied to the bill. The note is not written for the purpose of influencing whether the bill should become law, but is written to provide information relevant to legislators' consideration of this bill. The note is not a substitute for the judgment of the judiciary, which has authority to determine the constitutionality of a law in the context of a specific case.

This bill, if it takes effect, requires the Workers' Compensation Fund (WCF) to transfer certain assets to the state as a reserve for potential deficits of an assigned risk plan created to address the residual workers' compensation market. This bill also requires the creation of a successor mutual insurance company to the WCF. The successor mutual insurance company is then required to hold assets representing the Injury Fund in trust until such time as the successor no longer writes workers' compensation in Utah. At that time, the successor mutual insurance company is required to transfer those assets to the state. These provisions are examples of requirements in this bill that raise constitutional issues.

This bill's restrictions on the use of and requirements to transfer assets currently held by the WCF result in a high probability that, if challenged, the bill could be held unconstitutional on principles such as due process, equal protection, or takings. The Utah Supreme Court in *Workers' Compensation Fund v. State*, 125 P.3d 852 (2005), affirmed that the "State of Utah has no ownership interest in the Workers' Compensation Fund or its assets other than as a policyholder." However, the Court explained that its ruling did "not prevent the Legislature from modifying the structure and management of the WCF or adjusting the level of the State's influence thereupon, as it sees fit" and noted "the Legislature's ability to modify [WCF's] governing statutes." Therefore, a court would need to determine whether the state has authority under its power to modify the structure and management of the WCF to impose requirements on the use and transfer of assets of the WCF and its successor mutual insurance company or whether because the WCF's assets "belong to the WCF policyholders and not to the State" these assets could not be controlled either in the short-term or long-term by the state in a manner different than for a private workers' compensation insurer. *See also, e.g., Hansen v. Utah State Ret. Bd.*, 652 P.2d 1332 (Utah 1982); *State Tax Commission v. Department of Finance*, 576 P.2d 1297 (Utah 1978). The language of the Utah Supreme Court suggests a high probability that the Utah Supreme Court could find that the powers of the Legislature may be limited by constitutional concerns.

Office of Legislative Research and General Counsel

H.B. 397 - Workers' Compensation Amendments

**Revised
Fiscal Note**

2007 General Session
State of Utah

State Impact

Enactment of this bill would require an appropriation of \$285,000 in General Fund (including \$15,600 in one-time costs) in FY 2009 to the Insurance Department for the additional staff and contracted expertise needed to implement the provisions of the bill. The bill may end the federal income tax benefit, estimated at \$33,000,000, which would be passed on to all customers including the state of Utah. This would be an increase of about ten percent over current rates. The State of Utah currently spends about \$8,000,000 on workers' compensation insurance so the increase would be about \$800,000 spread proportionately over all funds and agencies. Residual account reserves may be impacted and are currently estimated at \$300,000,000. There is a legislative review note attached to this bill raising constitutional issues indicating likely litigation expenses.

	<u>FY 2007</u> <u>Approp.</u>	<u>FY 2008</u> <u>Approp.</u>	<u>FY 2009</u> <u>Approp.</u>	<u>FY 2007</u> <u>Revenue</u>	<u>FY 2008</u> <u>Revenue</u>	<u>FY 2009</u> <u>Revenue</u>
General Fund	\$0	\$285,500	\$269,900	\$0	\$0	\$0
General Fund, One-Time	\$0	(\$285,500)	\$15,600	\$0	\$0	\$0
Total	\$0	\$0	\$285,500	\$0	\$0	\$0

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals. Local government entities and businesses would likely pay about 10% more in premiums generally and residual market employers would pay more as a result of provisions in this legislation.