

WORKERS' COMPENSATION FUND AMENDMENTS

2016 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Val L. Peterson

Senate Sponsor: Curtis S. Bramble

LONG TITLE

General Description:

This bill modifies provisions related to the Workers' Compensation Fund to address its board of directors.

Highlighted Provisions:

This bill:

- ▶ modifies limits on compensation for directors;
- ▶ modifies requirements for and restrictions on who can be a director;
- ▶ allows for the number of directors to increase by two under certain circumstances;
- ▶ addresses terms, quorum, and voting requirements if the board is increased to nine directors; and
- ▶ makes technical and conforming amendments.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

31A-33-106, as last amended by Laws of Utah 2015, Chapter 427

31A-33-107, as last amended by Laws of Utah 2015, Chapter 427



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

29 Section 1. Section **31A-33-106** is amended to read:

30 **31A-33-106. Board of directors -- Status of the fund in relationship to the state.**

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

32 (2) [~~The~~] Except as provided in Subsection (18), the board shall consist of seven
33 directors.

34 (3) One director shall be the chief executive officer of the fund.

35 (4) (a) In accordance with a plan that meets the requirements of this section and the
36 fund's articles of incorporation and bylaws, the board shall nominate and the policyholders
37 shall elect six public directors as follows:

38 (i) four directors who are owners, officers, directors, or employees of policyholders,
39 each of whom is an owner, officer, or employee of a policyholder that has been insured by the
40 Workers' Compensation Fund for at least one year before the election of the director
41 representing the policyholder; and

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

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

45 (5) No two directors may represent or be employed by the same policyholder.

46 (6) At least five directors elected by the policyholders shall have had previous
47 experience in:

48 (a) the actuarial profession;

49 (b) accounting;

50 (c) investments;

51 (d) risk management;

52 (e) occupational safety;

53 (f) casualty insurance; or

54 (g) the legal profession.

55 (7) A director who represents a policyholder that fails to maintain workers'
56 compensation insurance through the Workers' Compensation Fund shall immediately resign
57 from the board.

58 (8) A person may not be a director if that person:

59 (a) has any interest as a stockholder, employee, attorney, or contractor of a competing
60 insurance carrier providing workers' compensation insurance [~~in Utah~~];

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

63 (c) is not bondable.

64 (9) After notice and a hearing, the board may remove any director for cause which
65 includes:

66 (a) neglect of duty; or

67 (b) malfeasance.

68 (10) (a) Except as required by Subsection (10)(b), the term of office of the directors
69 elected by the policyholders shall be four years, beginning July 1 of the year of appointment.

70 (b) Notwithstanding the requirements of Subsection (10)(a), the board shall, at the time
71 of election or reelection, adjust the length of terms to ensure that no more than two terms
72 expire in a calendar year.

73 (11) A director shall hold office until the director's successor is selected and qualified.

74 (12) When a vacancy occurs in the membership of the board for any reason, the
75 replacement shall be appointed by a majority of the board for the unexpired term, after which
76 time the replacement shall stand for policyholder election as described in the fund's articles of
77 incorporation and bylaws.

78 (13) The board shall annually elect a chair and other officers as needed from its
79 membership.

80 (14) (a) The board shall meet at least quarterly at a time and place designated by the
81 chair.

82 (b) The chair:

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

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

85 (15) [~~Four~~] Except as provided in Subsection (18), four directors are a quorum for the
86 purpose of transacting all business of the board.

87 (16) [~~Each~~] Except as provided in Subsection (18), a decision of the board requires the
88 affirmative vote of at least four directors for approval.

89 (17) (a) [~~It~~] A director may receive compensation and be reimbursed for reasonable

90 expenses incurred in the performance of the director's official duties:

91 ~~[(A)]~~ (i) as determined by the board of directors; and

92 ~~[(B)]~~ if the aggregate of compensation paid to all directors of the Workers'

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

94 ~~Subsection (17)(a)(ii).]~~

95 ~~[(ii) (A) For the period beginning January 1, 2016, and ending December 31, 2016, the~~
96 ~~amount described in Subsection (17)(a)(i)(B) is \$150,000.]~~

97 ~~[(B) For calendar years beginning on or after January 1, 2017, the amount described in~~
98 ~~Subsection (17)(a)(i)(B) is the sum of the amount under this Subsection (17)(a) for the previous~~
99 ~~year and an amount equal to the greater of:]~~

100 ~~[(F) an amount calculated by multiplying the amount under this Subsection (17)(a) for~~
101 ~~the previous year by the actual percent change during the previous calendar year in the~~
102 ~~consumer price index; and]~~

103 ~~[(H) 0.]~~

104 ~~[(C) For purposes of this Subsection (17), the consumer price index shall be calculated~~
105 ~~as provided in Sections 1(f)(4) and 1(f)(5), Internal Revenue Code.]~~

106 (ii) in an amount not to exceed the reasonable market rate for directors of similarly
107 situated insurance carriers.

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

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

110 reasonable expenses of directors as permitted by this section:

111 (i) from the Injury Fund; and

112 (ii) upon vouchers drawn in the same manner as the Workers' Compensation Fund pays
113 its normal operating expenses.

114 (d) The chief executive officer of the Workers' Compensation Fund shall serve on the
115 board without payment of compensation, but may be reimbursed for reasonable expenses in
116 accordance with Subsection (17)(a).

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

119 (18) (a) In accordance with this Subsection (18), the board may increase the number of
120 directors on the board by one or two directors, except the board may not exceed a total of nine

121 directors.

122 (b) The board may increase the number of directors if:

123 (i) the board determines by unanimous vote, that the business needs of the Workers'

124 Compensation Fund would be best served by the expansion;

125 (ii) the majority of the total number of directors after the increase are policyholders of
126 the Workers' Compensation Fund;

127 (iii) an added director has experience described in Subsection (6);

128 (iv) the term of an additional director is compliant with Subsection (10), except that if
129 the board is increased to nine directors, at the time of election or reelection, the board shall
130 adjust the length of terms to ensure that no more than three terms expire in a calendar year;

131 (v) at least one of the two additional directors is nominated and elected by the
132 policyholders of the Workers' Compensation Fund subject to the requirements of:

133 (A) this section; and

134 (B) the Workers' Compensation Fund's articles of incorporation and bylaws; and

135 (vi) one of the two additional directors is not elected in accordance with Subsection
136 (18)(b)(v), the director shall be selected subject to the requirements of:

137 (A) this section; and

138 (B) the Workers' Compensation Fund's articles of incorporation and bylaws.

139 (c) If the board is increased to nine directors:

140 (i) five directors are a quorum for the purpose of transacting all business of the board;

141 and

142 (ii) a decision of the board requires the affirmative vote of at least five directors for
143 approval.

144 ~~[(18)]~~ (19) The placement of this chapter in this title does not:

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

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

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

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

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

- 152 (d) alter the legal status of the Workers' Compensation Fund as:
- 153 (i) a nonprofit, self-supporting, quasi-public corporation; and
- 154 (ii) an insurer:
- 155 (A) regulated under this title;
- 156 (B) that is structured to operate in perpetuity; and
- 157 (C) domiciled in the state; or
- 158 (e) alter the requirement that the Workers' Compensation Fund provide workers'
- 159 compensation:

- 160 (i) for the purposes set forth in Section 31A-33-102;
- 161 (ii) consistent with Section 34A-2-201; and
- 162 (iii) as provided in Section 31A-22-1001.

163 Section 2. Section 31A-33-107 is amended to read:

164 **31A-33-107. Duties of board -- Creation of subsidiaries -- Entering into joint**
165 **enterprises.**

- 166 (1) The board shall:
- 167 (a) appoint a chief executive officer to administer the Workers' Compensation Fund;
- 168 (b) receive and act upon financial, management, and actuarial reports covering the
- 169 operations of the Workers' Compensation Fund;
- 170 (c) ensure that the Workers' Compensation Fund is administered according to law;
- 171 (d) examine and approve an annual operating budget for the Workers' Compensation
- 172 Fund;
- 173 (e) serve as investment trustees and fiduciaries of the Injury Fund;
- 174 (f) receive and act upon recommendations of the chief executive officer;
- 175 (g) develop broad policy for the long-term operation of the Workers' Compensation
- 176 Fund, consistent with its mission and fiduciary responsibility;
- 177 (h) subject to Chapter 19a, Part 4, Workers' Compensation Rates, approve any rating
- 178 plans that would modify a policyholder's premium;
- 179 (i) subject to Chapter 19a, Part 4, Workers' Compensation Rates, approve the amount
- 180 of deviation, if any, from standard insurance rates;
- 181 (j) approve the amount of the dividends, if any, to be returned to policyholders;
- 182 (k) adopt a procurement policy consistent with the provisions of Title 63G, Chapter 6a,

183 Utah Procurement Code;

184 (l) develop and publish an annual report to policyholders, the governor, the Legislature,
185 and interested parties that describes the financial condition of the Injury Fund, including a
186 statement of expenses and income and what measures were taken or will be necessary to keep
187 the Injury Fund actuarially sound;

188 (m) establish a fiscal year;

189 (n) determine and establish an actuarially sound price for insurance offered by the
190 fund;

191 (o) establish conflict of interest requirements that govern the board, officers, and
192 employees;

193 (p) establish compensation and reasonable expenses to be paid to directors on the board
194 subject to the requirements of Section 31A-33-106, so that the board may not approve
195 compensation that exceeds the amount described in Subsection 31A-33-106(17)(a)[~~(i)~~(B)]; and

196 (q) perform all other acts necessary for the policymaking and oversight of the Workers'
197 Compensation Fund.

198 (2) Subject to board review and its responsibilities under Subsection (1)(e), the board
199 may delegate authority to make daily investment decisions.

200 (3) The fund may form or acquire a subsidiary or enter into a joint enterprise:

201 (a) only if that action is approved by the board; and

202 (b) subject to the limitations in Section 31A-33-103.5.

Legislative Review Note
Office of Legislative Research and General Counsel