

**LABOR AMENDMENTS**

2013 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Wayne A. Harper**

House Sponsor: James A. Dunnigan

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**LONG TITLE**

**General Description:**

This bill modifies the Utah Labor Code to address procedures followed by the Labor Commission and persons subject to the jurisdiction of the Labor Commission.

**Highlighted Provisions:**

This bill:

- ▶ modifies requirements of the Appeals Board;
- ▶ authorizes the commissioner to recuse from hearing a motion for review;
- ▶ imposes time frames for decisions of administrative law judges and the commissioner or Appeals Board;
- ▶ requires rulemaking to facilitate timely completion of certain administrative actions;
- ▶ requires monitoring and reporting regarding the time it takes to complete a workers' compensation related administrative hearing;
- ▶ authorizes the commission to hire a medical panel director;
- ▶ addresses the assignment of administrative law judges and the appointment of medical panels; and
- ▶ makes technical and conforming amendments.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

This bill takes effect on July 1, 2013.

**Utah Code Sections Affected:**

AMENDS:

30       **34A-1-205**, as last amended by Laws of Utah 2002, Chapter 176

31       **34A-1-303**, as last amended by Laws of Utah 2008, Chapter 382

32       **34A-2-601**, as last amended by Laws of Utah 2009, Chapter 215

33       **34A-2-801**, as last amended by Laws of Utah 2009, Chapter 347

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

36       Section 1. Section **34A-1-205** is amended to read:

37       **34A-1-205. Appeals Board -- Chair -- Appointment -- Compensation --**  
38       **Qualifications.**

39       (1) There is created the Appeals Board within the commission consisting of three  
40       members. The board may call and preside at adjudicative proceedings to review an order or  
41       decision that is subject to review by the Appeals Board under this title.

42       (2) (a) The governor shall appoint the members with the consent of the Senate and in  
43       accordance with this section.

44       (b) One member of the board shall be appointed to represent employers, in making this  
45       appointment, the governor shall consider nominations from employer organizations.

46       (c) One member of the board shall be appointed to represent employees, in making this  
47       appointment, the governor shall consider nominations from employee organizations.

48       (d) No more than two members may belong to the same political party.

49       (e) The governor shall, at the time of appointment or reappointment, make  
50       appointments to the board so that at least two of the members of the board are members of the  
51       Utah State Bar in good standing or resigned from the Utah State Bar in good standing.

52       (3) (a) The term of a member shall be six years beginning on March 1 of the year the  
53       member is appointed, except that the governor shall, at the time of appointment or  
54       reappointment, adjust the length of terms to ensure that the terms of members are staggered so  
55       that one member is appointed every two years.

56       (b) The governor may remove a member only for inefficiency, neglect of duty,  
57       malfeasance or misfeasance in office, or other good and sufficient cause.

(c) A member shall hold office until a successor is appointed and has qualified.

(4) A member shall be part-time and receive compensation as provided by Title 67, Chapter 19, State Personnel Management Act.

(5) (a) The chief officer of the board shall be the chair, who shall serve as the executive and administrative head of the board.

(b) The governor shall appoint and may remove at will the chair from the position of chair.

(6) A majority of the board shall constitute a quorum to transact business.

(7) (a) The commission shall provide the Appeals Board necessary staff support, except as provided in Subsection (7)(b).

(b) At the request of the Appeals Board, the attorney general shall act as an impartial aid to the Appeals Board in outlining the facts and the issues.

Section 2. Section **34A-1-303** is amended to read:

**34A-1-303. Review of administrative decision.**

(1) A decision entered by an administrative law judge under this title is the final order of the commission unless a further appeal is initiated:

(a) under this title; and

(b) in accordance with the rules of the commission governing the review.

(2) (a) Unless otherwise provided, a person who is entitled to appeal a decision of an administrative law judge under this title may appeal the decision by filing a motion for review with the Division of Adjudication.

(b) (i) Unless a party in interest to the appeal requests in accordance with Subsection (3) that the appeal be heard by the Appeals Board, the commissioner shall hear the review in accordance with Title 63G, Chapter 4, Administrative Procedures Act.

(ii) A decision of the commissioner is a final order of the commission unless set aside by the court of appeals.

(c) (i) If in accordance with Subsection (3) a party in interest to the appeal requests that the appeal be heard by the Appeals Board, the Appeals Board shall hear the review in

86 accordance with:

87 (A) Section 34A-1-205; and

88 (B) Title 63G, Chapter 4, Administrative Procedures Act.

89 (ii) A decision of the Appeals Board is a final order of the commission unless set aside  
90 by the court of appeals.

91 (d) The commissioner may transfer a motion for review to the Appeals Board for  
92 decision if the commissioner determines that the commissioner's ability to impartially decide  
93 the motion for review might reasonably be questioned.

94 (3) A party in interest may request that an appeal be heard by the Appeals Board by  
95 filing the request with the Division of Adjudication:

96 (a) as part of the motion for review; or

97 (b) if requested by a party in interest who did not file a motion for review, within 20  
98 days of the date the motion for review is filed with the Division of Adjudication.

99 (4) (a) On appeal, the commissioner or the Appeals Board may:

100 (i) affirm the decision of an administrative law judge;

101 (ii) modify the decision of an administrative law judge;

102 (iii) return the case to an administrative law judge for further action as directed; or

103 (iv) reverse the findings, conclusions, and decision of an administrative law judge.

104 (b) The commissioner or Appeals Board may not conduct a trial de novo of the case.

105 (c) The commissioner or Appeals Board may base its decision on:

106 (i) the evidence previously submitted in the case; or

107 (ii) on written argument or written supplemental evidence requested by the  
108 commissioner or Appeals Board.

109 (d) The commissioner or Appeals Board may permit the parties to:

110 (i) file briefs or other papers; or

111 (ii) conduct oral argument.

112 (e) The commissioner or Appeals Board shall promptly notify the parties to any  
113 proceedings before the commissioner or Appeals Board of its decision, including its findings

and conclusions.

(5) (a) Each decision of a member of the Appeals Board shall represent the member's independent judgment.

(b) A member of the Appeals Board may not participate in any case in which the member is an interested party.

(c) If a member of the Appeals Board may not participate in a case because the member is an interested party, the two members of the Appeals Board that may hear the case shall assign an individual to participate as a member of the board in that case if the individual:

(i) is not an interested party in the case;

(ii) was not previously assigned to:

(A) preside over any proceeding related to the case; or

(B) take any administrative action related to the case; and

(iii) is representative of the following group that was represented by the member that may not hear the case under Subsection (5)(b):

(A) employers;

(B) employees; or

(C) the public.

(d) The two members of the Appeals Board may appoint an individual to participate as a member of the Appeals Board in a case if:

(i) there is a vacancy on the board at the time the Appeals Board hears the review of the case;

(ii) the individual appointed meets the conditions described in Subsections (5)(c)(i) and (ii); and

(iii) the individual appointed is representative of the following group that was represented by the member for which there is a vacancy:

(A) employers;

(B) employees; or

(C) the public.

(6) If an order is appealed to the court of appeals after the party appealing the order has exhausted all administrative appeals, the court of appeals has jurisdiction to:

(a) review, reverse, remand, or annul any order of the commissioner or Appeals Board; or

(b) suspend or delay the operation or execution of the order of the commissioner or Appeals Board being appealed.

Section 3. Section **34A-2-601** is amended to read:

**34A-2-601. Medical panel, director, or consultant -- Findings and reports -- Objections to report -- Hearing -- Expenses.**

(1) (a) The Division of Adjudication may refer the medical aspects of a case described in this Subsection (1)(a) to a medical panel appointed by an administrative law judge:

(i) upon the filing of a claim for compensation arising out of and in the course of employment for:

(A) disability by accident; or

(B) death by accident; and

(ii) if the employer or the employer's insurance carrier denies liability.

(b) An administrative law judge may appoint a medical panel upon the filing of a claim for compensation based upon disability or death due to an occupational disease.

(c) A medical panel appointed under this section shall consist of one or more physicians specializing in the treatment of the disease or condition involved in the claim.

(d) As an alternative method of obtaining an impartial medical evaluation of the medical aspects of a controverted case, the division may employ a medical director or one or more medical consultants:

(i) on a full-time or part-time basis; and

(ii) for the purpose of:

(A) evaluating medical evidence; and

(B) advising an administrative law judge with respect to the administrative law judge's ultimate fact-finding responsibility.

(e) If all parties agree to the use of a medical director or one or more medical consultants, the medical director or one or more medical consultants is allowed to function in the same manner and under the same procedures as required of a medical panel.

(2) (a) A medical panel, medical director, or medical consultant may do the following to the extent the medical panel, medical director, or medical consultant determines that it is necessary or desirable:

(i) conduct a study;

(ii) take an x-ray;

(iii) perform a test; or

(iv) if authorized by an administrative law judge, conduct a post-mortem examination.

(b) A medical panel, medical director, or medical consultant shall make:

(i) a report in writing to the administrative law judge in a form prescribed by the Division of Adjudication; and

(ii) additional findings as the administrative law judge may require.

(c) In an occupational disease case, in addition to the requirements of Subsection (2)(b), a medical panel, medical director, or medical consultant shall certify to the administrative law judge:

(i) the extent, if any, of the disability of the claimant from performing work for remuneration or profit;

(ii) whether the sole cause of the disability or death, in the opinion of the medical panel, medical director, or medical consultant results from the occupational disease; and

(iii) (A) whether any other cause aggravated, prolonged, accelerated, or in any way contributed to the disability or death; and

(B) if another cause contributed to the disability or death, the extent in percentage to which the other cause contributed to the disability or death.

(d) (i) An administrative law judge shall promptly distribute full copies of a report submitted to the administrative law judge under this Subsection (2) by mail to:

(A) the applicant;

198 (B) the employer;  
199 (C) the employer's insurance carrier; and  
200 (D) an attorney employed by a person listed in Subsections (2)(d)(i)(A) through (C).  
201 (ii) Within 20 days after the report described in Subsection (2)(d)(i) is deposited in the  
202 United States post office, the following may file with the administrative law judge a written  
203 objection to the report:  
204 (A) the applicant;  
205 (B) the employer; or  
206 (C) the employer's insurance carrier.  
207 (iii) If no written objection is filed within the period described in Subsection (2)(d)(ii),  
208 the report is considered admitted in evidence.  
209 (e) (i) An administrative law judge may base the administrative law judge's finding and  
210 decision on the report of:  
211 (A) a medical panel;  
212 (B) the medical director; or  
213 (C) one or more medical consultants.  
214 (ii) Notwithstanding Subsection (2)(e)(i), an administrative law judge is not bound by a  
215 report described in Subsection (2)(e)(i) if other substantial conflicting evidence in the case  
216 supports a contrary finding.  
217 (f) (i) If a written objection to a report is filed under Subsection (2)(d), the  
218 administrative law judge may set the case for hearing to determine the facts and issues  
219 involved.  
220 (ii) At a hearing held pursuant to this Subsection (2)(f), any party may request the  
221 administrative law judge to have any of the following present at the hearing for examination  
222 and cross-examination:  
223 (A) the chair of the medical panel;  
224 (B) the medical director; or  
225 (C) the one or more medical consultants.

(iii) For good cause shown, an administrative law judge may order the following to be present at the hearing for examination and cross-examination:

(A) a member of a medical panel, with or without the chair of the medical panel;

(B) the medical director; or

(C) a medical consultant.

(g) (i) A written report of a medical panel, medical director, or one or more medical consultants may be received as an exhibit at a hearing described in Subsection (2)(f).

(ii) Notwithstanding Subsection (2)(g)(i), a report received as an exhibit under Subsection (2)(g)(i) may not be considered as evidence in the case except as far as the report is sustained by the testimony admitted.

(h) For a claim referred under Subsection (1) to a medical panel, medical director, or medical consultant before July 1, 1997, the commission shall pay out of the Employers' Reinsurance Fund established in Section 34A-2-702:

(i) expenses of a study or report of the medical panel, medical director, or medical consultant; and

(ii) the expenses of the medical panel's, medical director's, or medical consultant's appearance before an administrative law judge.

(i) (i) For a claim referred under Subsection (1) to a medical panel, medical director, or medical consultant on or after July 1, 1997, the commission shall pay out of the Uninsured Employers' Fund established in Section 34A-2-704 the expenses of:

(A) a study or report of the medical panel, medical director, or medical consultant; and

(B) the medical panel's, medical director's, or medical consultant's appearance before an administrative law judge.

(ii) Notwithstanding Section 34A-2-704, the expenses described in Subsection (2)(i)(i) shall be paid from the Uninsured Employers' Fund whether or not the employment relationship during which the industrial accident or occupational disease occurred is localized in Utah as described in Subsection 34A-2-704(20).

(3) (a) The commission may employ a qualified physician as medical panel director

who, in addition to the other duties outlined in this section for a medical director, is responsible for:

(i) assisting the commission in creating and enforcing standards for medical panels and medical consultants;

(ii) training members of medical panels or medical consultants;

(iii) increasing the number of physicians who participate on medical panels;

(iv) ensuring medical panels include appropriate specialists; and

(v) monitoring the quality of medical panel and medical consultant reports.

(b) The commission shall pay the expenses of employing a medical panel director described in this Subsection (3) out of the Uninsured Employers' Fund established in Section 34A-2-704.

Section 4. Section **34A-2-801** is amended to read:

**34A-2-801. Initiating adjudicative proceedings -- Procedure for review of administrative action.**

(1) (a) To contest an action of the employee's employer or its insurance carrier concerning a compensable industrial accident or occupational disease alleged by the employee or a dependent any of the following shall file an application for hearing with the Division of Adjudication:

(i) the employee;

(ii) a representative of the employee, the qualifications of whom are defined in rule by the commission; or

(iii) a dependent as described in Section 34A-2-403.

(b) To appeal the imposition of a penalty or other administrative act imposed by the division on the employer or its insurance carrier for failure to comply with this chapter or Chapter 3, Utah Occupational Disease Act, any of the following shall file an application for hearing with the Division of Adjudication:

(i) the employer;

(ii) the insurance carrier; or

(iii) a representative of either the employer or the insurance carrier, the qualifications of whom are defined in rule by the commission.

(c) A person providing goods or services described in Subsections 34A-2-407(11) and 34A-3-108(12) may file an application for hearing in accordance with Section 34A-2-407 or 34A-3-108.

(d) An attorney may file an application for hearing in accordance with Section 34A-1-309.

(2) (a) Unless all parties agree to the assignment in writing, the Division of Adjudication may not assign the same administrative law judge to hear a claim under this section by an injured employee if the administrative law judge previously heard a claim by the same injured employee for a different injury or occupational disease.

(b) Unless all parties agree to the appointment in writing, an administrative law judge may not appoint the same medical panel or individual panel member to evaluate a claim by an injured employee if the medical panel or individual panel member previously evaluated a claim by the same injured employee for a different injury or occupational disease.

~~[(2)]~~ (3) Unless a party in interest appeals the decision of an administrative law judge in accordance with Subsection ~~[(3)]~~ (4), the decision of an administrative law judge on an application for hearing filed under Subsection (1) is a final order of the commission 30 days after the day on which the decision is issued. An administrative law judge shall issue a decision by no later than 60 days from the day on which the hearing is held under this part unless:

(a) the parties agree to a longer period of time; or

(b) a decision within the 60-day period is impracticable.

~~[(3)]~~ (4) (a) A party in interest may appeal the decision of an administrative law judge by filing a motion for review with the Division of Adjudication within 30 days of the date the decision is issued.

(b) Unless a party in interest to the appeal requests under Subsection ~~[(3)]~~ (4)(c) that the appeal be heard by the Appeals Board, the commissioner shall hear the review.

(c) A party in interest may request that an appeal be heard by the Appeals Board by filing the request with the Division of Adjudication:

(i) as part of the motion for review; or

(ii) if requested by a party in interest who did not file a motion for review, within 20 days of the day on which the motion for review is filed with the Division of Adjudication.

(d) A case appealed to the Appeals Board shall be decided by the majority vote of the Appeals Board.

~~[(4)]~~ (5) All records on appeals shall be maintained by the Division of Adjudication. Those records shall include an appeal docket showing the receipt and disposition of the appeals on review.

~~[(5)]~~ (6) Upon appeal, the commissioner or Appeals Board shall make its decision in accordance with Section 34A-1-303. The commissioner or Appeals Board shall issue a decision under this part by no later than 90 days from the day on which the motion for review is filed unless:

(a) the parties agree to a longer period of time; or

(b) a decision within the 90-day period is impracticable.

~~[(6)]~~ (7) The commissioner or Appeals Board shall promptly notify the parties to a proceeding before it of its decision, including its findings and conclusions.

~~[(7)]~~ (8) The decision of the commissioner or Appeals Board is final unless within 30 days after the date the decision is issued further appeal is initiated under the provisions of this section or Title 63G, Chapter 4, Administrative Procedures Act.

~~[(8)]~~ (9) (a) Within 30 days after the day on which the decision of the commissioner or Appeals Board is issued, an aggrieved party may secure judicial review by commencing an action in the court of appeals against the commissioner or Appeals Board for the review of the decision of the commissioner or Appeals Board.

(b) In an action filed under Subsection ~~[(8)]~~ (9)(a):

(i) any other party to the proceeding before the commissioner or Appeals Board shall be made a party; and

(ii) the commission shall be made a party.

(c) A party claiming to be aggrieved may seek judicial review only if the party exhausts the party's remedies before the commission as provided by this section.

(d) At the request of the court of appeals, the commission shall certify and file with the court all documents and papers and a transcript of all testimony taken in the matter together with the decision of the commissioner or Appeals Board.

(10) (a) The commission shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to facilitate timely completion of administrative actions under this part.

(b) The commission shall monitor the time from filing of an application for a hearing to issuance of a final order of the commission for cases brought under this part.

(c) The commission shall annually report to the Business and Labor Interim Committee:

(i) the number of cases for which an application for hearing is filed under this part in the previous calendar year;

(ii) the number of cases described in Subsection (10)(c)(i) for which the decision of the administrative law judge was not issued within the 60-day period required by Subsection (3);

(iii) the number of cases described in Subsection (10)(c)(i) that are appealed to the commissioner or Appeals Board for which the decision of the commissioner or Appeals Board was not issued within the 90-day period required by Subsection (6);

(iv) the number of cases described in Subsection (10)(c)(i) for which a final order of the commission is issued within 18 months of the day on which the application for hearing is filed;

(v) the number of cases for which a final order of the commission is not issued within 18 months of the day on which the application for a hearing is filed; and

(vi) the reasons the cases described in Subsection (10)(c)(v) were not resolved within 18 months of the day on which the application for a hearing is filed.

Section 5. **Effective date.**

366        This bill takes effect on July 1, 2013.