

## Part 2 Duties and Powers of Commissioner

### **31A-2-201 General duties and powers.**

- (1) The commissioner shall administer and enforce this title.
- (2) The commissioner has all powers specifically granted, and all further powers that are reasonable and necessary to enable the commissioner to perform the duties imposed by this title.
- (3)
  - (a) The commissioner may make rules to implement the provisions of this title according to the procedures and requirements of Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
  - (b) In addition to the notice requirements of Section 63G-3-301, the commissioner shall provide notice under Section 31A-2-303 of hearings concerning insurance department rules.
- (4)
  - (a) The commissioner shall issue prohibitory, mandatory, and other orders as necessary to secure compliance with this title. An order by the commissioner is not effective unless the order:
    - (i) is in writing; and
    - (ii) is signed by the commissioner or under the commissioner's authority.
  - (b) On request of any person who would be affected by an order under Subsection (4)(a), the commissioner may issue a declaratory order to clarify the person's rights or duties.
- (5)
  - (a) The commissioner may hold informal adjudicative proceedings and public meetings, for the purpose of:
    - (i) investigation;
    - (ii) ascertainment of public sentiment; or
    - (iii) informing the public.
  - (b) An effective rule or order may not result from informal hearings and meetings unless the requirement of a hearing under this section is satisfied.
- (6) The commissioner shall inquire into violations of this title and may conduct any examinations and investigations of insurance matters, in addition to examinations and investigations expressly authorized, that the commissioner considers proper to determine:
  - (a) whether or not any person has violated any provision of this title; or
  - (b) to secure information useful in the lawful administration of this title.

Amended by Chapter 68, 2010 General Session

### **31A-2-201.1 General filing requirements.**

Except as otherwise provided in this title, the commissioner may set by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, specific requirements for filing any of the following required by this title:

- (1) a form;
- (2) a rate; or
- (3) a report.

Amended by Chapter 382, 2008 General Session

**31A-2-201.2 Evaluation of health insurance market.**

- (1) Each year the commissioner shall:
  - (a) conduct an evaluation of the state's health insurance market;
  - (b) report the findings of the evaluation to the Health and Human Services Interim Committee before October 1 of each year; and
  - (c) publish the findings of the evaluation on the department website.
- (2) The evaluation required by this section shall:
  - (a) analyze the effectiveness of the insurance regulations and statutes in promoting a healthy, competitive health insurance market that meets the needs of the state, and includes an analysis of:
    - (i) the availability and marketing of individual and group products;
    - (ii) rate changes;
    - (iii) coverage and demographic changes;
    - (iv) benefit trends;
    - (v) market share changes; and
    - (vi) accessibility;
  - (b) assess complaint ratios and trends within the health insurance market, which assessment shall include complaint data from the Office of Consumer Health Assistance within the department;
  - (c) contain recommendations for action to improve the overall effectiveness of the health insurance market, administrative rules, and statutes; and
  - (d) include claims loss ratio data for each health insurance company doing business in the state.
- (3) When preparing the evaluation required by this section, the commissioner shall include a report of:
  - (a) the types of health benefit plans sold in the Health Insurance Exchange created in Section 63N-11-104;
  - (b) the number of insurers participating in the defined contribution arrangement health benefit plans in the Health Insurance Exchange; and
  - (c) the number of employers and covered lives in the defined contribution arrangement market in the Health Insurance Exchange.
- (4) When preparing the evaluation and report required by this section, the commissioner may seek the input of insurers, employers, insured persons, providers, and others with an interest in the health insurance market.
- (5) The commissioner may adopt administrative rules for the purpose of collecting the data required by this section, taking into account the business confidentiality of the insurers.
- (6) Records submitted to the commissioner under this section shall be maintained by the commissioner as protected records under Title 63G, Chapter 2, Government Records Access and Management Act.

Amended by Chapter 283, 2015 General Session

**31A-2-202 Reports and replies.**

- (1) When relevant, either directly or indirectly, to the performance of the commissioner's duties under this title, the commissioner may require from any person subject to regulation under this title:
  - (a) in whatever reasonable form and reasonable intervals the commissioner designates:
    - (i) a statement;
    - (ii) a report;

- (iii) an answer to a questionnaire;
  - (iv) other information; and
  - (v) evidence of the information described in Subsections (1)(a)(i) through (iv);
  - (b) full explanation of the programming of any data storage or communication system in use;
  - (c) information from books, records, electronic data processing systems, computers, or any other information storage system be made available to the department:
    - (i) at any reasonable time; and
    - (ii) in any reasonable manner; and
  - (d) timely delivery to the National Association of Insurance Commissioners or other entity that gathers insurance industry information, a copy of the statistical data prepared for and submitted to the department, as specified by the commissioner.
- (2)
- (a) Subject to the requirements of this Subsection (2), the commissioner may:
    - (i) prescribe forms for the information under Subsection (1); and
    - (ii) specify who shall execute or certify the information under Subsection (1).
  - (b) The forms prescribed under this Subsection (2) shall be consistent, to the extent practicable, with those prescribed by other jurisdictions.
  - (c) The commissioner shall use the annual statement forms developed by the National Association of Insurance Commissioners for:
    - (i) basic financial data; and
    - (ii) market regulation analysis.
- (3)
- (a) Subject to the requirements of this Subsection (3), the commissioner may prescribe reasonable minimum standards and techniques of accounting and data handling to ensure that timely and reliable information exists and can be made available.
  - (b) The standards and techniques prescribed under this Subsection (3) shall be consistent, to the extent practicable, with those prescribed by other states.
- (4)
- (a) A person listed in Subsection (4)(b) shall reply promptly in writing or in other designated form to a reasonable written inquiry from the commissioner.
  - (b) This Subsection (4) applies to any person with executive authority over or in charge of any segment of the affairs of:
    - (i) an insurer authorized to do or doing an insurance business in this state;
    - (ii) the affiliate of an insurer authorized to do or doing an insurance business in this state; and
    - (iii) any other person licensed under this title.
- (5) The commissioner may:
- (a) require that any communication made under this section be verified; and
  - (b) specify by whom a communication shall be verified.
- (6) All information submitted to the commissioner shall be accurate and complete.
- (7) In the absence of actual malice, no communication to the commissioner required by law or by the commissioner subjects the person making it to an action for damages for defamation.

Amended by Chapter 177, 2006 General Session

**31A-2-203 Examinations and alternatives.**

- (1)
- (a) When the commissioner determines that information is needed about a matter related to the enforcement of this title, the commissioner may examine the affairs and condition of:

- (i) a licensee under this title;
  - (ii) an applicant for a license under this title;
  - (iii) a person or organization of persons doing or in process of organizing to do an insurance business in this state; or
  - (iv) a person who is not, but is required to be, licensed under this title.
- (b) When reasonably necessary for an examination under Subsection (1)(a), the commissioner may examine:
- (i) so far as it relates to the examinee, an account, record, document, or evidence of a transaction of:
    - (A) the insurer or other licensee;
    - (B) an officer or other person who has executive authority over or is in charge of any segment of the examinee's affairs; or
    - (C) an affiliate of the examinee; or
  - (ii) a third party model or product used by the examinee.
- (c)
- (i) On demand, an examinee under Subsection (1)(a) shall make available to the commissioner for examination:
    - (A) the examinee's own account, record, file, document, or evidence of a transaction; and
    - (B) to the extent reasonably necessary for an examination, an account, record, file, document, or evidence of a transaction of a person described under Subsection (1)(b).
  - (ii) Except as provided in Subsection (1)(c)(iii), failure to make an item described in Subsection (1)(c)(i) available is concealment of records under Subsection 31A-27a-207(1)(e).
  - (iii) If an examinee is unable to obtain an account, record, file, document, or evidence of a transaction from a person described under Subsection (1)(b), that failure is not concealment of records if the examinee immediately terminates the relationship with the other person.
- (d)
- (i) The commissioner or an examiner may not remove an account, record, file, document, evidence of a transaction, or other property of an examinee from the examinee's offices unless:
    - (A) the examinee consents in writing; or
    - (B) a court grants permission.
  - (ii) The commissioner may make and remove a copy or abstract of the following described in Subsection (1)(d)(i):
    - (A) an account;
    - (B) a record;
    - (C) a file;
    - (D) a document;
    - (E) evidence of a transaction; or
    - (F) other property.
- (2)
- (a) Subject to the other provisions of this section, the commissioner shall examine as needed and as otherwise provided by law:
    - (i) every insurer, both domestic and nondomestic;
    - (ii) every licensed rate service organization; and
    - (iii) any other licensee.
  - (b) The commissioner shall examine an insurer, both domestic and nondomestic, no less frequently than once every five years, but the commissioner may use in lieu an examination under Subsection (4) to satisfy this requirement.

- (c) The commissioner shall revoke the certificate of authority of an insurer or the license of a rate service organization that has not been examined, or submitted an acceptable in lieu report under Subsection (4), within the past five years.
- (d)
  - (i) Any 25 persons who are policyholders, shareholders, or creditors of a domestic insurer may by verified petition demand a hearing under Section 31A-2-301 to determine whether the commissioner should conduct an unscheduled examination of the insurer.
  - (ii) Persons demanding the hearing under this Subsection (2)(d) shall be given an opportunity in the hearing to present evidence that an examination of the insurer is necessary.
  - (iii) If the evidence justifies an examination, the commissioner shall order an examination.
- (e)
  - (i) If the board of directors of a domestic insurer requests that the commissioner examine the insurer, the commissioner shall examine the insurer as soon as reasonably possible.
  - (ii) If the examination requested under this Subsection (2)(e) is conducted within two years after completion of a comprehensive examination by the commissioner, costs of the requested examination may not be deducted from premium taxes under Section 59-9-102 unless the commissioner's order specifically provides for the deduction.
- (f) A bail bond surety company, as defined in Section 31A-35-102, is exempt from:
  - (i) the five-year examination requirement in Subsection (2)(b);
  - (ii) the revocation under Subsection (2)(c); and
  - (iii) Subsections (2)(d) and (2)(e).
- (3)
  - (a) The commissioner may order an independent audit or examination by one or more technical experts, including a certified public accountant or actuary:
    - (i) in lieu of all or part of an examination under Subsection (1) or (2); or
    - (ii) in addition to an examination under Subsection (1) or (2).
  - (b) An audit or evaluation under this Subsection (3) is subject to Subsection (5), Section 31A-2-204, and Subsection 31A-2-205(4).
- (4)
  - (a) In lieu of all or a part of an examination under this section, the commissioner may accept the report of an examination made by:
    - (i) the insurance department of another state; or
    - (ii) another government agency in:
      - (A) this state;
      - (B) the federal government; or
      - (C) another state.
  - (b) An examination by the commissioner under Subsection (1) or (2) or accepted by the commissioner under this Subsection (4) may use:
    - (i) an audit completed by a certified public accountant; or
    - (ii) an actuarial evaluation made by an actuary approved by the commissioner.
- (5)
  - (a) An examination may be comprehensive or limited with respect to the examinee's affairs and condition. The commissioner shall determine the nature and scope of an examination, taking into account all relevant factors, including:
    - (i) the length of time the examinee has been licensed in this state;
    - (ii) the nature of the business being examined;
    - (iii) the nature of the accounting or other records available;
    - (iv) one or more reports from:

- (A) independent auditors; and
- (B) self-certification entities; and
- (v) the nature of examinations performed elsewhere.
- (b) The examination of an alien insurer is limited to one or more insurance transactions and assets in the United States, unless the commissioner orders otherwise after finding that extraordinary circumstances necessitate a broader examination.
- (6) To effectively administer this section, the commissioner:
  - (a) shall:
    - (i) maintain one or more effective financial condition and market regulation surveillance systems including:
      - (A) financial and market analysis; and
      - (B) a review of insurance regulatory information system reports;
    - (ii) employ a priority scheduling method that focuses on insurers and other licensees most in need of examination; and
    - (iii) use examination management techniques similar to those outlined in the Financial Condition Examination Handbook of the National Association of Insurance Commissioners; and
  - (b) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, may make rules pertaining to:
    - (i) a financial condition and market regulation surveillance system; and
    - (ii) annual financial reporting requirements similar to those outlined in the Annual Financial Reporting Model Regulation of the National Association of Insurance Commissioners.

Amended by Chapter 349, 2009 General Session

**31A-2-203.5 Procedures -- Adjudicative proceedings.**

The commissioner of insurance shall comply with the procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act, in its adjudicative proceedings.

Amended by Chapter 382, 2008 General Session

**31A-2-204 Conducting examinations.**

- (1)
  - (a) For each examination under Section 31A-2-203, the commissioner shall issue an order:
    - (i) stating the scope of the examination; and
    - (ii) designating the examiner in charge.
  - (b) The commissioner need not give advance notice of an examination to an examinee.
  - (c) The examiner in charge shall give the examinee a copy of the order issued under this Subsection (1).
  - (d)
    - (i) The commissioner may alter the scope or nature of an examination at any time without advance notice to the examinee.
    - (ii) If the commissioner amends an order described in this Subsection (1), the commissioner shall provide a copy of any amended order to the examinee.
  - (e) Statements in the commissioner's examination order concerning examination scope are for the examiner's guidance only.
  - (f) Examining relevant matters not mentioned in an order issued under this Subsection (1) is not a violation of this title.

- (2) The commissioner shall, whenever practicable, cooperate with the insurance regulators of other states by conducting joint examinations of:
  - (a) multistate insurers doing business in this state; or
  - (b) other multistate licensees doing business in this state.
- (3) An examiner authorized by the commissioner shall, when necessary to the purposes of the examination, have access at all reasonable hours to the premises and to any books, records, files, securities, documents, or property of:
  - (a) the examinee; and
  - (b) any of the following if the premises, books, records, files, securities, documents, or property relate to the affairs of the examinee:
    - (i) an officer of the examinee;
    - (ii) any other person who:
      - (A) has executive authority over the examinee; or
      - (B) is in charge of any segment of the examinee's affairs; or
    - (iii) any affiliate of the examinee under Subsection 31A-2-203(1)(b).
- (4)
  - (a) The officers, employees, and agents of the examinee and of persons under Subsection 31A-2-203(1)(b) shall comply with every reasonable request of the examiners for assistance in any matter relating to the examination.
  - (b) A person may not obstruct or interfere with the examination except by legal process.
- (5) If the commissioner finds the accounts or records to be inadequate for proper examination of the condition and affairs of the examinee or improperly kept or posted, the commissioner may employ experts to rewrite, post, or balance the accounts or records at the expense of the examinee.
- (6)
  - (a) The examiner in charge of an examination shall make a report of the examination no later than 60 days after the completion of the examination that shall include:
    - (i) the information and analysis ordered under Subsection (1); and
    - (ii) the examiner's recommendations.
  - (b) At the option of the examiner in charge, preparation of the report may include conferences with the examinee or representatives of the examinee.
  - (c) The report is confidential until the report becomes a public document under Subsection (7), except the commissioner may use information from the report as a basis for action under Chapter 27a, Insurer Receivership Act.
- (7)
  - (a) The commissioner shall serve a copy of the examination report described in Subsection (6) upon the examinee.
  - (b) Within 20 days after service, the examinee shall:
    - (i) accept the examination report as written; or
    - (ii) request agency action to modify the examination report.
  - (c) The report is considered accepted under this Subsection (7) if the examinee does not file a request for agency action to modify the report within 20 days after service of the report.
  - (d) If the examination report is accepted:
    - (i) the examination report immediately becomes a public document; and
    - (ii) the commissioner shall distribute the examination report to all jurisdictions in which the examinee is authorized to do business.
  - (e)

- (i) Any adjudicative proceeding held as a result of the examinee's request for agency action shall, upon the examinee's demand, be closed to the public, except that the commissioner need not exclude any participating examiner from this closed hearing.
- (ii) Within 20 days after the hearing held under this Subsection (7)(e), the commissioner shall:
  - (A) adopt the examination report with any necessary modifications; and
  - (B) serve a copy of the adopted report upon the examinee.
- (iii) Unless the examinee seeks judicial relief, the adopted examination report:
  - (A) shall become a public document 10 days after service; and
  - (B) may be distributed as described in this section.
- (f) Notwithstanding Title 63G, Chapter 4, Administrative Procedures Act, to the extent that this section is in conflict with Title 63G, Chapter 4, Administrative Procedures Act, this section governs:
  - (i) a request for agency action under this section; or
  - (ii) adjudicative proceeding under this section.
- (8) The examinee shall promptly furnish copies of the adopted examination report described in Subsection (7) to each member of the examinee's board.
- (9) After an examination report becomes a public document under Subsection (7), the commissioner may furnish, without cost or at a reasonable price set under Section 31A-3-103, a copy of the examination report to interested persons, including:
  - (a) a member of the board of the examinee; or
  - (b) one or more newspapers in this state.
- (10)
  - (a) In a proceeding by or against the examinee, or any officer or agent of the examinee, the examination report as adopted by the commissioner is admissible as evidence of the facts stated in the report.
  - (b) In any proceeding commenced under Chapter 27a, Insurer Receivership Act, the examination report, whether adopted by the commissioner or not, is admissible as evidence of the facts stated in the examination report.

Amended by Chapter 382, 2008 General Session

**31A-2-205 Examination costs.**

- (1)
  - (a) Except as provided in Subsection (3), an examinee that is one of the following shall reimburse the department for the reasonable costs of examinations made under Sections 31A-2-203 and 31A-2-204:
    - (i) an insurer;
    - (ii) a rate service organization;
    - (iii) a subsidiary of an insurer or rate service organization; or
    - (iv) a life settlement provider.
  - (b) The following costs shall be reimbursed under this Subsection (1):
    - (i) actual travel expenses;
    - (ii) reasonable living expense allowance;
    - (iii) compensation at reasonable rates for all professionals reasonably employed for the examination under Subsection (4);
    - (iv) the administration and supervisory expense of:
      - (A) the department; and
      - (B) the attorney general's office; and

- (v) an amount necessary to cover fringe benefits authorized by the commissioner or provided by law.
  - (c) In determining rates, the commissioner shall consider the rates recommended and outlined in the examination manual sponsored by the National Association of Insurance Commissioners.
  - (d) This Subsection (1) applies to a surplus lines producer to the extent that the examinations are of the surplus line producer's surplus lines business.
- (2) An insurer requesting the examination of one of its producers shall pay the cost of the examination. Otherwise, the department shall pay the cost of examining a licensee other than those specified under Subsection (1).
- (3)
- (a) On the examinee's request or at the commissioner's discretion, the department may pay all or part of the costs of an examination whenever the commissioner finds that because of the frequency of examinations or the financial condition of the examinee, imposition of the costs would place an unreasonable burden on the examinee.
  - (b) The commissioner shall include in the commissioner's annual report information about any instance in which the commissioner has applied this Subsection (3).
- (4)
- (a) A technical expert employed under Subsection 31A-2-203(3) shall present to the commissioner a statement of all expenses incurred by the technical expert in conjunction with an examination.
  - (b) The examined insurer shall, at the commissioner's direction, pay to a technical expert:
    - (i)
      - (A) actual travel expenses;
      - (B) reasonable living expenses; and
      - (C) compensation; and
    - (ii) for expenses necessarily incurred as approved by the commissioner.
  - (c) The examined insurer shall reimburse the department for:
    - (i) a department examiner's:
      - (A) actual travel expenses; and
      - (B) reasonable living expenses; and
    - (ii) the compensation of department examiners involved in the examination.
  - (d)
    - (i) The examined insurer shall certify the consolidated account of all charges and expenses for the examination.
    - (ii) The examined insurer shall:
      - (A) retain a copy of the consolidated account; and
      - (B) file a copy of the consolidated account with the department as a public record.
  - (e) An annual report of examination charges paid by examined insurers directly to persons employed under Subsection 31A-2-203(3) or to department examiners shall be included with the department's budget request.
  - (f) Amounts paid directly by examined insurers to persons employed under Subsection 31A-2-203(3) or to department examiners may not be deducted from the department's appropriation.
- (5)
- (a) The amount payable under Subsection (1) is due 10 days after the day on which the examinee is served with a detailed account of the costs.
  - (b) Payments received by the department under this Subsection (5) shall be handled as provided by Section 31A-3-101.

- (6)
  - (a) The commissioner may require an examinee under Subsection (1), or an insurer requesting an examination under Subsection (2), either before or during an examination, to make deposits with the state treasurer to pay the costs of examination.
  - (b) Any deposit made under this Subsection (6) shall be held in trust by the state treasurer until applied to pay the department the costs payable under this section.
  - (c) If a deposit made under this Subsection (6) exceeds examination costs, the state treasurer shall refund the surplus.
- (7) A domestic insurer may offset the examination expenses paid under this section against premium taxes under Subsection 59-9-102(2).

Amended by Chapter 355, 2009 General Session

**31A-2-206 Receipt and handling of deposits.**

- (1) As used in this chapter:
  - (a) "Custodian institution" means a financial institution in this state as defined under Section 7-1-103 that:
    - (i) has authority under Title 7, Chapter 5, Trust Business, to engage in a trust business; and
    - (ii) is approved by the commissioner to have custody of deposited securities, whether physically, through the Federal Reserve book-entry system, or through a clearing corporation as defined under Subsection 70A-8-101(1).
  - (b) "Federal Reserve book-entry system" means the computerized system sponsored by the United States Department of the Treasury and certain other agencies and instrumentalities of the United States for holding and transferring securities of the United States government and other agencies and instrumentalities.
- (2) Subject to the commissioner's approval and to the requirements of this section, the state treasurer shall accept, and a custodian institution qualified under Subsection (1)(a) may accept:
  - (a) deposits required or permitted under this title or rules adopted under this title;
  - (b) deposits of domestic insurers or of alien insurers domiciled in this state if required by the laws of other states as a prerequisite to authority to do an insurance business in other states; and
  - (c) deposits resulting from application of any retaliatory provisions of this title.
- (3) Deposits authorized under Subsection (2) shall be of securities described in Subsection (7).
- (4) Unless otherwise provided by the law requiring or permitting the deposit, each deposit shall be held in trust:
  - (a) first, for administrative costs under Subsection 31A-27a-701(2)(a);
  - (b) second, for the claimants under Subsection 31A-27a-701(2)(c);
  - (c) third, for the claimants under Subsection 31A-27a-701(2)(d); and
  - (d) fourth, for all other creditors in the order of priority established under Section 31A-27a-701.
- (5) A claim may be made against the deposit of an alien insurer only if it arises out of a transaction in the United States.
- (6) Deposits may be made by:
  - (a) delivering physical custody and control of the deposited security to the state treasurer or a custodian institution, accompanied by a statement signed by the depositor indicating that the deposit shall be held in trust under the terms of this section and subject to the commissioner's exclusive direction until control is released by the commissioner; or
  - (b) delivering to the commissioner, on a form adopted by rule, a signed certificate of a custodian institution, describing securities qualifying for deposit under Subsection (7) that are on deposit with a clearing corporation or held in the Federal Reserve book-entry system in the

name of the custodian institution, in trust for the purposes stated under this section, and that these securities are subject to the exclusive direction of the commissioner and may not be withdrawn or transferred by any person, including the insurer owning the securities, without the commissioner's written approval.

- (7)
- (a) Deposits may consist of any securities authorized in Subsection (7)(b) for which there is a ready market if they:
    - (i) are expressly approved by the commissioner;
    - (ii) are subject to disposition by the state treasurer or custodian institution only with the concurrence of the commissioner; and
    - (iii) are not available to any other person except as expressly provided by law.
  - (b) The authorized securities are:
    - (i) deposits or certificates of deposit insured by the Federal Deposit Insurance Corporation;
    - (ii) bonds or other evidences of indebtedness that are guaranteed as to principal and interest by the United States;
    - (iii) tax anticipation bonds or notes, general obligation bonds, or revenue bonds of this state or of any county, incorporated city or town, school district, or other political subdivision of this state, if the bonds or notes are rated AAA by Standard and Poor's or an equivalent nationally recognized rating agency;
    - (iv) bonds or other evidences of indebtedness issued or guaranteed by an agency or instrumentality of the United States; and
    - (v) any other security approved by the commissioner that the commissioner considers an equivalent grade investment to those enumerated under Subsections (7)(b)(i) through (iv) based on tests of the safety of principal and liquidity.
- (8) Securities held on deposit shall be valued under Section 31A-17-401 as those investments are valued for life insurers, or at market, whichever is lower. The securities shall be revalued whenever the commissioner requests to ensure continued compliance with the requirements of this title.
- (9)
- (a) The state treasurer or custodian institution shall:
    - (i) deliver to the depositor a receipt for all securities deposited or held;
    - (ii) issue a duplicate copy of the receipt to the commissioner; and
    - (iii) permit the depositor to inspect its physically held securities at any reasonable time.
  - (b) On application of the depositor or when required by the law of any state or country or by the order of any court of competent jurisdiction, the state treasurer or custodian institution shall certify that the deposit was made and what is on deposit.
  - (c) Depositors, the state treasurer, any custodian institution, and the commissioner shall each keep a permanent record of securities deposited or held under this section and of any substitutions or withdrawals. They shall compare records at least annually.
- (10) A transfer of a deposited security, whether voluntary or by operation of law, is valid only if approved in writing by the commissioner and countersigned by the state treasurer or custodian institution.
- (11) Neither a judgment creditor nor other person may levy upon any deposit held under this section.
- (12) A depositor that has complied with all provisions of this title intended to preserve its financial solidity is, while solvent and complying with the laws of this state, entitled to:
- (a) receive interest and cash dividends accruing on the securities held for its account; and

- (b) substitute for deposited securities other eligible securities, as expressly approved by the commissioner.
- (13) Within 45 days after the commissioner gives notice to a depositor that a deposit is not an acceptable deposit under Subsection (7), the depositor shall substitute other eligible securities expressly approved by the commissioner and allowed under Subsection (7).
- (14) A depositor may voluntarily deposit or transfer control of eligible securities in excess of requirements to absorb fluctuations in value and to facilitate substitution of securities.
- (15) Upon the depositor's request and upon approval of the commissioner, any deposit or part of a deposit shall be released to, or on order of, the depositor to the extent not needed to satisfy requirements of this title. On the order of a court of competent jurisdiction, the deposit or appropriate part of the deposit shall be released to the person for whom it is held.
- (16) Each depositor shall pay the cost of custody of securities by a custodian institution or by the state treasurer.
- (17) The commissioner shall adopt rules to implement this section.

Amended by Chapter 309, 2007 General Session

**31A-2-207 Commissioner's records and reports -- Protection from disclosure of certain records.**

- (1) The commissioner shall maintain all department records that are:
  - (a) required by law;
  - (b) necessary for the effective operation of the department; or
  - (c) necessary to maintain a full record of department activities.
- (2) The records of the department may be preserved, managed, stored, and made available for review consistent with:
  - (a) another Utah statute;
  - (b) the rules made under Section 63A-12-104;
  - (c) the decisions of the State Records Committee made under Title 63G, Chapter 2, Government Records Access and Management Act; or
  - (d) the needs of the public.
- (3) A department record may not be destroyed, damaged, or disposed of without:
  - (a) authorization of the commissioner; and
  - (b) compliance with all other applicable laws.
- (4) The commissioner shall maintain a permanent record of the commissioner's proceedings and important activities, including:
  - (a) a concise statement of the condition of each insurer examined by the commissioner; and
  - (b) a record of all certificates of authority and licenses issued by the commissioner.
- (5)
  - (a) Prior to October 1 of each year, the commissioner shall prepare an annual report to the governor which shall include, for the preceding calendar year, the information concerning the department and the insurance industry which the commissioner believes will be useful to the governor and the public.
  - (b) The report required by this Subsection (5) shall include the information required under Chapter 27a, Insurer Receivership Act, and Subsections 31A-2-106(2), 31A-2-205(3), and 31A-2-208(3).
  - (c) The commissioner shall make the report required by this Subsection (5) available to the public and industry in electronic format.

- (6) All department records and reports are open to public inspection unless specifically provided otherwise by statute or by Title 63G, Chapter 2, Government Records Access and Management Act.
- (7) On request, the commissioner shall provide to any person certified or uncertified copies of any record in the department that is open to public inspection.
- (8) Notwithstanding Subsection (6) and Title 63G, Chapter 2, Government Records Access and Management Act, the commissioner shall protect from disclosure any record, as defined in Section 63G-2-103, or other document received from an insurance regulator of another jurisdiction:
  - (a) at least to the same extent the record or document is protected from disclosure under the laws applicable to the insurance regulator providing the record or document; or
  - (b) under the same terms and conditions of confidentiality as the National Association of Insurance Commissioners requires as a condition of participating in any of the National Association of Insurance Commissioners' programs.

Amended by Chapter 382, 2008 General Session

### **31A-2-208 Publications.**

- (1) The commissioner may prepare and distribute books, pamphlets, and other publications relating to insurance. Except as otherwise provided under this title, the commissioner may charge the cost of producing a publication to those desiring to receive the publication. Money collected from subscription fees charged for a publication shall be deposited into the Relative Value Study Restricted Account, created in Section 59-9-105, to be used as provided in Section 59-9-105.
- (2) The commissioner shall have the annual report required in Subsection 31A-2-207(5) printed:
  - (a) in a form determined by the commissioner; and
  - (b) in sufficient numbers to meet requests for copies.
- (3) The commissioner shall publish in the annual report required in Subsection 31A-2-207(5) an up-to-date chart and explanation of the organization of the commissioner's office, making clear the allocation of responsibility and authority among the staff. This up-to-date chart and explanation shall be printed in sufficient numbers to meet requests for copies.

Amended by Chapter 284, 2011 General Session

### **31A-2-208.5 Comparison tables.**

- (1)
  - (a) The commissioner shall annually publish a table comparing the rates charged by insurers for private passenger motor vehicle and homeowners insurance in this state.
  - (b) The comparison shall list the top 20 insurers writing the greatest volume by premium dollar per calendar year and others requesting inclusion in the comparison.
  - (c) The commissioner shall develop at least four hypothetical examples of risk in preparing the comparison.
- (2) In conjunction with the rate comparison described in Subsection (1), the commissioner shall publish:
  - (a) a table listing, for each insurer compared, the ratio of confirmed complaints received by the department to the premium dollar amount written by the insurer; and
  - (b) a table listing for each insurer the combined loss and expense ratio for the most current year available.

(3) The department shall make copies of the tables available to the public at minimal or no cost.

Amended by Chapter 138, 2016 General Session

**31A-2-209 Access to state records.**

Subject to Title 63G, Chapter 2, Government Records Access and Management Act, the commissioner shall have access to the records of any agency of the state government or of any political subdivision of the state which the commissioner may consult in discharging the commissioner's duties.

Amended by Chapter 382, 2008 General Session

**31A-2-210 Participation in organizations.**

The commissioner and the Insurance Department shall maintain close relations with the commissioners of other states and shall participate in the activities and affairs of the National Association of Insurance Commissioners and other organizations to the extent, in the commissioner's judgment, these activities will promote the purposes of the Insurance Code. The actual and necessary expenses incurred by this participation shall be paid out of the Insurance Department appropriation. The commissioner may not make any commitments that are not terminable on reasonable notice by the commissioner.

Enacted by Chapter 242, 1985 General Session

**31A-2-211 Rules and forms during transition period.**

- (1) The commissioner's rules adopted under former Title 31 are rescinded unless continued under Subsection (3).
- (2) Between May 1, 1985, and July 1, 1986, the commissioner may prepare and adopt rules to implement or supplement provisions under Title 31A, Insurance Code. These rules are effective on July 1, 1986, or on the effective date of the particular provision, if that is later than July 1, 1986.
- (3) The commissioner may issue orders declaring that all or part of a rule in effect under former Title 31 remains in effect until a date specified under the order, which date may not be later than June 30, 1989. No rule continued under this subsection may be inconsistent with other provisions under Title 31A, Insurance Code. Notice of the order shall be given under Section 31A-2-303.
- (4) Every form used, issued, or required by the Insurance Department and approved by the commissioner or otherwise legitimately in use immediately prior to the effective date of this title may continue to be used until replaced in accordance with the provisions of this title.

Amended by Chapter 161, 1987 General Session

**31A-2-212 Miscellaneous duties.**

- (1) Upon issuance of an order limiting, suspending, or revoking a person's authority to do business in Utah, and when the commissioner begins a proceeding against an insurer under Chapter 27a, Insurer Receivership Act, the commissioner:
  - (a) shall notify by mail the producers of the person or insurer of whom the commissioner has record; and

- (b) may publish notice of the order or proceeding in any manner the commissioner considers necessary to protect the rights of the public.
- (2) When required for evidence in a legal proceeding, the commissioner shall furnish a certificate of authority of a licensee to transact the business of insurance in Utah on any particular date. The court or other officer shall receive the certificate of authority in lieu of the commissioner's testimony.
- (3)
  - (a) On the request of an insurer authorized to do a surety business, the commissioner shall furnish a copy of the insurer's certificate of authority to a designated public officer in this state who requires that certificate of authority before accepting a bond.
  - (b) The public officer described in Subsection (3)(a) shall file the certificate of authority furnished under Subsection (3)(a).
  - (c) After a certified copy of a certificate of authority is furnished to a public officer, it is not necessary, while the certificate of authority remains effective, to attach a copy of it to any instrument of suretyship filed with that public officer.
  - (d) Whenever the commissioner revokes the certificate of authority or begins a proceeding under Chapter 27a, Insurer Receivership Act, against an insurer authorized to do a surety business, the commissioner shall immediately give notice of that action to each public officer who is sent a certified copy under this Subsection (3).
- (4)
  - (a) The commissioner shall immediately notify every judge and clerk of the courts of record in the state when:
    - (i) an authorized insurer doing a surety business:
      - (A) files a petition for receivership; or
      - (B) is in receivership; or
    - (ii) the commissioner has reason to believe that the authorized insurer doing surety business:
      - (A) is in financial difficulty; or
      - (B) has unreasonably failed to carry out any of its contracts.
  - (b) Upon the receipt of the notice required by this Subsection (4), it is the duty of the judges and clerks to notify and require a person that files with the court a bond on which the authorized insurer doing surety business is surety to immediately file a new bond with a new surety.
- (5)
  - (a) The commissioner shall report to the Legislature in accordance with Section 63N-11-106 before adopting a rule authorized by Subsection (5)(b).
  - (b) The commissioner shall require an insurer that issues, sells, renews, or offers health insurance coverage in this state to comply with PPACA and administrative rules adopted by the commissioner related to regulation of health benefit plans, including:
    - (i) lifetime and annual limits;
    - (ii) prohibition of rescissions;
    - (iii) coverage of preventive health services;
    - (iv) coverage for a child or dependent;
    - (v) pre-existing condition limitations;
    - (vi) insurer transparency of consumer information including plan disclosures, uniform coverage documents, and standard definitions;
    - (vii) premium rate reviews;
    - (viii) essential health benefits;
    - (ix) provider choice;
    - (x) waiting periods;

- (xi) appeals processes;
  - (xii) rating restrictions;
  - (xiii) uniform applications and notice provisions;
  - (xiv) certification and regulation of qualified health plans; and
  - (xv) network adequacy standards.
- (c) The commissioner shall preserve state control over:
- (i) the health insurance market in the state;
  - (ii) qualified health plans offered in the state; and
  - (iii) the conduct of navigators, producers, and in-person assisters operating in the state.
- (d) If the state enters into an agreement with the United States Department of Health and Human Services in which the state operates health insurance plan management, the commissioner may:
- (i) for fiscal year 2014, hire one temporary and two permanent full-time employees to be funded through the department's existing budget; and
  - (ii) for fiscal year 2015, hire two permanent full-time employees funded through the Insurance Department Restricted Account, subject to appropriations from the Legislature and approval by the governor.

Amended by Chapter 138, 2016 General Session

**31A-2-213 Immunity.**

- (1)
- (a) In the absence of actual malice, a person listed in Subsection (1)(b) is not subject to any civil liability for any cause of action arising out of any communication, written or oral, made to:
- (i) a law enforcement agency;
  - (ii) a governmental authority; or
  - (iii) the National Association of Insurance Commissioners.
- (b) This section applies to:
- (i) the commissioner;
  - (ii) an authorized representative of the commissioner;
  - (iii) an examiner appointed by the commissioner; or
  - (iv) any employee of the department.
- (2) This section is not intended to abrogate or modify in any way any common-law or statutory privilege or immunity enjoyed by any person.

Amended by Chapter 320, 2006 General Session

**31A-2-214 Market assistance programs -- Joint underwriting associations.**

- (1)
- (a) The commissioner may by rule implement a market assistance program whereby all licensed insurers and producers may pool their information as to the available markets if the commissioner finds that in any part of this state:
- (i) a line of insurance:
    - (A) is not generally available in the marketplace; or
    - (B) is priced in such a manner as to severely limit its availability; and
  - (ii) the public interest requires availability of the line of insurance described in Subsection (1)(a)
    - (i).

- (b) Insurers doing business in this state may, at their own instance or at the request of the commissioner, prepare and submit to the commissioner, for the commissioner's approval and adoption, voluntary plans providing any line of insurance coverage for all or any part of this state in which:
  - (i) the line of insurance:
    - (A) is not generally available in the voluntary market; or
    - (B) is priced in such a manner as to severely limit its availability; and
  - (ii) the public interest requires the availability of the coverage described in Subsection (1)(b)(i).
- (2)
  - (a) If the commissioner finds after notice and hearing that a market assistance program formed under Subsection (1)(a) or (b) has not met the needs it was intended to address, the commissioner may by rule form a joint underwriting association to make available the insurance to applicants who are in good faith entitled to but unable to procure this insurance through ordinary methods.
  - (b) The commissioner shall allow any market assistance program formed under Subsection (1)(a) or (b) a minimum of 30 days operation before the commissioner forms a joint underwriting association.
  - (c) The commissioner may not adopt a rule forming a joint underwriting association under Subsection (2)(a) unless the commissioner finds as a result of the hearing that:
    - (i) a certain coverage is not available or that the price for that coverage is no longer commensurate with the risk in this state; and
    - (ii) the coverage is:
      - (A) vital to the economic health of this state;
      - (B) vital to the quality of life in this state;
      - (C) vital in maintaining competition in insurance in this state; or
      - (D) the number of people affected is significant enough to justify its creation.
  - (d) The commissioner may not adopt a rule forming a joint underwriting association under Subsection (2)(a) on the basis that:
    - (i) applicants for particular lines of insurance are unable to pay a premium that is commensurate with the risk involved; or
    - (ii) the number of applicants or people affected is too small to justify its creation.
  - (e) Each joint underwriting association formed under Subsection (2)(a) shall require participation by all insurers licensed and engaged in writing that line of insurance or any component of that line of insurance within this state.
  - (f) Each association formed under Subsection (2)(a) shall:
    - (i) give consideration to:
      - (A) the need for adequate and readily accessible coverage;
      - (B) alternative methods of improving the market affected;
      - (C) the preference of the insurers and producers;
      - (D) the inherent limitations of the insurance mechanism;
      - (E) the need for reasonable underwriting standards; and
      - (F) the requirement of reasonable loss prevention measures;
    - (ii) establish procedures that will create minimum interference with the voluntary market;
    - (iii) allocate the burden imposed by the association equitably and efficiently among the insurers doing business in this state;
    - (iv) establish procedures for applicants and participants to have grievances reviewed by an impartial body;
    - (v) provide for the method of classifying risks and making and filing applicable rates; and

- (vi) specify:
  - (A) the basis of participation of insurers and producers in the association;
  - (B) the conditions under which risks must be accepted; and
  - (C) the commission rates to be paid for insurance business placed with the association.
- (g) Any deficit in an association in any year shall be recouped by rate increases for the association, applicable prospectively.
- (h) Any surplus in excess of the loss reserves of the association in any year shall be distributed either by rate decreases or by distribution to the members of the association on a pro-rata basis.
- (3) Notwithstanding Subsection (2), the commissioner may not create a joint underwriting association under Subsection (2) for:
  - (a) life insurance;
  - (b) annuities;
  - (c) accident and health insurance;
  - (d) ocean marine insurance;
  - (e) medical malpractice insurance;
  - (f) earthquake insurance;
  - (g) workers' compensation insurance; or
  - (h) private passenger automobile liability insurance.
- (4) Every insurer and producer participating in a joint underwriting association adopted by the commissioner under Subsection (2) shall provide the services prescribed by the association to any person seeking coverage of the kind available in the plan, including full information about the requirements and procedures for obtaining coverage with the association.
- (5) If the commissioner finds that the lack of cooperating insurers or producers in an area makes the functioning of the association difficult, the commissioner may order the association to:
  - (a) establish branch service offices;
  - (b) make special contracts for provision of the service; or
  - (c) take other appropriate steps to ensure that service is available.
- (6)
  - (a) The association may issue policies for a period of one year.
  - (b) If, at the end of any one year period, the commissioner determines that the market conditions justify the continued existence of the association, the commissioner may reauthorize its existence.
  - (c) In reauthorizing the association in accordance with this Subsection (6), the commissioner shall follow the procedure set forth in Subsection (2).

Amended by Chapter 298, 2003 General Session

**31A-2-215 Consumer education.**

- (1) In furtherance of the purposes in Section 31A-1-102, the commissioner may educate consumers about insurance and provide consumer assistance.
- (2) Consumer education may include:
  - (a) outreach activities; and
  - (b) the production or collection and dissemination of educational materials.
- (3)
  - (a) Consumer assistance may include explaining:
    - (i) the terms of a policy;
    - (ii) a policy's complaint, grievance, or adverse benefit determination procedure; and

- (iii) the fundamentals of self-advocacy.
- (b) Notwithstanding Subsection (3)(a), consumer assistance may not include testifying or representing a consumer in any grievance or adverse benefit determination, arbitration, judicial, or related proceeding, unless the proceeding is in connection with an enforcement action brought under Section 31A-2-308.
- (4) The commissioner may adopt rules necessary to implement the requirements of this section.

Amended by Chapter 308, 2002 General Session

**31A-2-216 Office of Consumer Health Assistance.**

- (1) The commissioner shall establish:
  - (a) an Office of Consumer Health Assistance before July 1, 1999; and
  - (b) a committee to advise the commissioner on consumer assistance rendered under this section.
- (2) The office shall:
  - (a) be a resource for health care consumers concerning health care coverage or the need for such coverage;
  - (b) help health care consumers understand:
    - (i) contractual rights and responsibilities;
    - (ii) statutory protections; and
    - (iii) available remedies;
  - (c) educate health care consumers:
    - (i) by producing or collecting and disseminating educational materials to consumers, health insurers, and health benefit plans; and
    - (ii) through outreach and other educational activities;
  - (d) for health care consumers that have difficulty in accessing their health insurance policies because of language, disability, age, or ethnicity, provide services, directly or through referral, such as:
    - (i) information and referral; and
    - (ii) adverse benefit determination process initiation;
  - (e) analyze and monitor federal and state consumer health-related statutes, rules, and regulations; and
  - (f) summarize information gathered under this section and make the summaries available to the public, government agencies, and the Legislature.
- (3) The office may:
  - (a) obtain data from health care consumers as necessary to further the office's duties under this section;
  - (b) investigate complaints and attempt to resolve complaints at the lowest possible level; and
  - (c) assist, but not testify or represent, a consumer in an adverse benefit determination, arbitration, judicial, or related proceeding, unless the proceeding is in connection with an enforcement action brought under Section 31A-2-308.
- (4) The commissioner may adopt rules necessary to implement the requirements of this section.

Amended by Chapter 308, 2002 General Session

**31A-2-217 Coordination with other states.**

- (1)

- (a) Subject to Subsection (1)(b), the commissioner, by rule, may adopt one or more agreements with a state governmental regulatory agency, within and outside of this state, or with the National Association of Insurance Commissioners to address state regulatory issues limited to:
    - (i) licensing of insurance companies;
    - (ii) licensing of agents;
    - (iii) regulation of premium rates and policy forms; and
    - (iv) regulation of insurer insolvency and insurance receiverships.
  - (b) An agreement described in Subsection (1)(a), may authorize the commissioner to modify a requirement of this title if the commissioner determines that the requirements under the agreement provide protections similar to or greater than the requirements under this title.
- (2)
- (a) The commissioner may negotiate an interstate compact that addresses issuing certificates of authority, if the commissioner determines that:
    - (i) each state participating in the compact has requirements for issuing certificates of authority that provide protections similar to or greater than the requirements of this title; or
    - (ii) the interstate compact contains requirements for issuing certificates of authority that provide protections similar to or greater than the requirements of this title.
  - (b) If an interstate compact described in Subsection (2)(a) is adopted by the Legislature, the commissioner may issue certificates of authority to insurers in accordance with the terms of the interstate compact.
- (3) If any provision of this title conflicts with a provision of the annual statement instructions or the National Association of Insurance Commissioners Accounting Practices and Procedures Manual, the commissioner may, by rule, resolve the conflict in favor of the annual statement instructions or the National Association of Insurance Commissioners Accounting Practices and Procedures Manual.
- (4) The commissioner may, by rule, accept the information prescribed by the National Association of Insurance Commissioners instead of the documents required to be filed with an application for a certificate of authority under:
  - (a) Section 31A-4-103, 31A-5-204, 31A-8-205, or 31A-14-201; or
  - (b) rules made by the commissioner.
- (5) This section shall be repealed in accordance with Section 63I-1-231.

Amended by Chapter 43, 2013 General Session

Amended by Chapter 319, 2013 General Session

**31A-2-218 Strategic plan for health system reform.**

The commissioner and the department shall:

- (1) work with the Governor's Office of Economic Development, the Department of Health, the Department of Workforce Services, and the Legislature to develop health system reform in accordance with the strategic plan described in Title 63N, Chapter 11, Health System Reform Act;
- (2) work with health insurers in accordance with Section 31A-22-635 to develop standards for health insurance applications and compatible electronic systems;
- (3) facilitate a private sector method for the collection of health insurance premium payments made for a single policy by multiple payers, including the policyholder, one or more employers of one or more individuals covered by the policy, government programs, and others by educating

- employers and insurers about collection services available through private vendors, including financial institutions;
- (4) encourage health insurers to develop products that:
    - (a) encourage health care providers to follow best practice protocols;
    - (b) incorporate other health care quality improvement mechanisms; and
    - (c) incorporate rewards and incentives for healthy lifestyles and behaviors as permitted by the Health Insurance Portability and Accountability Act;
  - (5) involve the Office of Consumer Health Assistance created in Section 31A-2-216, as necessary, to accomplish the requirements of this section; and
  - (6) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, make rules, as necessary, to implement Subsections (2), (3), and (4).

Amended by Chapter 283, 2015 General Session