

WORKERS' COMPENSATION - UNINSURED

EMPLOYERS' FUND

2009 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Michael T. Morley

Senate Sponsor: Karen Mayne

LONG TITLE

General Description:

This bill modifies the Workers' Compensation Act to address collection practices for monies required to be deposited into the Uninsured Employers' Fund.

Highlighted Provisions:

This bill:

- ▶ requires that the administrator of the Uninsured Employers' Fund collect monies required to be deposited into the Uninsured Employers' Fund in accordance with the provision creating the fund;
- ▶ exempts collections of monies required to be deposited into the Uninsured Employers' Fund from collection by the Office of State Debt Collection;
- ▶ modifies related collection procedures; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill coordinates with H.B. 39, Utah Injured Worker Reemployment Act, to merge substantive amendments.

Utah Code Sections Affected:

AMENDS:



- 28 **34A-1-405**, as renumbered and amended by Laws of Utah 1997, Chapter 375
- 29 **34A-2-201.3**, as enacted by Laws of Utah 2008, Chapter 90
- 30 **34A-2-205**, as last amended by Laws of Utah 2008, Chapter 382
- 31 **34A-2-209**, as renumbered and amended by Laws of Utah 1997, Chapter 375
- 32 **34A-2-211**, as last amended by Laws of Utah 2008, Chapter 382
- 33 **34A-2-407**, as last amended by Laws of Utah 2008, Chapter 382
- 34 **34A-2-704**, as last amended by Laws of Utah 2008, Chapter 382
- 35 **34A-3-108**, as last amended by Laws of Utah 2006, Chapter 295
- 36 **63A-8-101**, as last amended by Laws of Utah 2005, Chapter 23

37

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

39 Section 1. Section **34A-1-405** is amended to read:

40 **34A-1-405. Employer's records subject to examination -- Penalty.**

41 (1) [~~All books, records, and payrolls~~] A book, record, or payroll of an employer
42 showing, or reflecting in any way upon[;] the amount of the employer's wage expenditure shall
43 always be open for inspection by the commission, or any of [its] the commission's auditors,
44 inspectors, or assistants, for the purpose of ascertaining:

- 45 (a) the correctness of the wage expenditure;
 - 46 (b) the number of individuals employed; and
 - 47 (c) other information as may be necessary for the uses and purposes of the commission
- 48 in its administration of the law.

49 (2) (a) If an employer refuses to submit [~~any books, records, or payrolls~~] a book,
50 record, or payroll for inspection, after being presented with written authority from the
51 commission, the employer is liable for a penalty of \$100 for each offense. [~~This~~]

52 (b) A penalty imposed under this section shall be [~~collected by~~]:

- 53 (i) ordered under a civil action [~~and paid~~];
- 54 (ii) deposited into the Uninsured Employers' Fund[;] created in Section 34A-2-704 to
55 be used for a purpose specified in Section 34A-2-704; and
- 56 (iii) collected by the administrator of the Uninsured Employers' Fund in accordance
57 with Section 34A-2-704.

58 Section 2. Section **34A-2-201.3** is amended to read:

59 **34A-2-201.3. Direct payments prohibited except by self-insured employer.**

60 (1) An employer who is not a self-insured employer, as defined in Section
61 34A-2-201.5, may not pay a benefit provided for under this chapter and Chapter 3, Utah
62 Occupational Disease Act, directly:

63 (a) to an employee; or

64 (b) for the employee.

65 (2) (a) Subject to Title 63G, Chapter 4, Administrative Procedures Act, if the division
66 finds that an employer is violating or has violated Subsection (1), the division shall send
67 written notice to the employer of the requirements of this section and Section 34A-2-201.

68 (b) The division shall send the notice described in Subsection (2)(a) to the last address
69 on the records of the commission for the employer.

70 (3) (a) If, after the division mails the notice required by Subsection (2) to an employer,
71 the employer again violates Subsection (1), the division may impose a penalty against the
72 employer of up to \$1,000 for each violation.

73 (b) If, after the division imposes a penalty under Subsection (3)(a) against the
74 employer, the employer again violates Subsection (1), the division may impose a penalty of up
75 to \$5,000 for each violation.

76 (4) (a) The division shall deposit a penalty imposed under Subsection (3) into the
77 Uninsured Employers' Fund created by Section 34A-2-704 to be used for the purposes of [~~that~~
78 ~~fund.~~] the Uninsured Employers' Fund specified in Section 34A-2-704.

79 (b) The administrator of the Uninsured Employers' Fund shall collect monies required
80 to be deposited into the Uninsured Employers' Fund under this Subsection (4) in accordance
81 with Section 34A-2-704.

82 (5) A penalty under this section is in addition to any other penalty imposed under this
83 chapter or Chapter 3, Utah Occupational Disease Act, against an employer who fails to comply
84 with Section 34A-2-201.

85 (6) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
86 commission shall adopt rules to implement this section.

87 Section 3. Section **34A-2-205** is amended to read:

88 **34A-2-205. Notification of workers' compensation insurance coverage to division**
89 **-- Cancellation requirements -- Penalty for violation.**

90 (1) (a) ~~[Every]~~ An insurance carrier writing workers' compensation insurance coverage
91 in this state or for this state, regardless of the state in which the policy is written, shall file
92 notification of that coverage with the division or ~~[its]~~ the division's designee within 30 days
93 after the inception date of the policy in the form prescribed by the division.

94 (b) A policy described in Subsection (1)(a) is in effect from inception until canceled by
95 filing with the division or ~~[its]~~ the division's designee a notification of cancellation in the form
96 prescribed by the division within ten days after the cancellation of a policy.

97 (c) Failure to notify the division or its designee under Subsection (1)(b) ~~[will result]~~
98 results in the continued liability of the carrier until the date that notice of cancellation is
99 received by the division or ~~[its]~~ the division's designee.

100 (d) ~~[Filings shall be made]~~ An insurance carrier described in this Subsection (1) shall
101 make a filing within 30 days of:

102 (i) the reinstatement of a policy;

103 (ii) the changing or addition of a name or address of the insured; or

104 (iii) the merger of an insured with another entity.

105 (e) ~~[All filings]~~ A filing under this section shall include:

106 (i) the name of the insured;

107 (ii) the principal business address;

108 (iii) any and all assumed name designations;

109 (iv) the address of all locations within this state where business is conducted; and

110 (v) all federal employer identification numbers or federal tax identification numbers.

111 (2) Noncompliance with this section is grounds for revocation of an insurance carrier's
112 certificate of authority in addition to the grounds specified in Title 31A, Insurance Code.

113 (3) (a) The division may assess an insurer up to \$150~~[, payable to the Uninsured~~
114 ~~Employers' Fund,]~~ if the insurer fails to comply with this section.

115 (b) The division shall deposit an amount assessed under Subsection (3)(a) into the
116 Uninsured Employers' Fund created in Section 34A-2-704 to be used for the purposes of the
117 Uninsured Employer's Fund specified in Section 34A-2-704.

118 (c) The administrator of the Uninsured Employers' Fund shall collect monies required
119 to be deposited into the Uninsured Employers' Fund under this Subsection (3) in accordance
120 with Section 34A-2-704.

121 (4) (a) The notification of workers' compensation insurance coverage required to be
122 filed under Subsection (1) is a protected record under Section 63G-2-305.

123 (b) The commission or any of its divisions may not disclose the information described
124 in Subsection (4)(a) except as provided in:

125 (i) Title 63G, Chapter 2, Government Records Access and Management Act, for a
126 protected record; or

127 (ii) Subsection (4)(c), notwithstanding whether Title 63G, Chapter 2, Government
128 Records Access and Management Act, permits disclosure.

129 (c) The commission may disclose the information described in Subsection (4)(a) if:

130 (i) the information is disclosed on an individual case basis related to a single employer;

131 (ii) the information facilitates the:

132 (A) coverage of subcontractors by identifying the insurance carrier providing workers'
133 compensation coverage for an employer;

134 (B) filing of a claim by an employee; or

135 (C) payment of services rendered on an employee's claim by a medical practitioner; and

136 (iii) promotes the purposes of this chapter or Chapter 3, Utah Occupational Disease
137 Act.

138 (d) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
139 commission shall make rules concerning when information may be disclosed under Subsection
140 (4)(c).

141 Section 4. Section **34A-2-209** is amended to read:

142 **34A-2-209. Employer's penalty for violation -- Notice of noncompliance -- Proof**
143 **required -- Admissible evidence -- Criminal prosecution.**

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

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

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

150 ~~[(c)]~~ (b) If the division sends written notice of noncompliance by certified mail to the
151 last-known address of ~~[the]~~ an employer, a corporation, or ~~[officers]~~ an officer of a corporation

152 or association, and the employer, corporation, or ~~[officers do]~~ officer does not within ten days
153 of the day on which the notice is delivered provide to the division proof of compliance, the
154 notice and failure to provide proof constitutes prima facie evidence that the employer,
155 corporation, or ~~[officers are]~~ officer is in violation of this section.

156 (2) (a) ~~[(†)]~~ If the division has reason to believe that an employer is conducting
157 business without securing the payment of compensation in ~~[one of the three ways]~~ a manner
158 provided in Section 34A-2-201, the division may give ~~[the employer, or in the case of an~~
159 ~~employer corporation, the corporation or the officers of the corporation,]~~ notice of
160 noncompliance by certified mail to the following at the last-known address of the ~~[employer,~~
161 ~~corporation, or officers, and if the]~~ following:

162 (i) the employer; or

163 (ii) if the employer is a corporation or association:

164 (A) the corporation or association; or

165 (B) the officers of the corporation or association.

166 (b) If an employer, corporation, or ~~[officers do]~~ officer described in Subsection (2)(a)
167 does not, within ten days of the day on which the notice is delivered, provide to the division
168 proof of compliance, the employer and every officer of an employer corporation or association
169 is guilty of a class B misdemeanor.

170 ~~[(†)]~~ (c) Each day's failure to comply with Subsection (2)(a)~~[(†)]~~ is a separate offense.

171 ~~[(b) All funds, fines, or penalties]~~

172 (3) A fine, penalty, or money collected or assessed under ~~[Subsection (2)(a)]~~ this
173 section shall be:

174 (a) deposited in the Uninsured Employers' Fund created by Section 34A-2-704 ~~[and]~~;

175 (b) used for the purposes of ~~[that fund:]~~ the Uninsured Employers' Fund specified in
176 Section 34A-2-704; and

177 (c) collected by the Uninsured Employers' Fund administrator in accordance with
178 Section 34A-2-704.

179 ~~[(3) All forms and records]~~

180 (4) A form or record kept by the division or its designee pursuant to Section 34A-2-205
181 ~~[are]~~ is admissible as evidence to establish noncompliance under this section.

182 ~~[(4)]~~ (5) The commission or division on behalf of the commission ~~[is authorized to]~~

183 may prosecute or request the attorney general or district attorney to prosecute a criminal action
184 in the name of the state to enforce ~~[the provisions of]~~ this chapter or Chapter 3, Utah
185 Occupational Disease Act.

186 Section 5. Section **34A-2-211** is amended to read:

187 **34A-2-211. Notice of noncompliance to employer -- Enforcement power of**
188 **division -- Penalty.**

189 (1) (a) In addition to the remedies specified in Section 34A-2-210, if the division has
190 reason to believe that an employer is conducting business without securing the payment of
191 benefits in ~~[one of the three ways]~~ a manner provided in Section 34A-2-201, the division may
192 give that employer written notice of the noncompliance by certified mail to the last-known
193 address of the employer.

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

198 (c) If ~~[it is found]~~ the division finds that ~~[the]~~ an employer has failed to provide for the
199 payment of benefits in ~~[one of the three ways]~~ a manner provided in Section 34A-2-201, the
200 division may require ~~[any]~~ the employer to comply with Section 34A-2-201.

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

203 (i) subject to ~~[the notice and other requirements of]~~ Title 63G, Chapter 4,
204 Administrative Procedures Act; and

205 (ii) if the division believes that an employer of one or more employees is conducting
206 business without securing the payment of benefits in ~~[one of the three ways]~~ a manner provided
207 in Section 34A-2-201.

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

209 (i) \$1,000; or

210 (ii) three times the amount of the premium the employer would have paid for workers'
211 compensation insurance based on the rate filing of the Workers' Compensation Fund, during
212 the period of noncompliance.

213 (c) For purposes of Subsection (2)(b)(ii)~~[-]~~:

214 (i) the premium is calculated by applying rates and rate multipliers to the payroll basis
215 under Subsection (2)~~[(d)](c)(ii)~~, using the highest rated employee class code applicable to the
216 employer's operations~~[-]; and~~

217 ~~[(d) The]~~ (ii) the payroll basis ~~[for the purpose of calculating the premium penalty~~
218 ~~shall be]~~ is 150% of the state's average weekly wage multiplied by the highest number of
219 workers employed by the employer during the period of the employer's noncompliance
220 multiplied by the number of weeks of the employer's noncompliance up to a maximum of 156
221 weeks.

222 (3) ~~[The]~~ A penalty imposed under Subsection (2) shall be:

223 (a) deposited in the Uninsured Employers' Fund created by Section 34A-2-704 ~~[and];~~

224 (b) used for the purposes of ~~[that fund.]~~ the Uninsured Employers' Fund specified in
225 Section 34A-2-704; and

226 (c) collected by the Uninsured Employers' Fund administrator in accordance with
227 Section 34A-2-704.

228 (4) (a) An employer who disputes ~~[the]~~ a determination, imposition, or amount of a
229 penalty imposed under Subsection (2) shall request a hearing before an administrative law
230 judge within 30 days of the date of issuance of the administrative action imposing the penalty
231 or the administrative action becomes a final order of the commission.

232 (b) ~~[The]~~ An employer's request for a hearing under Subsection (4)(a) shall specify the
233 facts and grounds that are the basis of the employer's objection to the determination,
234 imposition, or amount of the penalty.

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

237 ~~[(5) (a) After a penalty has been issued and becomes a final order of the commission~~
238 ~~the division on behalf of the commission may file an abstract for any uncollected penalty in the~~
239 ~~district court.]~~

240 ~~[(b) The abstract filed under Subsection (5)(a) shall state:]~~

241 ~~[(i) the amount of the uncollected penalty;]~~

242 ~~[(ii) reasonable attorney fees;]~~

243 ~~[(iii) costs of collection; and]~~

244 ~~[(iv) court costs.]~~

- 245 ~~[(c) The filed abstract shall have the effect of a judgment of that court.]~~
- 246 ~~[(6) Any]~~ (5) An administrative action issued by the division under this section shall:
- 247 (a) be in writing;
- 248 (b) be sent by certified mail to the last-known address of the employer;
- 249 (c) state the findings and administrative action of the division; and
- 250 (d) specify its effective date, which may be:
- 251 (i) immediate; or ~~[may be]~~
- 252 (ii) at a later date.
- 253 ~~[(7) The]~~ (6) A final order of the commission under this section, upon application by
- 254 ~~[the division on behalf of]~~ the commission made on or after the effective date of the order to a
- 255 court of general jurisdiction in any county in this state, may be enforced by an order to comply:
- 256 (a) entered ex parte; and
- 257 (b) without notice by the court.
- 258 Section 6. Section **34A-2-407** is amended to read:
- 259 **34A-2-407. Reporting of industrial injuries -- Regulation of health care providers**
- 260 **-- Funeral expenses.**
- 261 (1) As used in this section, "physician" is as defined in Section 34A-2-111.
- 262 (2) (a) ~~[Any]~~ An employee sustaining an injury arising out of and in the course of
- 263 employment shall provide notification to the employee's employer promptly of the injury.
- 264 (b) If the employee is unable to provide the notification required by Subsection (2)(a),
- 265 the following may provide notification of the injury to the employee's employer:
- 266 (i) the employee's next-of-kin; or
- 267 (ii) the employee's attorney.
- 268 (c) An employee claiming benefits under this chapter, or Chapter 3, Utah Occupational
- 269 Disease Act, shall comply with rules adopted by the commission regarding disclosure of
- 270 medical records of the employee medically relevant to the industrial accident or occupational
- 271 disease claim.
- 272 (3) (a) An employee is barred for any claim of benefits arising from an injury if the
- 273 employee fails to notify within the time period described in Subsection (3)(b):
- 274 (i) the employee's employer in accordance with Subsection (2); or
- 275 (ii) the division.

- 276 (b) The notice required by Subsection (3)(a) shall be made within:
- 277 (i) 180 days of the day on which the injury occurs; or
- 278 (ii) in the case of an occupational hearing loss, the time period specified in Section
- 279 34A-2-506.
- 280 (4) The following constitute notification of injury required by Subsection (2):
- 281 (a) an employer's or physician's injury report filed with:
- 282 (i) the division;
- 283 (ii) the employer; or
- 284 (iii) the employer's insurance carrier; or
- 285 (b) the payment of any medical or disability benefits by:
- 286 (i) the employer; or
- 287 (ii) the employer's insurance carrier.
- 288 (5) (a) In the form prescribed by the division, [~~each~~] an employer shall file a report
- 289 with the division of [~~any~~] a:
- 290 (i) work-related fatality; or
- 291 (ii) work-related injury resulting in:
- 292 (A) medical treatment;
- 293 (B) loss of consciousness;
- 294 (C) loss of work;
- 295 (D) restriction of work; or
- 296 (E) transfer to another job.
- 297 (b) The employer shall file the report required by Subsection (5)(a) within seven days
- 298 after:
- 299 (i) the occurrence of a fatality or injury;
- 300 (ii) the employer's first knowledge of [~~the~~] a fatality or injury; or
- 301 (iii) the employee's notification of [~~the~~] a fatality or injury.
- 302 (c) (i) An employer shall file a subsequent report with the division of [~~any~~] a
- 303 previously reported injury that later results in death.
- 304 (ii) The subsequent report required by this Subsection (5)(c) shall be filed with the
- 305 division within seven days following:
- 306 (A) the death; or

307 (B) the employer's first knowledge or notification of the death.

308 (d) A report is not required to be filed under this Subsection (5) for a minor [~~injuries~~
309 ~~injury~~, such as [~~cuts or scratches that require~~] a cut or scratch that requires first-aid treatment
310 only, unless:

311 (i) a treating physician files a report with the division in accordance with Subsection
312 (9); or

313 (ii) a treating physician is required to file a report with the division in accordance with
314 Subsection (9).

315 (6) An employer required to file a report under Subsection (5) shall provide the
316 employee with:

317 (a) a copy of the report submitted to the division; and

318 (b) a statement, as prepared by the division, of the employee's rights and
319 responsibilities related to the industrial injury.

320 (7) [~~Each~~] An employer shall maintain a record in a manner prescribed by the division
321 of all:

322 (a) work-related fatalities; or

323 (b) work-related injuries resulting in:

324 (i) medical treatment;

325 (ii) loss of consciousness;

326 (iii) loss of work;

327 (iv) restriction of work; or

328 (v) transfer to another job.

329 (8) (a) Except as provided in Subsection (8)(b), an employer who refuses or neglects to
330 make [~~reports, to maintain records, or to file reports~~] a report, maintain a record, or file a report
331 with the division as required by this section is:

332 (i) guilty of a class C misdemeanor; and

333 (ii) subject to a civil assessment:

334 (A) imposed by the division, subject to the requirements of Title 63G, Chapter 4,
335 Administrative Procedures Act; and

336 (B) that may not exceed \$500.

337 (b) An employer is not subject to the civil assessment or guilty of a class C

338 misdemeanor under this Subsection (8) if:

339 (i) the employer submits a report later than required by this section; and

340 (ii) the division finds that the employer has shown good cause for submitting a report
341 later than required by this section.

342 (c) (i) A civil assessment collected under this Subsection (8) shall be deposited into the
343 Uninsured Employers' Fund created in Section 34A-2-704 to be used for a purpose specified in
344 Section 34A-2-704.

345 (ii) The administrator of the Uninsured Employers' Fund shall collect monies required
346 to be deposited into the Uninsured Employers' Fund under this Subsection (8)(c) in accordance
347 with Section 34A-2-704.

348 (9) (a) A physician attending an injured employee shall comply with rules established
349 by the commission regarding:

350 (i) fees for physician's services;

351 (ii) disclosure of medical records of the employee medically relevant to the employee's
352 industrial accident or occupational disease claim; and

353 (iii) reports to the division regarding:

354 (A) the condition and treatment of an injured employee; or

355 (B) any other matter concerning industrial cases that the physician is treating.

356 (b) A physician who is associated with, employed by, or bills through a hospital is
357 subject to Subsection (9)(a).

358 (c) A hospital providing services for an injured employee is not subject to the
359 requirements of Subsection (9)(a) except for rules made by the commission that are described
360 in Subsection (9)(a)(ii) or (iii).

361 (d) The commission's schedule of fees may reasonably differentiate remuneration to be
362 paid to providers of health services based on:

363 (i) the severity of the employee's condition;

364 (ii) the nature of the treatment necessary; and

365 (iii) the facilities or equipment specially required to deliver that treatment.

366 (e) This Subsection (9) does not prohibit a contract with a provider of health services
367 relating to the pricing of goods and services.

368 (10) A copy of the initial report filed under Subsection (9)(a)(iii) shall be furnished to:

- 369 (a) the division;
- 370 (b) the employee; and
- 371 (c) (i) the employer; or
- 372 (ii) the employer's insurance carrier.

373 (11) (a) Except as provided in Subsection (11)(b), a person subject to Subsection
 374 (9)(a)(iii) who fails to comply with Subsection (9)(a)(iii) is guilty of a class C misdemeanor for
 375 each offense.

376 (b) A person subject to Subsection (9)(a)(iii) is not guilty of a class C misdemeanor
 377 under this Subsection (11), if:

- 378 (i) the person files a late report; and
- 379 (ii) the division finds that there is good cause for submitting a late report.

380 (12) (a) Subject to appellate review under Section 34A-1-303, the commission has
 381 exclusive jurisdiction to hear and determine:

382 (i) whether goods provided to or services rendered to an employee are compensable
 383 pursuant to this chapter or Chapter 3, Utah Occupational Disease Act, including:

- 384 (A) medical, nurse, or hospital services;
- 385 (B) medicines; and
- 386 (C) artificial means, appliances, or prosthesis;

387 (ii) the reasonableness of the amounts charged or paid for a good or service described
 388 in Subsection (12)(a)(i); and

389 (iii) collection issues related to a good or service described in Subsection (12)(a)(i).

390 (b) Except as provided in Subsection (12)(a), Subsection 34A-2-211[~~(7)~~] (6), or
 391 Section 34A-2-212, a person may not maintain a cause of action in any forum within this state
 392 other than the commission for collection or payment for goods or services described in
 393 Subsection (12)(a) that are compensable under this chapter or Chapter 3, Utah Occupational
 394 Disease Act.

395 Section 7. Section **34A-2-704** is amended to read:

396 **34A-2-704. Uninsured Employers' Fund.**

397 (1) (a) There is created an Uninsured Employers' Fund. The Uninsured Employers'
 398 Fund has the purpose of assisting in the payment of workers' compensation benefits to ~~[any]~~ a
 399 person entitled to the benefits, if:

400 (i) that person's employer:
401 (A) is individually, jointly, or severally liable to pay the benefits; and
402 (B) (I) becomes or is insolvent;
403 (II) appoints or has appointed a receiver; or
404 (III) otherwise does not have sufficient funds, insurance, sureties, or other security to
405 cover workers' compensation liabilities; and
406 (ii) the employment relationship between that person and the person's employer is
407 localized within the state as provided in Subsection (20).
408 (b) The Uninsured Employers' Fund succeeds to ~~all~~ monies previously held in the
409 Default Indemnity Fund.
410 (c) If it becomes necessary to pay benefits, the Uninsured Employers' Fund is liable for
411 ~~all~~ the obligations of the employer ~~as~~ set forth in this chapter and Chapter 3, Utah
412 Occupational Disease Act, with the exception of ~~penalties~~ a penalty on those obligations.
413 (2) (a) Monies for the Uninsured Employers' Fund shall be deposited into the
414 Uninsured Employers' Fund in accordance with this chapter and Subsection 59-9-101(2).
415 (b) The commissioner shall appoint an administrator of the Uninsured Employers'
416 Fund.
417 (c) (i) The state treasurer is the custodian of the Uninsured Employers' Fund.
418 (ii) The administrator shall make provisions for and direct distribution from the
419 Uninsured Employers' Fund.
420 (3) Reasonable costs of administering the Uninsured Employers' Fund or other fees
421 required to be paid by the Uninsured Employers' Fund may be paid from the Uninsured
422 Employers' Fund.
423 (4) The state treasurer shall:
424 (a) receive workers' compensation premium assessments from the State Tax
425 Commission; and
426 (b) invest the Uninsured Employers' Fund to ensure maximum investment return for
427 both long and short term investments in accordance with Section 51-7-12.5.
428 (5) (a) The administrator may employ, retain, or appoint counsel to represent the
429 Uninsured Employers' Fund in ~~all proceedings~~ a proceeding brought to enforce ~~claims~~ a
430 claim against or on behalf of the Uninsured Employers' Fund.

431 (b) If requested by the commission, the following shall aid in the representation of the
 432 Uninsured Employers' Fund:

433 (i) the attorney general; or

434 (ii) the city attorney, or county attorney of the locality in which:

435 (A) ~~any~~ an investigation, hearing, or trial under this chapter or Chapter 3, Utah
 436 Occupational Disease Act, is pending;

437 (B) the employee resides; or

438 (C) an employer:

439 (I) resides; or

440 (II) is doing business.

441 (c) (i) Notwithstanding Title 63A, Chapter 8, Office of State Debt Collection, the

442 administrator shall provide for the collection of monies required to be deposited in the

443 Uninsured Employers' Fund under this chapter and Chapter 3, Utah Occupational Disease Act.

444 (ii) To comply with Subsection (5)(c)(i), the administrator may:

445 (A) take appropriate action, including docketing an award in a manner consistent with
 446 Section 34A-2-212; and

447 (B) employ counsel and other personnel necessary to collect the monies described in
 448 Subsection (5)(c)(i).

449 (6) To the extent of the compensation and other benefits paid or payable to or on behalf
 450 of an employee or the employee's dependents from the Uninsured Employers' Fund, the
 451 Uninsured Employers' Fund, by subrogation, has ~~all~~ the rights, powers, and benefits of the
 452 employee or the employee's dependents against the employer failing to make the compensation
 453 payments.

454 (7) (a) The receiver, trustee, liquidator, or statutory successor of an employer meeting a
 455 condition listed in Subsection (1)(a)(i)(B) is bound by ~~[settlements of covered claims]~~ a
 456 settlement of a covered claim by the Uninsured Employers' Fund.

457 (b) ~~[The]~~ A court with jurisdiction shall grant ~~[all payments]~~ a payment made under
 458 this section a priority equal to that to which the claimant would have been entitled in the
 459 absence of this section against the assets of the employer meeting a condition listed in
 460 Subsection (1)(a)(i)(B).

461 (c) The expenses of the Uninsured Employers' Fund in handling ~~[claims]~~ a claim shall

462 be accorded the same priority as the liquidator's expenses.

463 (8) (a) The administrator shall periodically file the information described in Subsection

464 (8)(b) with the receiver, trustee, or liquidator of:

465 (i) an employer that meets a condition listed in Subsection (1)(a)(i)(B);

466 (ii) a public agency insurance mutual, as defined in Section 31A-1-103, that meets a
467 condition listed in Subsection (1)(a)(i)(B); or

468 (iii) an insolvent insurance carrier.

469 (b) The information required to be filed under Subsection (8)(a) is:

470 (i) [~~statements~~] a statement of the covered claims paid by the Uninsured Employers'
471 Fund; and

472 (ii) [~~estimates~~] an estimate of anticipated claims against the Uninsured Employers'
473 Fund.

474 (c) [~~The filings~~] A filing under this Subsection (8) [~~shall preserve~~] preserves the rights
475 of the Uninsured Employers' Fund for claims against the assets of the employer that meets a
476 condition listed in Subsection (1)(a)(i)(B).

477 (9) When [~~any~~] an injury or death for which compensation is payable from the
478 Uninsured Employers' Fund has been caused by the wrongful act or neglect of another person
479 not in the same employment, the Uninsured Employers' Fund has the same rights as allowed
480 under Section 34A-2-106.

481 (10) The Uninsured Employers' Fund, subject to approval of the administrator, shall
482 discharge its obligations by:

483 (a) adjusting its own claims; or

484 (b) contracting with an adjusting company, risk management company, insurance
485 company, or other company that has expertise and capabilities in adjusting and paying workers'
486 compensation claims.

487 (11) (a) For the purpose of maintaining the Uninsured Employers' Fund, an
488 administrative law judge, upon rendering a decision with respect to [~~any~~] a claim for workers'
489 compensation benefits in which an employer that meets a condition listed in Subsection
490 (1)(a)(i)(B) [~~was~~] is duly joined as a party, shall:

491 (i) order the employer that meets a condition listed in Subsection (1)(a)(i)(B) to
492 reimburse the Uninsured Employers' Fund for [~~all~~] the benefits paid to or on behalf of an

493 injured employee by the Uninsured Employers' Fund along with interest, costs, and ~~[attorneys'~~
 494 attorney fees; and

495 (ii) impose a penalty against the employer that meets a condition listed in Subsection
 496 (1)(a)(i)(B);

497 (A) of 15% of the value of the total award in connection with the claim; and
 498 (B) that shall be ~~[paid]~~ deposited into the Uninsured Employers' Fund.

499 ~~[(b) Awards may be docketed as other awards under this chapter and Chapter 3, Utah~~
 500 ~~Occupational Disease Act.]~~

501 (b) An award under this Subsection (11) shall be collected by the administrator in
 502 accordance with Subsection (5)(c).

503 (12) The ~~[liability of the]~~ state, the commission, and the state treasurer, with respect to
 504 payment of ~~[any]~~ compensation benefits, expenses, fees, or disbursement properly chargeable
 505 against the Uninsured Employers' Fund~~[, is limited]~~;

506 (a) are liable only to the assets in the Uninsured Employers' Fund~~[-];~~; and ~~[they]~~

507 (b) are not otherwise in any way liable for the making of ~~[any]~~ a payment.

508 (13) The commission may make reasonable rules for the processing and payment of
 509 ~~[claims]~~ a claim for compensation from the Uninsured Employers' Fund.

510 (14) (a) (i) If it becomes necessary for the Uninsured Employers' Fund to pay benefits
 511 under this section to an employee described in Subsection (14)(a)(ii), the Uninsured Employers'
 512 Fund may assess all other self-insured employers amounts necessary to pay:

513 (A) the obligations of the Uninsured Employers' Fund subsequent to a condition listed
 514 in Subsection (1)(a)(i)(B) occurring;

515 (B) the expenses of handling covered ~~[claims]~~ a claim subsequent to a condition listed
 516 in Subsection (1)(a)(i)(B) occurring;

517 (C) the cost of ~~[examinations]~~ an examination under Subsection (15); and

518 (D) other expenses authorized by this section.

519 (ii) This Subsection (14) applies to benefits paid to an employee of:

520 (A) a self-insured employer, as defined in Section 34A-2-201.5, that meets a condition
 521 listed in Subsection (1)(a)(i)(B); or

522 (B) if the self-insured employer that meets a condition described in Subsection
 523 (1)(a)(i)(B) is a public agency insurance mutual, a member of the public agency insurance

524 mutual.

525 (b) The assessments of [~~each~~] a self-insured employer shall be in the proportion that
526 the manual premium of the self-insured employer for the preceding calendar year bears to the
527 manual premium of all self-insured employers for the preceding calendar year.

528 (c) [~~Each~~] A self-insured employer shall be notified of the self-insured employer's
529 assessment not later than 30 days before the day on which the assessment is due.

530 (d) (i) A self-insured employer may not be assessed in any year an amount greater than
531 2% of that self-insured employer's manual premium for the preceding calendar year.

532 (ii) If the maximum assessment does not provide in [~~any one~~] a year an amount
533 sufficient to make all necessary payments from the Uninsured Employers' Fund for one or more
534 self-insured employers that meet a condition listed in Subsection (1)(a)(i)(B), the unpaid
535 portion shall be paid as soon as [~~funds~~] monies become available.

536 (e) [~~At~~] A self-insured [~~employers are~~] employer is liable under this section for a
537 period not to exceed three years after the day on which the Uninsured Employers' Fund first
538 pays benefits to an employee described in Subsection (14)(a)(ii) for the self-insured employer
539 that meets a condition listed in Subsection (1)(a)(i)(B).

540 (f) This Subsection (14) does not apply to [~~claims~~] a claim made against a self-insured
541 employer that meets a condition listed in Subsection (1)(a)(i)(B) if the condition listed in
542 Subsection (1)(a)(i)(B) occurred [~~prior to~~] before July 1, 1986.

543 (15) (a) The following shall notify the division of any information indicating that any
544 of the following may be insolvent or in a financial condition hazardous to its employees or the
545 public:

546 (i) a self-insured employer; or

547 (ii) if the self-insured employer is a public agency insurance mutual, a member of the
548 public agency insurance mutual.

549 (b) Upon receipt of the notification described in Subsection (15)(a) and with good
550 cause appearing, the division may order an examination of:

551 (i) that self-insured employer; or

552 (ii) if the self-insured employer is a public agency insurance mutual, a member of the
553 public agency mutual.

554 (c) The cost of the examination ordered under Subsection (15)(b) shall be assessed

555 against all self-insured employers as provided in Subsection (14).

556 (d) The results of the examination ordered under Subsection (15)(b) shall be kept
557 confidential.

558 (16) (a) In ~~[any]~~ a claim against an employer by the Uninsured Employers' Fund, or by
559 or on behalf of the employee to whom or to whose dependents compensation and other benefits
560 are paid or payable from the Uninsured Employers' Fund, the burden of proof is on the
561 employer or other party in interest objecting to the claim.

562 (b) ~~[The]~~ A claim described in Subsection (16)(a) is presumed to be valid up to the full
563 amount of workers' compensation benefits claimed by the employee or the employee's
564 dependents.

565 (c) This Subsection (16) applies whether the claim is filed in court or in an adjudicative
566 proceeding under the authority of the commission.

567 (17) A partner in a partnership or an owner of a sole proprietorship may not recover
568 compensation or other benefits from the Uninsured Employers' Fund if:

569 (a) the person is not included as an employee under Subsection 34A-2-104(3); or

570 (b) the person is included as an employee under Subsection 34A-2-104(3), but:

571 (i) the person's employer fails to insure or otherwise provide adequate payment of
572 direct compensation; and

573 (ii) the failure described in Subsection (17)(b)(i) is attributable to an act or omission
574 over which the person had or shared control or responsibility.

575 (18) A director or officer of a corporation may not recover compensation or other
576 benefits from the Uninsured Employers' Fund if the director or officer is excluded from
577 coverage under Subsection 34A-2-104(4).

578 (19) The Uninsured Employers' Fund:

579 (a) shall be:

580 (i) used in accordance with this section only for:

581 (A) the purpose of assisting in the payment of workers' compensation benefits in
582 accordance with Subsection (1); and

583 (B) in accordance with Subsection (3), payment of:

584 (I) reasonable costs of administering the Uninsured Employers' Fund; or

585 (II) fees required to be paid by the Uninsured Employers' Fund; and

586 (ii) expended according to processes that can be verified by audit; and
 587 (b) may not be used for:
 588 (i) administrative costs unrelated to the Uninsured Employers' Fund; or
 589 (ii) ~~any~~ an activity of the commission other than an activity described in Subsection
 590 (19)(a).

591 (20) (a) For purposes of Subsection (1), an employment relationship is localized in the
 592 state if:

593 (i) (A) the employer who is liable for the benefits has a business premise in the state;
 594 and

595 (B) (I) the contract for hire is entered into in the state; or

596 (II) the employee regularly performs work duties in the state for the employer who is
 597 liable for the benefits; or

598 (ii) the employee is:

599 (A) a resident of the state; and

600 (B) regularly performs work duties in the state for the employer who is liable for the
 601 benefits.

602 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
 603 commission shall by rule define what constitutes regularly performing work duties in the state.

604 Section 8. Section **34A-3-108** is amended to read:

605 **34A-3-108. Reporting of occupational diseases -- Regulation of health care**
 606 **providers.**

607 (1) ~~Any~~ An employee sustaining an occupational disease, as defined in this chapter,
 608 arising out of and in the course of employment shall provide notification to the employee's
 609 employer promptly of the occupational disease. If the employee is unable to provide
 610 notification, the employee's next-of-kin or attorney may provide notification of the
 611 occupational disease to the employee's employer.

612 (2) (a) ~~Any~~ An employee who fails to notify the employee's employer or the division
 613 within 180 days after the cause of action arises is barred from ~~any~~ a claim of benefits arising
 614 from the occupational disease.

615 (b) The cause of action is considered to arise on the date the employee first ~~suffered~~;

616 (i) suffers disability from the occupational disease; and ~~knew~~;

617 (ii) knows or in the exercise of reasonable diligence should have known, that the
618 occupational disease [~~was~~] is caused by employment.

619 (3) The following constitute notification of an occupational disease:

620 (a) an employer's or physician's injury report filed with the:

621 (i) division;

622 (ii) employer; or

623 (iii) insurance carrier; or

624 (b) the payment of any medical or disability [~~benefits~~] benefit by the employer or the
625 employer's insurance carrier.

626 (4) (a) In the form prescribed by the division, [~~each~~] an employer shall file a report with
627 the division of any occupational disease resulting in:

628 (i) medical treatment;

629 (ii) loss of consciousness;

630 (iii) loss of work;

631 (iv) restriction of work; or

632 (v) transfer to another job.

633 (b) The report required under Subsection (4)(a), shall be filed within seven days after:

634 (i) the occurrence of an occupational disease;

635 (ii) the employer's first knowledge of [~~the~~] an occupational disease; or

636 (iii) the employee's notification of [~~the~~] an occupational disease.

637 (c) [~~Each~~] An employer shall file a subsequent report with the division of [~~any~~] a
638 previously reported occupational disease that later resulted in death. The subsequent report
639 shall be filed with the division within seven days following:

640 (i) the death; or

641 (ii) the employer's first knowledge or notification of the death.

642 (d) A report is not required for:

643 (i) a minor [~~injuries~~] injury that [~~require~~] requires first-aid treatment only, unless a
644 treating physician files, or is required to file, the Physician's Initial Report of Work Injury or
645 Occupational Disease with the division;

646 (ii) occupational diseases that manifest after the employee is no longer employed by the
647 employer with which the exposure occurred; or

648 (iii) when the employer is not aware of an exposure occasioned by the employment that
649 results in an occupational disease as defined by Section 34A-3-103.

650 (5) ~~Each~~ An employer shall provide the employee with:

651 (a) a copy of the report submitted to the division; and

652 (b) a statement, as prepared by the division, of the employee's rights and
653 responsibilities related to the occupational disease.

654 (6) ~~Each~~ An employer shall maintain a record in a manner prescribed by the division
655 of ~~all~~ occupational diseases resulting in:

656 (a) medical treatment;

657 (b) loss of consciousness;

658 (c) loss of work;

659 (d) restriction of work; or

660 (e) transfer to another job.

661 (7) ~~Any~~ An employer who refuses or neglects to make ~~reports, to maintain records,~~
662 ~~or to file reports~~ a report, maintain a record, or file a report with the division as required by
663 this section is guilty of a class C misdemeanor and subject to citation under Section 34A-6-302
664 and a civil assessment as provided under Section 34A-6-307, unless the division finds that the
665 employer has shown good cause for submitting a report later than required by this section.

666 (8) (a) Except as provided in Subsection (8)(c), ~~all physicians, surgeons, and other~~
667 ~~health providers~~ a physician, surgeon, or other health care provider attending an
668 occupationally diseased ~~employees~~ employee shall:

669 (i) comply with ~~all~~ the rules, including the schedule of fees, for ~~their~~ services as
670 adopted by the commission; and

671 (ii) make reports to the division at any and all times as required as to the condition and
672 treatment of an occupationally diseased employee or as to any other matter concerning
673 industrial cases ~~they are treating~~ being treated.

674 (b) A physician, as defined in Section 34A-2-111, who is associated with, employed
675 by, or bills through a hospital is subject to Subsection (8)(a).

676 (c) A hospital is not subject to the requirements of Subsection (8)(a) except a hospital
677 is subject to rules made by the commission under Subsections 34A-2-407(9)(a)(ii) and (iii).

678 (d) The commission's schedule of fees may reasonably differentiate remuneration to be

679 paid to providers of health services based on:

680 (i) the severity of the employee's condition;

681 (ii) the nature of the treatment necessary; and

682 (iii) the facilities or equipment specially required to deliver that treatment.

683 (e) This Subsection (8) does not prohibit a contract with a provider of health services
684 relating to the pricing of goods and services.

685 (9) A copy of the physician's initial report shall be furnished to the:

686 (a) division;

687 (b) employee; and

688 (c) employer or its insurance carrier.

689 (10) [~~Any~~] A person subject to reporting under Subsection (8)(a)(ii) or Subsection
690 34A-2-407(9)(a)(iii) who refuses or neglects to make [~~any~~] a report or comply with this section
691 is guilty of a class C misdemeanor for each offense, unless the division finds that there is good
692 cause for submitting a late report.

693 (11) (a) [~~Applications~~] An application for a hearing to resolve [~~disputes~~] a dispute
694 regarding an occupational disease [~~claims~~] claim shall be filed with the Division of
695 Adjudication.

696 (b) After the filing, a copy shall be forwarded by mail to:

697 (i) (A) the employer; or [~~to~~]

698 (B) the employer's insurance carrier;

699 (ii) the applicant; and

700 (iii) the attorneys for the parties.

701 (12) (a) Subject to appellate review under Section 34A-1-303, the commission has
702 exclusive jurisdiction to hear and determine:

703 (i) whether goods provided to or services rendered to an employee is compensable
704 pursuant to this chapter and Chapter 2, Workers' Compensation Act, including the following:

705 (A) medical, nurse, or hospital services;

706 (B) medicines; and

707 (C) artificial means, appliances, or prosthesis;

708 (ii) the reasonableness of the amounts charged or paid for a good or service described
709 in Subsection (12)(a)(i); and

710 (iii) collection issues related to a good or service described in Subsection (12)(a)(i).

711 (b) Except as provided in Subsection (12)(a), Subsection 34A-2-211[~~(7)~~] (6), or
712 Section 34A-2-212, a person may not maintain a cause of action in any forum within this state
713 other than the commission for collection or payment of goods or services described in
714 Subsection (12)(a) that are compensable under this chapter or Chapter 2, Workers'
715 Compensation Act.

716 Section 9. Section **63A-8-101** is amended to read:

717 **63A-8-101. Definitions.**

718 As used in this chapter:

719 (1) (a) "Accounts receivable" or "receivables" means any amount due the state from an
720 entity for which payment has not been received by the state agency that is servicing the debt.

721 (b) "Accounts receivable" includes unpaid fees, licenses, taxes, loans, overpayments,
722 fines, forfeitures, surcharges, costs, contracts, interest, penalties, restitution to victims,
723 third-party claims, sale of goods, sale of services, claims, and damages.

724 (2) "Administrative offset" means:

725 (a) a reduction of an individual's tax refund or other payments due to the individual to
726 reduce or eliminate accounts receivable that the individual owes to the state; and

727 (b) a reduction of an entity's tax refund or other payments due to the entity to reduce or
728 eliminate accounts receivable that the entity owes to the state.

729 (3) "Entity" means an individual, a corporation, partnership, or other organization that
730 pays taxes to or does business with the state.

731 (4) "Office" means the Office of State Debt Collection established by this chapter.

732 (5) "Past due" means any accounts receivable that the state has not received by the
733 payment due date.

734 (6) (a) "State agency" includes any department, division, commission, council, board,
735 bureau, committee, office, or other administrative subunit of Utah state government, including
736 the legislative and judicial branches of state government.

737 (b) "State agency" does not include:

738 (i) any institution of higher education; [~~or~~]

739 (ii) except in Subsection 63A-8-201(7)(g), the State Tax Commission[~~;~~]; or

740 (iii) the administrator of the Uninsured Employers' Fund appointed by the Labor

741 Commissioner under Section 34A-2-704, solely for the purposes of collecting monies required
742 to be deposited into the Uninsured Employers' Fund under:

743 (A) Section 34A-1-405;

744 (B) Title 34A, Chapter 2, Workers' Compensation Act; or

745 (C) Title 34A, Chapter 3, Occupational Disease Act.

746 (7) "Writing-off" means the removal of an accounts receivable from an agency's
747 accounts receivable records but does not necessarily eliminate further collection efforts.

748 Section 10. **Coordinating H.B. 271 with H.B. 39 -- Merging substantive**
749 **amendments.**

750 If this H.B. 271 and H.B. 39, Utah Injured Worker Reemployment Act, both pass, it is
751 the intent of the Legislature that the Office of Legislative Research and General Counsel, in
752 preparing the Utah Code database for publication:

753 (1) modify the language in Subsection 34A-8a-203(4)(b) to read:

754 "(b) (i) The commission shall deposit a civil assessment imposed under this Subsection
755 (4) into the Uninsured Employers' Fund created by Section 34A-2-704 to be used for the
756 purposes of the Uninsured Employers' Fund specified in Section 34A-2-704.

757 (ii) The administrator of the Uninsured Employers' Fund shall collect monies required
758 to be deposited into the Uninsured Employers' Fund under this Subsection (4) in accordance
759 with Section 34A-2-704."; and

760 (2) modify the language in Subsection 63A-8-101(6)(b)(iii) to read:

761 "(iii) the administrator of the Uninsured Employers' Fund appointed by the Labor
762 Commissioner under Section 34A-2-704, solely for the purposes of collecting monies required
763 to be deposited into the Uninsured Employers' Fund under:

764 (A) Section 34A-1-405;

765 (B) Title 34A, Chapter 2, Workers' Compensation Act;

766 (C) Title 34A, Chapter 3, Occupational Disease Act; or

767 (D) Title 34A, Chapter 8a, Utah Injured Worker Reemployment Act."

Legislative Review Note
as of 1-26-09 9:02 AM

Office of Legislative Research and General Counsel

H.B. 271 - Workers' Compensation - Uninsured Employers' Fund

Fiscal Note

2009 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.
