

Senator Wayne A. Harper proposes the following substitute bill:

LABOR AMENDMENTS

2013 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Wayne A. Harper

House Sponsor: James A. Dunnigan

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



26 **Other Special Clauses:**

27 This bill takes effect on July 1, 2013.

28 **Utah Code Sections Affected:**

29 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



34
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.

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

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

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

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

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

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

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

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

71 **34A-1-303. Review of administrative decision.**

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

74 (a) under this title; and

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

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

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

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

84 (c) (i) If in accordance with Subsection (3) a party in interest to the appeal requests that
85 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
114 and conclusions.

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

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

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

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

123 (ii) was not previously assigned to:

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

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

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

128 (A) employers;

129 (B) employees; or

130 (C) the public.

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

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

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

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

139 (A) employers;

140 (B) employees; or

141 (C) the public.

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

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

145 or

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

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

149 **34A-2-601. Medical panel, director, or consultant -- Findings and reports --**

150 **Objections to report -- Hearing -- Expenses.**

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

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

155 (A) disability by accident; or

156 (B) death by accident; and

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

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

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

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

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

166 (ii) for the purpose of:

167 (A) evaluating medical evidence; and

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

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

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

176 (i) conduct a study;

177 (ii) take an x-ray;

178 (iii) perform a test; or

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

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

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

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

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

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

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

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

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

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

197 (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.

226 (iii) For good cause shown, an administrative law judge may order the following to be

227 present at the hearing for examination and cross-examination:

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

229 (B) the medical director; or

230 (C) a medical consultant.

231 (g) (i) A written report of a medical panel, medical director, or one or more medical

232 consultants may be received as an exhibit at a hearing described in Subsection (2)(f).

233 (ii) Notwithstanding Subsection (2)(g)(i), a report received as an exhibit under

234 Subsection (2)(g)(i) may not be considered as evidence in the case except as far as the report is

235 sustained by the testimony admitted.

236 (h) For a claim referred under Subsection (1) to a medical panel, medical director, or

237 medical consultant before July 1, 1997, the commission shall pay out of the Employers'

238 Reinsurance Fund established in Section 34A-2-702:

239 (i) expenses of a study or report of the medical panel, medical director, or medical

240 consultant; and

241 (ii) the expenses of the medical panel's, medical director's, or medical consultant's

242 appearance before an administrative law judge.

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

246 (A) a study or report of the medical panel, medical director, or medical consultant; and
247 (B) the medical panel's, medical director's, or medical consultant's appearance before
248 an administrative law judge.

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

253 (3) (a) The commission may employ a qualified physician as medical panel director
254 who, in addition to the other duties outlined in this section for a medical director, is responsible
255 for:

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

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

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

260 (iv) ensuring medical panels include appropriate specialists; and

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

262 (b) The commission shall pay the expenses of employing a medical panel director
263 described in this Subsection (3) out of the Uninsured Employers' Fund established in Section
264 34A-2-704.

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

266 **34A-2-801. Initiating adjudicative proceedings -- Procedure for review of**
267 **administrative action.**

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

272 (i) the employee;

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

274 the commission; or

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

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

280 (i) the employer;

281 (ii) the insurance carrier; or

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

284 (c) A person providing goods or services described in Subsections 34A-2-407(11) and
285 34A-3-108(12) may file an application for hearing in accordance with Section 34A-2-407 or
286 34A-3-108.

287 (d) An attorney may file an application for hearing in accordance with Section
288 34A-1-309.

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

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

297 [~~2~~] (3) Unless a party in interest appeals the decision of an administrative law judge
298 in accordance with Subsection [~~3~~] (4), the decision of an administrative law judge on an
299 application for hearing filed under Subsection (1) is a final order of the commission 30 days
300 after the day on which the decision is issued. An administrative law judge shall issue a
301 decision by no later than 60 days from the day on which the hearing is held under this part
302 unless:

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

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

305 ~~[(3)]~~ (4) (a) A party in interest may appeal the decision of an administrative law judge
306 by filing a motion for review with the Division of Adjudication within 30 days of the date the
307 decision is issued.

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

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

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

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

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

317 ~~[(4)]~~ (5) All records on appeals shall be maintained by the Division of Adjudication.

318 Those records shall include an appeal docket showing the receipt and disposition of the appeals
319 on review.

320 ~~[(5)]~~ (6) Upon appeal, the commissioner or Appeals Board shall make its decision in
321 accordance with Section 34A-1-303. The commissioner or Appeals Board shall issue a
322 decision under this part by no later than 90 days from the day on which the motion for review is
323 filed unless:

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

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

326 ~~[(6)]~~ (7) The commissioner or Appeals Board shall promptly notify the parties to a
327 proceeding before it of its decision, including its findings and conclusions.

328 ~~[(7)]~~ (8) The decision of the commissioner or Appeals Board is final unless within 30
329 days after the date the decision is issued further appeal is initiated under the provisions of this
330 section or Title 63G, Chapter 4, Administrative Procedures Act.

331 ~~[(8)]~~ (9) (a) Within 30 days after the day on which the decision of the commissioner or
332 Appeals Board is issued, an aggrieved party may secure judicial review by commencing an
333 action in the court of appeals against the commissioner or Appeals Board for the review of the
334 decision of the commissioner or Appeals Board.

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

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

338 (ii) the commission shall be made a party.

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

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

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

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

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

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

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

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

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

361 (v) the number of cases for which a final order of the commission is not issued within
362 18 months of the day on which the application for a hearing is filed; and

363 (vi) the reasons the cases described in Subsection (10)(c)(v) were not resolved within
364 18 months of the day on which the application for a hearing is filed.

365 Section 5. **Effective date.**

366 This bill takes effect on July 1, 2013.