

**WORKERS' COMPENSATION DEPENDENT BENEFITS**

2017 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Karen Mayne**

House Sponsor: Mike Schultz

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**LONG TITLE**

**General Description:**

This bill modifies provisions related to workers' compensation death benefits.

**Highlighted Provisions:**

This bill:

- ▶ modifies the calculation of death benefits paid to one or more dependents of a deceased employee; and
- ▶ makes technical changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**34A-2-702**, as last amended by Laws of Utah 2008, Chapters 27 and 90

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

Section 1. Section **34A-2-702** is amended to read:

**34A-2-702. Employers' Reinsurance Fund -- Injury causing death -- Burial expenses -- Payments to dependents.**

(1) (a) There is created an Employers' Reinsurance Fund for the purpose of making a



28 payment for an industrial accident or occupational disease occurring on or before June 30,  
29 1994. A payment made under this section shall be made in accordance with this chapter or  
30 Chapter 3, Utah Occupational Disease Act. The Employers' Reinsurance Fund has no liability  
31 for an industrial accident or occupational disease occurring on or after July 1, 1994.

32 (b) The Employers' Reinsurance Fund succeeds to all money previously held in the  
33 "Special Fund," the "Combined Injury Fund," or the "Second Injury Fund."

34 (c) The commissioner shall appoint an administrator of the Employers' Reinsurance  
35 Fund.

36 (d) The state treasurer shall be the custodian of the Employers' Reinsurance Fund.

37 (e) The administrator shall make provisions for and direct a distribution from the  
38 Employers' Reinsurance Fund.

39 (f) Reasonable costs of administering the Employers' Reinsurance Fund or other fees  
40 may be paid from the Employers' Reinsurance Fund.

41 (2) The state treasurer shall:

42 (a) receive workers' compensation premium assessments from the State Tax  
43 Commission; and

44 (b) invest the Employers' Reinsurance Fund to ensure maximum investment return for  
45 both long and short term investments in accordance with Section [51-7-12.5](#).

46 (3) (a) The administrator may employ, retain, or appoint counsel to represent the  
47 Employers' Reinsurance Fund in a proceeding brought to enforce a claim against or on behalf  
48 of the Employers' Reinsurance Fund.

49 (b) If requested by the commission, the attorney general shall aid in representation of  
50 the Employers' Reinsurance Fund.

51 (4) The liability of the state, its departments, agencies, instrumentalities, elected or  
52 appointed officials, or other duly authorized agents, with respect to payment of compensation  
53 benefits, expenses, fees, medical expenses, or disbursement properly chargeable against the  
54 Employers' Reinsurance Fund, is limited to the cash or assets in the Employers' Reinsurance  
55 Fund, and they are not otherwise, in any way, liable for the operation, debts, or obligations of  
56 the Employers' Reinsurance Fund.

57 (5) (a) If injury causes death within a period of 312 weeks from the date of the  
58 accident, the employer or insurance carrier shall pay:

- 59 (i) the burial expenses of the deceased as provided in Section 34A-2-418; and  
60 (ii) benefits in the amount and to a person provided for in this Subsection (5).
- 61 (b) (i) If there is a wholly dependent person at the time of the death, the payment by the  
62 employer or [its] the employer's insurance carrier shall be:
- 63 (A) subject to Subsections (5)(b)(i)(B) and (C), 66-2/3% of the decedent's average  
64 weekly wage at the time of the injury;
- 65 (B) not more than a maximum of 85% of the state average weekly wage at the time of  
66 the injury per week; and
- 67 (C) (I) not less than a minimum of \$45 per week, plus:  
68 (Aa) [~~\$5~~] \$20 for a dependent spouse; and  
69 (Bb) [~~\$5~~] \$20 for each dependent minor child under the age of 18 years, up to a  
70 maximum of four such dependent minor children; and  
71 (II) not exceeding:  
72 (Aa) the average weekly wage of the employee at the time of the injury; and  
73 (Bb) 85% of the state average weekly wage at the time of the injury per week.
- 74 (ii) Compensation shall continue during dependency for the remainder of the period  
75 between the date of the death and the expiration of 312 weeks after the date of the injury.
- 76 (iii) (A) The payment by the employer or [its] the employer's insurance carrier to a  
77 wholly dependent person during dependency following the expiration of the first 312-week  
78 period described in Subsection (5)(b)(ii) shall be an amount equal to the weekly benefits paid  
79 to the wholly dependent person during the initial 312-week period, reduced by 50% of the  
80 federal social security death benefits the wholly dependent person:
- 81 (I) is eligible to receive for a week as of the first day the employee is eligible to receive  
82 a Social Security death benefit; and  
83 (II) receives.
- 84 (B) An employer or [its] the employer's insurance carrier may not reduce compensation  
85 payable under this Subsection (5)(b)(iii) on or after May 5, 2008, to a wholly dependent person  
86 by an amount related to a cost-of-living increase to the social security death benefits that the  
87 wholly dependent person is first eligible to receive for a week, notwithstanding whether the  
88 employee is injured on or before May 4, 2008.
- 89 (C) For purposes of a wholly dependent person whose compensation payable is

90 reduced under this Subsection (5)(b)(iii) on or before May 4, 2008, the reduction is limited to  
91 the amount of the reduction as of May 4, 2008.

92 (iv) The issue of dependency is subject to review at the end of the initial 312-week  
93 period and annually after the initial 312-week period. If in a review it is determined that, under  
94 the facts and circumstances existing at that time, the applicant is no longer a wholly dependent  
95 person, the applicant:

96 (A) may be considered a partly dependent or nondependent person; and

97 (B) shall be paid the benefits as may be determined under Subsection (5)(d)(iii).

98 (c) (i) For purposes of a dependency determination, a surviving spouse of a deceased  
99 employee is conclusively presumed to be wholly dependent for a 312-week period from the  
100 date of death of the employee. This presumption does not apply after the initial 312-week  
101 period.

102 (ii) (A) In determining the annual income of the surviving spouse after the initial  
103 312-week period, there shall be excluded 50% of a federal social security death benefit that the  
104 surviving spouse:

105 (I) is eligible to receive for a week as of the first day the surviving spouse is eligible to  
106 receive a Social Security death benefit; and

107 (II) receives.

108 (B) An employer or [its] the employer's insurance carrier may not reduce compensation  
109 payable under this Subsection (5)(c)(ii) on or after May 5, 2008, to a surviving spouse by an  
110 amount related to a cost-of-living increase to the social security death benefits that the  
111 surviving spouse is first eligible to receive for a week, notwithstanding whether the employee  
112 is injured on or before May 4, 2008.

113 (C) For purposes of a surviving spouse whose compensation payable is reduced under  
114 this Subsection (5)(c)(ii) on or before May 4, 2008, the reduction is limited to the amount of  
115 the reduction as of May 4, 2008.

116 (d) (i) If there is a partly dependent person at the time of the death, the payment shall  
117 be:

118 (A) subject to Subsections (5)(d)(i)(B) and (C), 66-2/3% of the decedent's average  
119 weekly wage at the time of the injury;

120 (B) not more than a maximum of 85% of the state average weekly wage at the time of

121 the injury per week; and

122 (C) not less than a minimum of \$45 per week.

123 (ii) Compensation shall continue during dependency for the remainder of the period  
124 between the date of death and the expiration of 312 weeks after the date of injury.

125 Compensation may not amount to more than a maximum of \$30,000.

126 (iii) The benefits provided for in this Subsection (5)(d) shall be in keeping with the  
127 circumstances and conditions of dependency existing at the date of injury, and any amount paid  
128 under this Subsection (5)(d) shall be consistent with the general provisions of this chapter and  
129 Chapter 3, Utah Occupational Disease Act.

130 (iv) Benefits to a person determined to be partly dependent under Subsection (5)(c):

131 (A) shall be determined in keeping with the circumstances and conditions of  
132 dependency existing at the time of the dependency review; and

133 (B) may be paid in an amount not exceeding the maximum weekly rate that a partly  
134 dependent person would receive if wholly dependent.

135 (v) A payment under this section shall be paid to a person during a person's dependency  
136 by the employer or [~~its~~] the employer's insurance carrier.

137 (e) (i) Subject to Subsection (5)(e)(ii), if there is a wholly dependent person and also a  
138 partly dependent person at the time of death, the benefits may be apportioned in a manner  
139 consistent with Section [34A-2-414](#).

140 (ii) The total benefits awarded to all parties concerned may not exceed the maximum  
141 provided for by law.

142 (6) The Employers' Reinsurance Fund:

143 (a) shall be:

144 (i) used only in accordance with Subsection (1) for:

145 (A) the purpose of making a payment for an industrial accident or occupational disease  
146 occurring on or before June 30, 1994, in accordance with this section and Section [34A-2-703](#);  
147 and

148 (B) payment of:

149 (I) reasonable costs of administering the Employers' Reinsurance Fund; or

150 (II) fees required to be paid by the Employers' Reinsurance Fund;

151 (ii) expended according to processes that can be verified by audit; and

- 152 (b) may not be used for:
- 153 (i) administrative costs unrelated to the Employers' Reinsurance Fund; or
- 154 (ii) an activity of the commission other than an activity described in Subsection (6)(a).
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**Legislative Review Note**  
**Office of Legislative Research and General Counsel**