

WORKERS' COMPENSATION FUND AMENDMENTS

2015 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Curtis S. Bramble

House Sponsor: James A. Dunnigan

LONG TITLE

General Description:

This bill modifies the Insurance Code to address the Workers' Compensation Fund.

Highlighted Provisions:

This bill:

- ▶ modifies definitions;
- ▶ addresses the powers of the fund and its subsidiaries;
- ▶ changes the method by which board members are selected;
- ▶ removes references to the Governor's Office of Economic Development;
- ▶ addresses compensation of board members; and
- ▶ makes technical and conforming amendments.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:

AMENDS:

31A-33-101, as last amended by Laws of Utah 2000, Chapter 222

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

31A-33-106, as last amended by Laws of Utah 2007, Chapter 74

31A-33-107, as last amended by Laws of Utah 2012, Chapter 347

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

30 Section 1. Section 31A-33-101 is amended to read:

31 **31A-33-101. Definitions.**

32 As used in this chapter:

- 33 (1) "Board" means the board of directors of the Workers' Compensation Fund.
- 34 (2) "Chief executive officer" means the chief executive officer appointed by the board.
- 35 (3) "Director" means a member of the board.

36 (4) "Fund" and "Workers' Compensation Fund" mean the nonprofit, quasi-public
37 corporation established by this chapter.

38 (5) "Injury Fund" means the premiums, reserves, investment income, and any other
39 funds administered by the Workers' Compensation Fund as provided in this chapter.

40 (6) "Joint enterprise" means a joint business activity either for-profit or not-for-profit:

- 41 (a) by which two or more persons provide insurance, products, or services; and
- 42 (b) that is established by contract between the persons providing the insurance,
43 products, or services.

44 (7) (a) "Workers' compensation products and services" means:

- 45 (i) medical or lost time claims management;
- 46 (ii) utilization review;
- 47 (iii) rehabilitation counseling or training;
- 48 (iv) fraud detection for workers' compensation claims;
- 49 (v) loss prevention or safety consultation;
- 50 (vi) data or information reporting or processing involving workers' compensation;

51 [~~and~~]

52 (vii) services related to improved employment practices, procedures, and data security;

53 and

54 [~~(vii)~~] (viii) liability insurance claims management if the claims management is related
55 to or arising out of:

56 (A) the sale of workers' compensation products and services described in Subsections
57 (7)(a)(i) through [~~(vi)~~] (vii) by:

- 58 (I) the Workers' Compensation Fund; or
- 59 (II) a subsidiary of the fund; or
- 60 (B) workers' compensation insurance coverage through:
- 61 (I) the Workers' Compensation Fund; or
- 62 (II) a subsidiary of the fund in accordance with Section 31A-33-103.5.
- 63 (b) "Workers' compensation products and services" does not include the bearing of any
- 64 insurance risk associated with insurance coverage.

65 Section 2. Section 31A-33-103.5 is amended to read:

66 **31A-33-103.5. Powers of fund -- Limitations.**

- 67 (1) The fund may form or acquire subsidiaries or enter into a joint enterprise:
- 68 (a) in accordance with Section 31A-33-107; and
- 69 (b) except as limited by this section and applicable insurance rules and statutes.
- 70 (2) Subject to applicable insurance rules and statutes, the fund may only offer:
- 71 (a) workers' compensation insurance and, subject to Subsection (5)(b), reinsurance in
- 72 Utah;
- 73 (b) workers' compensation insurance and workers' compensation reinsurance in a state
- 74 other than Utah [to the extent necessary to:];
- 75 ~~[(i) accomplish its purpose under Subsection 31A-33-102(1)(b); and]~~
- 76 ~~[(ii) provide workers' compensation or occupational disease insurance coverage to Utah~~
- 77 ~~employers and their employees engaged in interstate commerce; and]~~
- 78 (c) death, disability, or medical benefits arising from an industrial accident or
- 79 occupational disease arising from employment in Utah or other states; and
- 80 ~~[(e)]~~ (d) workers' compensation products and services in Utah or other states.
- 81 (3) Subject to applicable law, including insurance rules and statutes, a subsidiary of the
- 82 fund ~~[may:]~~ shall operate in Utah or a state other than Utah as a for profit, taxable business
- 83 enterprise.
- 84 ~~[(a) offer workers' compensation insurance coverage only:]~~
- 85 ~~[(i) in a state other than Utah; and]~~

86 ~~[(ii)(A) to insure the following against liability for compensation based on job-related~~
 87 ~~accidental injuries and occupational diseases:]~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

114 (ii) Subject to Subsection (5)(b)(i), the fund or a subsidiary of the fund may serve as a
 115 reinsurer or reinsurance intermediary for medical or disability costs or exposures assumed by a
 116 self-insured employer in Utah.

117 Section 3. Section 31A-33-106 is amended to read:

118 **31A-33-106. Board of directors -- Status of the fund in relationship to the state.**

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

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

121 [~~(3) Subject to Subsection (8), one director.~~]

122 [~~(a) (i) shall be the executive director of the Department of Administrative Services or~~
 123 ~~the executive director's designee; and]~~

124 [~~(ii) acts as the representative of the state as a policyholder of the Workers'~~
 125 ~~Compensation Fund; or]~~

126 [~~(b) is a public director appointed in accordance with Subsection (8)(b).]~~

127 [~~(4)~~] (3) One director shall be the chief executive officer of the fund.

128 [~~(5)~~] (4) (a) In accordance with a plan that meets the requirements of this section[~~, the~~
 129 ~~governor, with the consent of the Senate, shall appoint five]~~ and the fund's articles of
 130 incorporation and bylaws, the board shall nominate and the policyholders shall elect six public
 131 directors as follows:

132 (i) [~~three~~] four directors who are owners, officers, or employees of policyholders [~~other~~
 133 ~~than the state~~], each of whom is an owner, officer, or employee of a policyholder that has been
 134 insured by the Workers' Compensation Fund for at least one year before the [~~appointment~~]
 135 election of the director representing the policyholder; and

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

137 (b) The plan described in Subsection [~~(5)~~] (4)(a) shall comply with Section 31A-5-409
 138 to the extent that Section 31A-5-409 does not conflict with this section.

139 [~~(6)~~] (5) No two directors may represent or be employed by the same policyholder.

140 [~~(7)~~] (6) At least [~~four~~] five directors [~~appointed by the governor~~] elected by the
 141 policyholders shall have had previous experience in:

- 142 (a) the actuarial profession;
- 143 (b) accounting;
- 144 (c) investments;
- 145 (d) risk management;
- 146 (e) occupational safety;
- 147 (f) casualty insurance; or
- 148 (g) the legal profession.

149 ~~[(8)(a) Any]~~ (7) A director who represents a policyholder that fails to maintain
150 workers' compensation insurance through the Workers' Compensation Fund shall immediately
151 resign from the board~~[, including the executive director of the Department of Administrative~~
152 ~~Services or the executive director's designee if the state is no longer insured by the Workers'~~
153 ~~Compensation Fund pursuant to Section 34A-2-203].~~

154 ~~[(b)(i) If the state is no longer insured by the Workers' Compensation Fund pursuant to~~
155 ~~Section 34A-2-203, the governor with the consent of the Senate, shall appoint a public director~~
156 ~~to replace the executive director of the Department of Administrative Services or the executive~~
157 ~~director's designee.]~~

158 ~~[(ii) The public director appointed under this Subsection (8)(b) shall:]~~

159 ~~[(A) be an owner, officer, or employee of a policyholder that has been insured by the~~
160 ~~Workers' Compensation Fund for at least one year before the appointment of the director~~
161 ~~representing the policyholder;]~~

162 ~~[(B) have previous experience described in Subsection (7); or]~~

163 ~~[(C) be the director of the Governor's Office of Economic Development.]~~

164 ~~[(c) Once the executive director of the Department of Administrative Services or the~~
165 ~~executive director's designee is not a member of the board under Subsection (3), the state shall~~
166 ~~have a member on the board to represent the state as a policyholder only if the member is~~
167 ~~appointed in accordance with Subsection (5) or (8)(b).]~~

168 ~~[(9)]~~ (8) A person may not be a director if that person:

- 169 (a) has any interest as a stockholder, employee, attorney, or contractor of a competing

170 insurance carrier providing workers' compensation insurance in Utah;

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

173 (c) is not bondable.

174 ~~[(10)]~~ (9) After notice and a hearing, the ~~[governor]~~ board may remove any director for
175 cause which includes:

176 (a) neglect of duty; or

177 (b) malfeasance.

178 ~~[(11)]~~ (10) (a) Except as required by Subsection ~~[(11)]~~ (10)(b), the term of office of the
179 directors ~~[appointed by the governor]~~ elected by the policyholders shall be four years,
180 beginning July 1 of the year of appointment.

181 (b) Notwithstanding the requirements of Subsection ~~[(11)]~~ (10)(a), the ~~[governor]~~
182 board shall, at the time of ~~[appointment or reappointment]~~ election or reelection, adjust the
183 length of terms to ensure that no more than two terms expire in a calendar year.

184 ~~[(12) Each]~~ (11) A director shall hold office until the director's successor is
185 ~~[appointed]~~ selected and qualified.

186 ~~[(13)]~~ (12) When a vacancy occurs in the membership of the board for any reason, the
187 replacement shall be appointed by a majority of the board for the unexpired term, after which
188 time the replacement shall stand for policyholder election as described in the fund's articles of
189 incorporation and bylaws.

190 ~~[(14)]~~ (13) The board shall annually elect a chair and other officers as needed from its
191 membership.

192 ~~[(15)]~~ (14) (a) The board shall meet at least quarterly at a time and place designated by
193 the chair.

194 (b) The chair:

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

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

197 ~~[(16)]~~ (15) Four directors are a quorum for the purpose of transacting all business of

198 the board.

199 ~~[(17)]~~ (16) Each decision of the board requires the affirmative vote of at least four
200 directors for approval.

201 ~~[(18)]~~ (17) (a) (i) A director may receive compensation and be reimbursed for
202 reasonable expenses incurred in the performance of the director's official duties:

203 (A) as determined by the board of directors; and

204 (B) if the aggregate of compensation paid to all directors of the Workers'

205 Compensation Fund in a calendar year is less than or equal to the amount described in

206 Subsection ~~[(18)]~~ (17)(a)(ii).

207 (ii) (A) For the period beginning ~~[May 1, 2007]~~ January 1, 2016, and ending December

208 31, ~~[2007]~~ 2016, the amount described in Subsection ~~[(18)]~~ (17)(a)(i)(B) is ~~[\$75,000 except~~

209 ~~that any compensation paid to a director of the Workers' Compensation Fund on or after~~

210 ~~January 1, 2007 but on or before April 30, 2007 shall be included in determining whether the~~

211 ~~aggregate amount described in Subsection (18)(a)(i)(B) is exceeded]~~ \$150,000.

212 (B) For calendar years beginning on or after January 1, ~~[2008]~~ 2017, the amount

213 described in Subsection ~~[(18)]~~ (17)(a)(i)(B) is the sum of the amount under this Subsection

214 ~~[(18)]~~ (17)(a) for the previous year and an amount equal to the greater of:

215 (I) an amount calculated by multiplying the amount under this Subsection ~~[(18)]~~

216 ~~(17)(a) for the previous year by the actual percent change during the previous calendar year in~~

217 the consumer price index; and

218 (II) 0.

219 (C) For purposes of this Subsection ~~[(18)]~~ (17), the consumer price index shall be

220 calculated as provided in Sections 1(f)(4) and 1(f)(5), Internal Revenue Code.

221 (b) Directors may decline to receive compensation and expenses for their service.

222 (c) The Worker's Compensation Fund shall pay compensation to and reimburse

223 reasonable expenses of directors as permitted by this section:

224 (i) from the Injury Fund; and

225 (ii) upon vouchers drawn in the same manner as the Workers' Compensation Fund pays

226 its normal operating expenses.

227 (d) The ~~[following]~~ chief executive officer of the Workers' Compensation Fund shall
228 serve on the board without payment of compensation, but may be reimbursed for reasonable
229 expenses in accordance with Subsection ~~[(18)]~~ (17)(a)[:].

230 ~~[(i) the executive director of the Department of Administrative Services, or the~~
231 ~~executive director's designee;]~~

232 ~~[(ii) the chief executive officer of the Workers' Compensation Fund; and]~~

233 ~~[(iii) the director of the Governor's Office of Economic Development if appointed~~
234 ~~under Subsection (8).]~~

235 (e) The Workers' Compensation Fund shall annually report to the commissioner
236 compensation and expenses paid to the directors on the board.

237 ~~[(19) The requirement that the governor, with the consent of the Senate, appoint the~~
238 ~~directors of the Workers' Compensation Fund specified in Subsection (5) or (8), does not:]~~

239 (18) The placement of this chapter in this title does not:

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

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

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

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

246 (ii) expense, liability, or debt described in Section [31A-33-105](#);

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

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

249 (ii) an insurer:

250 (A) regulated under this title;

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

252 (C) domiciled in the state; or

253 (e) alter the requirement that the Workers' Compensation Fund provide workers'

254 compensation:

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

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

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

258 Section 4. Section 31A-33-107 is amended to read:

259 **31A-33-107. Duties of board -- Creation of subsidiaries -- Entering into joint**
260 **enterprises.**

261 (1) The board shall:

262 (a) appoint a chief executive officer to administer the Workers' Compensation Fund;

263 (b) receive and act upon financial, management, and actuarial reports covering the
264 operations of the Workers' Compensation Fund;

265 (c) ensure that the Workers' Compensation Fund is administered according to law;

266 (d) examine and approve an annual operating budget for the Workers' Compensation
267 Fund;

268 (e) serve as investment trustees and fiduciaries of the Injury Fund;

269 (f) receive and act upon recommendations of the chief executive officer;

270 (g) develop broad policy for the long-term operation of the Workers' Compensation
271 Fund, consistent with its mission and fiduciary responsibility;

272 (h) subject to Chapter 19a, Part 4, Workers' Compensation Rates, approve any rating
273 plans that would modify a policyholder's premium;

274 (i) subject to Chapter 19a, Part 4, Workers' Compensation Rates, approve the amount
275 of deviation, if any, from standard insurance rates;

276 (j) approve the amount of the dividends, if any, to be returned to policyholders;

277 (k) adopt a procurement policy consistent with the provisions of Title 63G, Chapter 6a,
278 Utah Procurement Code;

279 (l) develop and publish an annual report to policyholders, the governor, the Legislature,
280 and interested parties that describes the financial condition of the Injury Fund, including a
281 statement of expenses and income and what measures were taken or will be necessary to keep

282 the Injury Fund actuarially sound;
283 (m) establish a fiscal year;
284 (n) determine and establish an actuarially sound price for insurance offered by the
285 fund;
286 (o) establish conflict of interest requirements that govern the board, officers, and
287 employees;
288 (p) establish compensation and reasonable expenses to be paid to directors on the board
289 subject to the requirements of Section 31A-33-106, so that the board may not approve
290 compensation that exceeds the amount described in Subsection 31A-33-106~~(18)~~(17)(a)(i)(B);
291 and
292 (q) perform all other acts necessary for the policymaking and oversight of the Workers'
293 Compensation Fund.
294 (2) Subject to board review and its responsibilities under Subsection (1)(e), the board
295 may delegate authority to make daily investment decisions.
296 (3) The fund may form or acquire a subsidiary or enter into a joint enterprise:
297 (a) only if that action is approved by the board; and
298 (b) subject to the limitations in Section 31A-33-103.5.
299 **Section 5. Effective date.**
300 This bill takes effect on May 12, 2015, except that the amendments to Sections
301 31A-33-106 and 31A-33-107 in this bill take effect on January 1, 2016.