

**INSURANCE RATE REGULATION**

1999 GENERAL SESSION

STATE OF UTAH

**Sponsor: Gerry A. Adair**

AN ACT RELATING TO INSURANCE; RECODIFYING RATE REGULATION PROVISIONS; CLARIFYING PURPOSES OF CHAPTER; DEFINING TERMS; PROVIDING RULEMAKING AUTHORITY; AMENDING PROVISIONS RELATED TO RATE STANDARDS; AMENDING PROVISIONS RELATED TO RATE METHODS; AMENDING RATE FILING REQUIREMENTS; AMENDING PROVISIONS FOR DISAPPROVAL OF RATES; AMENDING PROVISION RELATED TO SPECIAL RESTRICTIONS ON INDIVIDUAL INSURERS; ADDRESSING SPECIAL PROVISIONS FOR TITLE INSURERS; ADDRESSING DIVIDEND AND PARTICIPATING PLANS; AMENDING FAULT PROVISION OF CERTAIN PREMIUM INCREASES; ADDRESSING JOINT UNDERWRITING; PROVIDING FOR TIER RATING; ADDRESSING THE RECORDING, REPORTING, AND SHARING OF STATISTICAL AND RATE ADMINISTRATION INFORMATION; PROHIBITING CERTAIN CONDUCT; ADDRESSING GRIEVANCE AND APPEAL PROCEDURES; AMENDING PROVISIONS RELATED TO RATE SERVICE ORGANIZATIONS; SPECIFYING PERMITTED AND PROHIBITED ACTIVITIES FOR RATE SERVICE ORGANIZATIONS; PROVIDING FOR A DESIGNATED RATE SERVICE ORGANIZATION FOR WORKERS COMPENSATION; PROVIDING FOR CERTAIN UNIFORM PLANS; ADDRESSING COOPERATION; AND MAKING TECHNICAL CHANGES.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

**31A-1-301**, as last amended by Chapters 13 and 329, Laws of Utah 1998

**31A-2-308**, as last amended by Chapter 293, Laws of Utah 1998

**31A-6a-103**, as enacted by Chapter 203, Laws of Utah 1992

**31A-11-103**, as last amended by Chapter 204, Laws of Utah 1986

**31A-12-103**, as last amended by Chapter 212, Laws of Utah 1993

**31A-33-107**, as last amended by Chapter 107, Laws of Utah 1998

**31A-33-111**, as renumbered and amended by Chapter 240, Laws of Utah 1996

**34A-2-202**, as last amended by Chapters 112 and 330 and renumbered and amended by Chapter 375, Laws of Utah 1997

**53-1-106**, as last amended by Chapters 36 and 242, Laws of Utah 1996

**ENACTS:**

**31A-19a-210**, Utah Code Annotated 1953

**31A-19a-213**, Utah Code Annotated 1953

**31A-19a-214**, Utah Code Annotated 1953

**31A-19a-215**, Utah Code Annotated 1953

**31A-19a-216**, Utah Code Annotated 1953

**31A-19a-306**, Utah Code Annotated 1953

**31A-19a-307**, Utah Code Annotated 1953

**31A-19a-308**, Utah Code Annotated 1953

**31A-19a-407**, Utah Code Annotated 1953

**RENUMBERS AND AMENDS:**

**31A-19a-101**, (Renumbered from 31A-19-101, as last amended by Chapter 204, Laws of Utah 1986)

**31A-19a-102**, (Renumbered from 31A-19-102, as last amended by Chapter 204, Laws of Utah 1986)

**31A-19a-103**, (Renumbered from 31A-19-103, as enacted by Chapter 242, Laws of Utah 1985)

**31A-19a-201**, (Renumbered from 31A-19-201, as enacted by Chapter 242, Laws of Utah 1985)

**31A-19a-202**, (Renumbered from 31A-19-202, as enacted by Chapter 242, Laws of Utah 1985)

**31A-19a-203**, (Renumbered from 31A-19-203, as last amended by Chapter 261, Laws of Utah 1989)

**31A-19a-204**, (Renumbered from 31A-19-204, as enacted by Chapter 242, Laws of Utah

1985)

**31A-19a-205**, (Renumbered from 31A-19-205, as enacted by Chapter 242, Laws of Utah

1985)

**31A-19a-206**, (Renumbered from 31A-19-207, as last amended by Chapter 74, Laws of Utah

1991)

**31A-19a-207**, (Renumbered from 31A-19-206, as last amended by Chapter 204, Laws of Utah 1986)

**31A-19a-208**, (Renumbered from 31A-19-208, as enacted by Chapter 242, Laws of Utah

1985)

**31A-19a-209**, (Renumbered from 31A-19-209, as enacted by Chapter 242, Laws of Utah

1985)

**31A-19a-211**, (Renumbered from 31A-19-210, as last amended by Chapter 234, Laws of Utah 1993)

**31A-19a-212**, (Renumbered from 31A-19-211, as enacted by Chapter 359, Laws of Utah

1998)

**31A-19a-217**, (Renumbered from 31A-19-418, as enacted by Chapter 205, Laws of Utah

1992)

**31A-19a-218**, (Renumbered from 31A-19-419, as enacted by Chapter 205, Laws of Utah

1992)

**31A-19a-301**, (Renumbered from 31A-19-301, as enacted by Chapter 242, Laws of Utah

1985)

**31A-19a-302**, (Renumbered from 31A-19-302, as last amended by Chapter 10, Laws of Utah 1988, Second Special Session)

**31A-19a-303**, (Renumbered from 31A-19-303, as enacted by Chapter 242, Laws of Utah

1985)

**31A-19a-304**, (Renumbered from 31A-19-304, as last amended by Chapter 344, Laws of Utah 1995)

**31A-19a-305**, (Renumbered from 31A-19-305, as last amended by Chapter 204, Laws of

Utah 1986)

**31A-19a-309**, (Renumbered from 31A-19-306, as enacted by Chapter 242, Laws of Utah 1985)

**31A-19a-401**, (Renumbered from 31A-19-401, as last amended by Chapter 91, Laws of Utah 1987)

**31A-19a-402**, (Renumbered from 31A-19-402, as last amended by Chapter 205, Laws of Utah 1992)

**31A-19a-403**, (Renumbered from 31A-19-403, as repealed and reenacted by Chapter 205, Laws of Utah 1992)

**31A-19a-404**, (Renumbered from 31A-19-407, as repealed and reenacted by Chapter 205, Laws of Utah 1992)

**31A-19a-405**, (Renumbered from 31A-19-408, as repealed and reenacted by Chapter 205, Laws of Utah 1992)

**31A-19a-406**, (Renumbered from 31A-19-414, as repealed and reenacted by Chapter 205, Laws of Utah 1992)

**REPEALS:**

**31A-19-404**, as last amended by Chapter 205, Laws of Utah 1992

**31A-19-405**, as last amended by Chapter 185, Laws of Utah 1997

**31A-19-406**, as repealed and reenacted by Chapter 205, Laws of Utah 1992

**31A-19-409**, as enacted by Chapter 242, Laws of Utah 1985

**31A-19-410**, as repealed and reenacted by Chapter 205, Laws of Utah 1992

**31A-19-411**, as repealed and reenacted by Chapter 205, Laws of Utah 1992

**31A-19-412**, as repealed and reenacted by Chapter 205, Laws of Utah 1992

**31A-19-413**, as repealed and reenacted by Chapter 205, Laws of Utah 1992

**31A-19-415**, as repealed and reenacted by Chapter 205, Laws of Utah 1992

**31A-19-416**, as enacted by Chapter 205, Laws of Utah 1992

**31A-19-417**, as enacted by Chapter 205, Laws of Utah 1992

**31A-19-420**, as enacted by Chapter 205, Laws of Utah 1992

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

Section 1. Section **31A-1-301** is amended to read:

**31A-1-301. Definitions.**

As used in this title, unless otherwise specified:

(0.5) "Administrator" is defined in Subsection (77).

(1) "Adult" means a natural person who has attained the age of at least 18 years.

(2) "Affiliate" means any person who controls, is controlled by, or is under common control with, another person. A corporation is an affiliate of another corporation, regardless of ownership, if substantially the same group of natural persons manages the corporations.

(3) "Alien insurer" means an insurer domiciled outside the United States.

(4) "Annuities" means all agreements to make periodical payments for a period certain or over the lifetime of one or more natural persons if the making or continuance of all or some of the series of the payments, or the amount of the payment, is dependent upon the continuance of human life.

(5) "Articles" or "articles of incorporation" means the original articles, special laws, charters, amendments, restated articles, articles of merger or consolidation, trust instruments, and other constitutive documents for trusts and other entities that are not corporations, and amendments to any of these. Refer also to "bylaws" in this section and Section 31A-5-203.

(6) "Bail bond insurance" means a guarantee that a person will attend court when required, or will obey the orders or judgment of the court, as a condition to the release of that person from confinement.

(7) "Binder" is defined in Section 31A-21-102.

(8) "Board," "board of trustees," or "board of directors" means the group of persons with responsibility over, or management of, a corporation, however designated. Refer also to "trustee" in this section.

(9) "Business of insurance" is defined in Subsection (44).

(10) "Business plan" means the information required to be supplied to the commissioner under Subsections 31A-5-204(2)(i) and (j), including the information required when these

subsections are applicable by reference under Section 31A-7-201, Section 31A-8-205, or Subsection 31A-9-205(2).

(11) "Bylaws" means the rules adopted for the regulation or management of a corporation's affairs, however designated. It includes comparable rules for trusts and other entities that are not corporations. Refer also to "articles" and Section 31A-5-203.

(12) "Casualty insurance" means liability insurance as defined in Subsection (50).

(13) "Certificate" means the evidence of insurance given to an insured under a group policy.

(14) "Certificate of authority" is included within the term "license."

(14.5) "Claim," unless the context otherwise requires, means a request or demand on an insurer for payment of benefits according to the terms of an insurance policy.

(14.6) "Claims-made coverage" means any insurance contract or provision limiting coverage under a policy insuring against legal liability to claims that are first made against the insured while the policy is in force.

(15) "Commissioner" or "commissioner of insurance" means Utah's insurance commissioner. Where appropriate, these terms apply to the equivalent supervisory official of another jurisdiction.

(16) "Control," "controlling," "controlled," or "under common control" means the direct or indirect possession of the power to direct or cause the direction of the management and policies of a person. This control may be by contract, by common management, through the ownership of voting securities, or otherwise. There is no presumption that an individual holding an official position with another person controls that person solely by reason of the position. A person having a contract or arrangement giving control is considered to have control despite the illegality or invalidity of the contract or arrangement. There is a rebuttable presumption of control in a person who directly or indirectly owns, controls, holds with the power to vote, or holds proxies to vote 10% or more of the voting securities of another person. Refer also to "affiliate" in this section.

(17) (a) "Corporation" means insurance corporation, except where referring under Chapter 23, Insurance Marketing - Licensing Agents, Brokers ~~and~~, Consultants, and Reinsurance Intermediaries, and Chapter 26, Insurance Adjusters, to corporations doing business as insurance agents, brokers, consultants, or adjusters, or where referring under Chapter 16, Insurance Holding

Companies, to a noninsurer which is part of a holding company system.

(b) "Stock corporation" means stock insurance corporation.

(c) "Mutual" or "mutual corporation" means mutual insurance corporation.

(18) "Credit disability insurance" means insurance on a debtor to provide indemnity for payments coming due on a specific loan or other credit transaction while the debtor is disabled.

Refer also to Subsection 31A-22-802(1).

(19) "Credit insurance" means surety insurance under which mortgagees and other creditors are indemnified against losses caused by the default of debtors.

(20) "Credit life insurance" means insurance on the life of a debtor in connection with a loan or other credit transaction. Refer also to Subsection 31A-22-802(2).

(21) "Creditor" means a person, including an insured, having any claim, whether matured, unmatured, liquidated, unliquidated, secured, unsecured, absolute, fixed, or contingent.

(22) "Deemer clause" means a provision under this title under which upon the occurrence of a condition precedent, the commissioner is deemed to have taken a specific action. If the statute so provides, the condition precedent may be the commissioner's failure to take a specific action.

Refer also to Section 31A-2-302.

(23) "Degree of relationship" means the number of steps between two persons determined by counting the generations separating one person from a common ancestor and then counting the generations to the other person.

(24) "Department" means the Insurance Department.

(25) "Director" means a member of the board of directors of a corporation.

(26) "Disability insurance" means insurance written to indemnify for losses and expenses resulting from accident or sickness, to provide payments to replace income lost from accident or sickness, and to pay for services resulting directly from accident or sickness, including medical, surgical, hospital, and other ancillary expenses.

(27) "Domestic insurer" means an insurer organized under the laws of this state.

(28) "Domiciliary state" means the state in which an insurer is incorporated or organized or, in the case of an alien insurer, the state of entry into the United States.

(29) "Employee benefits" means one or more benefits or services provided employees or their dependents.

(30) "Employee welfare fund" means a fund established or maintained by one or more employers, one or more labor organizations, or a combination of employers and labor organizations, whether directly or through trustees. This fund is to provide employee benefits paid or contracted to be paid, other than income from investments of the fund, by or on behalf of an employer doing business in this state or for the benefit of any person employed in this state. It includes plans funded or subsidized by user fees or tax revenues.

(31) "Excludes" is not exhaustive and does not mean that other things are not also excluded. The items listed are representative examples for use in interpretation of this title.

(31.5) "Fidelity insurance" means insurance guaranteeing the fidelity of persons holding positions of public or private trust.

(31.7) "First party insurance" means an insurance policy or contract in which the insurer agrees to pay claims submitted to it by the insured for the insured's losses.

(32) "Foreign insurer" means an insurer domiciled outside of this state, including an alien insurer.

(33) "Form" means a policy, certificate, or application prepared for general use. It does not include one specially prepared for use in an individual case. Refer also to "policy" in this section.

(34) "Franchise insurance" means individual insurance policies provided through a mass marketing arrangement involving a defined class of persons related in some way other than through the purchase of insurance.

(35) "Health care insurance" or "health insurance" means disability insurance providing benefits solely of medical, surgical, hospital, or other ancillary services or payment of medical, surgical, hospital, or other ancillary expenses incurred. "Health care insurance" or "health insurance" does not include disability insurance providing benefits for:

- (a) replacement of income;
- (b) short-term accident;
- (c) fixed indemnity;

- (d) credit disability;
- (e) supplements to liability;
- (f) workers' compensation;
- (g) automobile medical payment;
- (h) no-fault automobile;
- (i) equivalent self-insurance; or
- (j) any type of disability insurance coverage that is a part of or attached to another type of policy.

(35.5) "Indemnity" means the payment of an amount to offset all or part of an insured loss.

(36) "Independent adjuster" means an insurance adjuster required to be licensed under Section 31A-26-201 who engages in insurance adjusting as a representative of insurers. Refer also to Section 31A-26-102.

(37) "Independently procured insurance" means insurance procured under Section 31A-15-104.

(37.5) "Individual" means a natural person.

(38) "Inland marine insurance" includes insurance covering:

- (a) property in transit on or over land;
- (b) property in transit over water by means other than boat or ship;
- (c) bailee liability;
- (d) fixed transportation property such as bridges, electric transmission systems, radio and television transmission towers and tunnels; and
- (e) personal and commercial property floaters.

(39) "Insolvency" means that:

- (a) an insurer is unable to pay its debts or meet its obligations as they mature;
- (b) an insurer's total adjusted capital is less than the insurer's mandatory control level RBC under Subsection 31A-17-601(7)(c); or
- (c) an insurer is determined to be hazardous under this title.

(40) "Insurance" means any arrangement, contract, or plan for the transfer of a risk or risks

from one or more persons to one or more other persons, or any arrangement, contract, or plan for the distribution of a risk or risks among a group of persons that includes the person seeking to distribute his risk. "Insurance" includes:

(a) risk distributing arrangements providing for compensation or replacement for damages or loss through the provision of services or benefits in kind;

(b) contracts of guaranty or suretyship entered into by the guarantor or surety as a business and not as merely incidental to a business transaction; and

(c) plans in which the risk does not rest upon the person who makes the arrangements, but with a class of persons who have agreed to share it.

(41) "Insurance adjuster" means a person who directs the investigation, negotiation, or settlement of a claim under an insurance policy other than life insurance or an annuity, on behalf of an insurer, policyholder, or a claimant under an insurance policy. Refer also to Section 31A-26-102.

(41.5) "Interinsurance exchange" is defined in Subsection (69).

(42) "Insurance agent" or "agent" means a person who represents insurers in soliciting, negotiating, or placing insurance. Refer to Subsection 31A-23-102(2) for exceptions to this definition.

(43) "Insurance broker" or "broker" means a person who acts in procuring insurance on behalf of an applicant for insurance or an insured, and does not act on behalf of the insurer except by collecting premiums or performing other ministerial acts. Refer to Subsection 31A-23-102(2) for exceptions to this definition.

(44) "Insurance business" or "business of insurance" includes:

(a) providing health care insurance, as defined in Subsection (35), by organizations that are or should be licensed under this title;

(b) providing benefits to employees in the event of contingencies not within the control of the employees, in which the employees are entitled to the benefits as a right, which benefits may be provided either by single employers or by multiple employer groups through trusts, associations, or other entities;

(c) providing annuities, including those issued in return for gifts, except those provided by

persons specified in Subsections 31A-22-1305(2) and (3);

(d) providing the characteristic services of motor clubs as outlined in Subsection (56);

(e) providing other persons with insurance as defined in Subsection (40);

(f) making as insurer, guarantor, or surety, or proposing to make as insurer, guarantor, or surety, any contract or policy of title insurance;

(g) transacting or proposing to transact any phase of title insurance, including solicitation, negotiation preliminary to execution, execution of a contract of title insurance, insuring, and transacting matters subsequent to the execution of the contract and arising out of it, including reinsurance; and

(h) doing, or proposing to do, any business in substance equivalent to Subsections (44)(a) through (g) in a manner designed to evade the provisions of this title.

(45) "Insurance consultant" or "consultant" means a person who advises other persons about insurance needs and coverages, is compensated by the person advised on a basis not directly related to the insurance placed, and is not compensated directly or indirectly by an insurer, agent, or broker for advice given. Refer to Subsection 31A-23-102(2) for exceptions to this definition.

(46) "Insurance holding company system" means a group of two or more affiliated persons, at least one of whom is an insurer.

(47) "Insured" means a person to whom or for whose benefit an insurer makes a promise in an insurance policy. The term includes policyholders, subscribers, members, and beneficiaries. This definition applies only to the provisions of this title and does not define the meaning of this word as used in insurance policies or certificates.

(48) (a) "Insurer" means any person doing an insurance business as a principal, including fraternal benefit societies, issuers of gift annuities other than those specified in Subsections 31A-22-1305(2) and (3), motor clubs, employee welfare plans, and any person purporting or intending to do an insurance business as a principal on his own account. It does not include a governmental entity, as defined in Section 63-30-2, to the extent it is engaged in the activities described in Section 31A-12-107.

(b) "Admitted insurer" is defined in Subsection (80)(b).

- (c) "Alien insurer" is defined in Subsection (3).
- (d) "Authorized insurer" is defined in Subsection (80)(b).
- (e) "Domestic insurer" is defined in Subsection (27).
- (f) "Foreign insurer" is defined in Subsection (32).
- (g) "Nonadmitted insurer" is defined in Subsection (80)(a).
- (h) "Unauthorized insurer" is defined in Subsection (80)(a).

(49) "Legal expense insurance" means insurance written to indemnify or pay for specified legal expenses. It includes arrangements that create reasonable expectations of enforceable rights, but it does not include the provision of, or reimbursement for, legal services incidental to other insurance coverages. Refer to Section 31A-1-103 for a list of exemptions.

(50) (a) "Liability insurance" means insurance against liability:

(i) for death, injury, or disability of any human being, or for damage to property, exclusive of the coverages under Subsection (53) for medical malpractice insurance, Subsection (66) for professional liability insurance, and Subsection (83) for workers' compensation insurance;

(ii) for medical, hospital, surgical, and funeral benefits to persons other than the insured who are injured, irrespective of legal liability of the insured, when issued with or supplemental to insurance against legal liability for the death, injury, or disability of human beings, exclusive of the coverages under Subsection (53) for medical malpractice insurance, Subsection (66) for professional liability insurance, and Subsection (83) for workers' compensation insurance;

(iii) for loss or damage to property resulting from accidents to or explosions of boilers, pipes, pressure containers, machinery, or apparatus;

(iv) for loss or damage to any property caused by the breakage or leakage of sprinklers, water pipes and containers, or by water entering through leaks or openings in buildings; or

(v) for other loss or damage properly the subject of insurance not within any other kind or kinds of insurance as defined in this chapter, if such insurance is not contrary to law or public policy.

(b) "Liability insurance" includes vehicle liability insurance as defined in Subsection (81), residential dwelling liability insurance as defined in Subsection (70.3), and also includes making inspection of, and issuing certificates of inspection upon, elevators, boilers, machinery, and

apparatus of any kind when done in connection with insurance on them.

(51) "License" means the authorization issued by the insurance commissioner under this title to engage in some activity that is part of or related to the insurance business. It includes certificates of authority issued to insurers.

(52) "Life insurance" means insurance on human lives and insurances pertaining to or connected with human life. The business of life insurance includes granting annuity benefits, granting endowment benefits, granting additional benefits in the event of death by accident or accidental means, granting additional benefits in the event of the total and permanent disability of the insured, and providing optional methods of settlement of proceeds.

(53) "Medical malpractice insurance" means insurance against legal liability incident to the practice and provision of medical services other than the practice and provision of dental services.

(54) "Member" means a person having membership rights in an insurance corporation. Refer also to "insured" in Subsection (47).

(55) "Minimum capital" or "minimum required capital" means the capital that must be constantly maintained by a stock insurance corporation as required by statute. Refer also to "permanent surplus" under Subsection (76)(a) and Sections 31A-5-211, 31A-8-209, and 31A-9-209.

(56) "Motor club" means a person licensed under Chapter 5, Domestic Stock and Mutual Insurance Corporations, Chapter 11, Motor Clubs, or Chapter 14, Foreign Insurers, that promises for an advance consideration to provide legal services under Subsection 31A-11-102(1)(b), bail services under Subsection 31A-11-102(1)(c), trip reimbursement, towing services, emergency road services, stolen automobile services, a combination of these services, or any other services given in Subsections 31A-11-102(1)(b) through (f) for a stated period of time.

(57) "Mutual" means mutual insurance corporation.

(57.5) "Nonparticipating" means a plan of insurance under which the insured is not entitled to receive dividends representing shares of the surplus of the insurer.

(58) "Ocean marine insurance" means insurance against loss of or damage to:

(a) ships or hulls of ships;

(b) goods, freight, cargoes, merchandise, effects, disbursements, profits, moneys, securities,

choses in action, evidences of debt, valuable papers, bottomry, respondentia interests, or other cargoes in or awaiting transit over the oceans or inland waterways;

(c) earnings such as freight, passage money, commissions, or profits derived from transporting goods or people upon or across the oceans or inland waterways; or

(d) a vessel owner or operator as a result of liability to employees, passengers, bailors, owners of other vessels, owners of fixed objects, customs or other authorities, or other persons in connection with maritime activity.

(59) "Order" means an order of the commissioner.

(59.5) "Participating" means a plan of insurance under which the insured is entitled to receive dividends representing shares of the surplus of the insurer.

(60) "Person" includes an individual, partnership, corporation, incorporated or unincorporated association, joint stock company, trust, reciprocal, syndicate, or any similar entity or combination of entities acting in concert.

(61) (a) "Policy" means any document, including attached endorsements and riders, purporting to be an enforceable contract, which memorializes in writing some or all of the terms of an insurance contract. Service contracts issued by motor clubs under Chapter 11, Motor Clubs, and by corporations licensed under Chapter 7, Nonprofit Health Service Insurance Corporations, or Chapter 8, Health Maintenance Organizations and Limited Health Plans, are policies. A certificate under a group insurance contract is not a policy. A document which does not purport to have legal effect is not a policy.

(b) "Group insurance policy" means a policy covering a group of persons that is issued to a policyholder on behalf of the group, for the benefit of group members who are selected under procedures defined in the policy or in agreements which are collateral to the policy. This type of policy may, but is not required to, include members of the policyholder's family or dependents.

(c) "Blanket insurance policy" means a group policy covering classes of persons without individual underwriting, where the persons insured are determined by definition of the class with or without designating the persons covered.

(62) "Policyholder" means the person who controls a policy, binder, or oral contract by

ownership, premium payment, or otherwise. Refer also to "insured" in Subsection (47).

(63) "Premium" means the monetary consideration for an insurance policy, and includes assessments, membership fees, required contributions, or monetary consideration, however designated. Consideration paid to third party administrators for their services is not "premium," though amounts paid by third party administrators to insurers for insurance on the risks administered by the third party administrators are "premium."

(64) "Principal officers" of a corporation means the officers designated under Subsection 31A-5-203(3).

(65) "Proceedings" includes actions and special statutory proceedings.

(66) "Professional liability insurance" means insurance against legal liability incident to the practice of a profession and provision of any professional services.

(67) "Property insurance" means insurance against loss or damage to real or personal property of every kind and any interest in that property, from all hazards or causes, and against loss consequential upon the loss or damage including vehicle comprehensive and vehicle physical damage coverages, but excluding inland marine insurance and ocean marine insurance as defined under Subsections (38) and (58).

(67.5) "Public agency insurance mutual" means any entity formed by joint venture or interlocal cooperation agreement by two or more political subdivisions or public agencies of the state for the purpose of providing insurance coverage for the political subdivisions or public agencies. Any public agency insurance mutual created under this title and Title 11, Chapter 13, Interlocal Cooperation Act, is considered to be a governmental entity and political subdivision of the state with all of the rights, privileges, and immunities of a governmental entity or political subdivision of the state.

(68) (a) Except as provided in Subsection (68)(b), "rate service organization" means any person who assists insurers in rate making or filing by:

- (i) collecting, compiling, and furnishing loss or expense statistics;
- (ii) recommending, making, or filing rates or supplementary rate information; or
- (iii) advising about rate questions, except as an attorney giving legal advice. [~~Refer also to~~

Subsection 31A-19-102(2):]

(b) "Rate service organization" does not mean an employee of an insurer, a single insurer or group of insurers under common control, a joint underwriting group, or a natural person serving as an actuarial or legal consultant.

(69) "Reciprocal" or "interinsurance exchange" means any unincorporated association of persons operating through an attorney-in-fact common to all of them and exchanging insurance contracts with one another that provide insurance coverage on each other.

(70) "Reinsurance" means an insurance transaction where an insurer, for consideration, transfers any portion of the risk it has assumed to another insurer. In referring to reinsurance transactions, this title sometimes refers to the insurer transferring the risk as the "ceding insurer," and to the insurer assuming the risk as the "assuming insurer" or the "assuming reinsurer."

(70.3) "Residential dwelling liability insurance" means insurance against liability resulting from or incident to the ownership, maintenance, or use of a residential dwelling that is a detached single family residence or multifamily residence up to four units.

(71) "Retrocession" means reinsurance with another insurer of a liability assumed under a reinsurance contract. A reinsurer "retrocedes" when it reinsures with another insurer part of a liability assumed under a reinsurance contract.

(72) (a) "Security" means any:

- (i) note;
- (ii) stock;
- (iii) bond;
- (iv) debenture;
- (v) evidence of indebtedness;
- (vi) certificate of interest or participation in any profit-sharing agreement;
- (vii) collateral-trust certificate;
- (viii) preorganization certificate or subscription;
- (ix) transferable share;
- (x) investment contract;

(xi) voting trust certificate;

(xii) certificate of deposit for a security;

(xiii) certificate of interest of participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease;

(xiv) commodity contract or commodity option;

(xv) any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase any of the items listed in Subsections (72)(a)(i) through (xiv); or

(xvi) any other interest or instrument commonly known as a security.

(b) "Security" does not include:

(i) any insurance or endowment policy or annuity contract under which an insurance company promises to pay money in a specific lump sum or periodically for life or some other specified period; or

(ii) a burial certificate or burial contract.

(73) "Self-insurance" means any arrangement under which a person provides for spreading its own risks by a systematic plan.

(a) Except as provided in this subsection, self-insurance does not include an arrangement under which a number of persons spread their risks among themselves.

(b) Self-insurance does include an arrangement by which a governmental entity, as defined in Section 63-30-2, undertakes to indemnify its employees for liability arising out of the employees' employment.

(c) Self-insurance does include an arrangement by which a person with a managed program of self-insurance and risk management undertakes to indemnify its affiliates, subsidiaries, directors, officers, or employees for liability or risk which is related to the relationship or employment. Self-insurance does not include any arrangement with independent contractors.

(74) (a) "Subsidiary" of a person means an affiliate controlled by that person either directly or indirectly through one or more affiliates or intermediaries.

(b) "Wholly owned subsidiary" of a person is a subsidiary of which all of the voting shares

are owned by that person either alone or with its affiliates, except for the minimum number of shares the law of the subsidiary's domicile requires to be owned by directors or others.

(75) Subject to Subsection (40)(b), "surety insurance" includes:

- (a) a guarantee against loss or damage resulting from failure of principals to pay or perform their obligations to a creditor or other obligee;
- (b) bail bond insurance; and
- (c) fidelity insurance.

(76) (a) "Surplus" means the excess of assets over the sum of paid-in capital and liabilities.

(b) "Permanent surplus" means the surplus of a mutual insurer that has been designated by the insurer as permanent. Sections 31A-5-211, 31A-7-201, 31A-8-209, 31A-9-209, and 31A-14-209 require that mutuals doing business in this state maintain specified minimum levels of permanent surplus. Except for assessable mutuals, the minimum permanent surplus requirement is essentially the same as the minimum required capital requirement that applies to stock insurers. Refer also to Subsection (55) on "minimum capital."

(c) "Excess surplus" means:

(i) for life or disability insurers, as defined in Subsection 31A-17-601(3), and property and casualty insurers, as defined in Subsection 31A-17-601(4), the lesser of:

(A) that amount of an insurer's total adjusted capital, as defined in Subsection (78.5), that exceeds the product of 2.5 and the sum of the insurer's minimum capital or permanent surplus required under Section 31A-5-211, 31A-9-209, or 31A-14-205; or

(B) that amount of an insurer's total adjusted capital, as defined in Subsection (78.5), that exceeds the product of 3.0 and the authorized control level RBC as defined in Subsection 31A-17-601(7)(a); and

(ii) for monoline mortgage guaranty insurers, financial guaranty insurers, and title insurers, that amount of an insurer's paid-in-capital and surplus that exceeds the product of 1.5 and the insurer's total adjusted capital required by Subsection 31A-17-609(1).

(77) "Third party administrator" or "administrator" means any person who collects charges or premiums from, or who, for consideration, adjusts or settles claims of residents of the state in

connection with life or disability insurance coverage, annuities, or service insurance coverage, except:

- (a) a union on behalf of its members;
  - (b) a person exempt as a trust under Section 514 of the federal Employee Retirement Income Security Act of 1974;
  - (c) an employer on behalf of his employees or the employees of one or more of the subsidiary or affiliated corporations of the employer;
  - (d) an insurer licensed under Chapter 5, 7, 8, 9, or 14, but only with respect to insurance issued by the insurer; or
  - (e) a person licensed or exempt from licensing under Chapter 23 or 26 whose activities are limited to those authorized under the license the person holds or for which the person is exempt.
- Refer also to Section 31A-25-101.

(78) "Title insurance" means the insuring, guaranteeing, or indemnifying of owners of real or personal property or the holders of liens or encumbrances on that property, or others interested in the property against loss or damage suffered by reason of liens or encumbrances upon, defects in, or the unmarketability of the title to the property, or invalidity or unenforceability of any liens or encumbrances on the property.

(78.5) "Total adjusted capital" means the sum of an insurer's statutory capital and surplus as determined in accordance with:

- (a) the statutory accounting applicable to the annual financial statements required to be filed under Section 31A-4-113; and
- (b) any other items provided by the RBC instructions, as RBC instructions is defined in Subsection 31A-17-601(6).

(79) (a) "Trustee" means "director" when referring to the board of directors of a corporation.

(b) "Trustee," when used in reference to an employee welfare fund, means an individual, firm, association, organization, joint stock company, or corporation, whether acting individually or jointly and whether designated by that name or any other, that is charged with or has the overall management of an employee welfare fund.

(80) (a) "Unauthorized insurer," "unadmitted insurer," or "nonadmitted insurer" means an insurer not holding a valid certificate of authority to do an insurance business in this state, or an insurer transacting business not authorized by a valid certificate.

(b) "Admitted insurer" or "authorized insurer" means an insurer holding a valid certificate of authority to do an insurance business in this state and transacting business as authorized by a valid certificate.

(81) "Vehicle liability insurance" means insurance against liability resulting from or incident to ownership, maintenance, or use of any land vehicle or aircraft, exclusive of vehicle comprehensive and vehicle physical damage coverages under Subsection (67).

(82) "Voting security" means a security with voting rights, and includes any security convertible into a security with a voting right associated with it.

(83) [~~"Workers"~~] "Workers compensation insurance" means:

(a) insurance for indemnification of employers against liability for compensation:

(i) based upon compensable accidental injuries; and

(ii) based on occupational disease disability;

(b) employer's liability insurance incidental to workers' compensation insurance and written in connection with it; and

(c) insurance assuring to the persons entitled to workers' compensation benefits the compensation provided by law.

Section 2. Section **31A-2-308** is amended to read:

**31A-2-308. Enforcement penalties and procedures.**

(1) (a) A person who violates any insurance statute or rule or any order issued under Subsection 31A-2-201(4) shall forfeit to the state twice the amount of any profit gained from the violation, in addition to any other forfeiture or penalty imposed.

(b) (i) The commissioner may order an individual agent, broker, adjuster, or insurance consultant who violates an insurance statute or rule to forfeit to the state not more than \$2,500 for each violation.

(ii) The commissioner may order any other person who violates an insurance statute or rule

to forfeit to the state not more than \$5,000 for each violation.

(c) (i) The commissioner may order an individual agent, broker, adjuster, or insurance consultant who violates an order issued under Subsection 31A-2-201(4) to forfeit to the state not more than \$2,500 for each violation. Each day the violation continues is a separate violation.

(ii) The commissioner may order any other person who violates an order issued under Subsection 31A-2-201(4) to forfeit to the state not more than \$5,000 for each violation. Each day the violation continues is a separate violation.

(d) The commissioner may accept or compromise any forfeiture under this subsection until after a complaint is filed under Subsection (2). After the filing of the complaint, only the attorney general may compromise the forfeiture.

(2) Whenever a person fails to comply with an order issued under Subsection 31A-2-201(4), including a forfeiture order, the commissioner may file an action in any court of competent jurisdiction or obtain a court order or judgment:

(a) enforcing the commissioner's order;

(b) directing compliance with the commissioner's order and restraining further violation of the order, subjecting the person ordered to the procedures and sanctions available to the court for punishing contempt if the failure to comply continues; or

(c) imposing a forfeiture in an amount the court considers just, up to \$10,000 for each day the failure to comply continues after the filing of the complaint until judgment is rendered.

(3) The Utah Rules of Civil Procedure govern actions brought under Subsection (2), except that the commissioner may file a complaint seeking a court-ordered forfeiture under Subsection (2)(c) no sooner than two weeks after giving written notice of his intention to proceed under Subsection (2)(c). The commissioner's order issued under Subsection 31A-2-201(4) may contain a notice of intention to seek a court-ordered forfeiture if the commissioner's order is disobeyed.

(4) If, after a court order is issued under Subsection (2), the person fails to comply with the commissioner's order or judgment, the commissioner may certify the fact of the failure to the court by affidavit, and the court may, after a hearing following at least five days written notice to the parties subject to the order or judgment, amend the order or judgment to add the forfeiture or

forfeitures, as prescribed in Subsection (2)(c), until the person complies.

(5) The proceeds of all forfeitures under this section, including collection expenses, shall be paid into the General Fund. The expenses of collection shall be credited to the Insurance Department's budget. The attorney general's budget shall be credited to the extent the Insurance Department reimburses the attorney general's office for its collection expenses under this section.

(6) Forfeitures and judgments under this section bear interest at the rate then charged by the United States Internal Revenue Service for past due taxes. Interest accrues from the later of the date of entry of the commissioner's order under Subsection (1) or the date of judgment under Subsection (2) until the forfeiture and accrued interest are fully paid.

(7) No forfeiture may be imposed under Subsection (2)(c) if, at the time the forfeiture action is commenced, the person was in compliance with the commissioner's order, or if the violation of the order occurred during the order's suspension.

(8) The commissioner may seek an injunction as an alternative to issuing an order under Subsection 31A-2-201(4).

(9) A person who intentionally violates, intentionally permits any person over whom he has authority to violate, or intentionally aids any person in violating any insurance statute or rule of this state or any effective order issued under Subsection 31A-2-201(4) is guilty of a class B misdemeanor. Unless a specific criminal penalty is provided elsewhere in this title, the person may be fined not more than \$10,000 if a corporation or not more than \$5,000 if a person other than a corporation. If the person is an individual, the person may, in addition, be imprisoned for up to one year. As used in this Subsection (9), "intentionally" has the same meaning as under Subsection 76-2-103(1).

(10) When a licensee of the Insurance Department, other than a domestic insurer, persistently or substantially violates the insurance law or violates an order of the commissioner under Subsection 31A-2-201(4), if there are grounds for delinquency proceedings against the licensee under Section 31A-27-301 or Section 31A-27-307, or if the licensee's methods and practices in the conduct of his business endanger, or his financial resources are inadequate to safeguard, the legitimate interests of his customers and the public, the commissioner may, after a hearing, in whole or in part, revoke,

suspend, place on probation, limit, or refuse to renew the licensee's license or certificate of authority. Additional license termination or probation provisions for licensees other than insurers are set forth in Sections [~~31A-19-303, 31A-19-304,~~] 31A-19a-303, 31A-19a-304, 31A-23-216, 31A-23-217, 31A-25-208, 31A-25-209, 31A-26-213, 31A-26-214, 31A-35-501, and 31A-35-503.

(11) The enforcement penalties and procedures set forth in this section are not exclusive, but are cumulative of other rights and remedies the commissioner has pursuant to applicable law.

Section 3. Section **31A-6a-103** is amended to read:

**31A-6a-103. Requirements for doing business.**

(1) Service contracts may not be issued, sold, or offered for sale in this state unless the service contract is insured under a service contract reimbursement insurance policy issued by an insurer authorized to do business in this state, or a recognized surplus lines carrier.

(2) (a) Service contracts may not be issued, sold, or offered for sale unless a true and correct copy of the service contract and the provider's reimbursement insurance policy have been filed with the commissioner. Copies of contracts and policies must be filed no less than 30 days prior to the issuance, sale offering for sale, or use of the service contract or reimbursement insurance policy in this state.

(b) Each modification of the terms of any service contract or reimbursement insurance policy must also be filed 30 days prior to its use in this state. Each filing must be accompanied by a filing fee as required under Subsection 31A-3-103, or the filing shall be rejected.

(c) Persons complying with this chapter are not required to comply with:

(i) Subsections 31A-21-201(1) and 31A-23-302(3)[~~7~~]; or

(ii) Chapter [~~19~~] 19a, Utah Rate Regulation Act.

(3) (a) Premiums collected on service contracts are not subject to premium taxes.

(b) Premiums collected by issuers of reimbursement insurance policies are subject to premium taxes.

(4) Persons marketing, selling, or offering to sell service contracts for service contract providers that comply with this chapter are exempt from the licensing requirements of this title.

(5) Service contract providers complying with this chapter are not required to comply with:

- (a) Chapter 5, Domestic Stock and Mutual Insurance Corporations[;];
- (b) Chapter 7, Nonprofit Health Service Insurance Corporations[;];
- (c) Chapter 8, Health Maintenance Organizations and Limited Health Plans[;];
- (d) Chapter 9, Insurance Fraternal[;];
- (e) Chapter 10, Annuities[;];
- (f) Chapter 11, Motor Clubs[;];
- (g) Chapter 12, State Risk Management Fund[;];
- (h) Chapter 13, Employee Welfare Funds and Plans[;];
- (i) Chapter 14, Foreign Insurers[;];
- (j) Chapter [19] 19a, Utah Rate Regulation[;] Act;
- (k) Chapter 25, Third Party Administrators[;]; and
- (l) Chapter 28, Guaranty Associations.

Section 4. Section **31A-11-103** is amended to read:

**31A-11-103. Rates.**

(1) Rates charged to holders of motor club service contracts may not be inadequate, excessive, or unfairly discriminatory.

(2) If, after a hearing, the commissioner finds a motor club's rates in violation of this section, ~~he~~ the commissioner may issue an order to the club to make a filing under Section [~~31A-19-203~~] 31A-19a-203. After issuance of such an order, the commissioner and the club shall proceed under Chapter [19] 19a until the commissioner determines that the club's rates conform to the requirements of this section. Chapter [19] 19a is then inapplicable to the club until the issuance of another order under this section.

Section 5. Section **31A-12-103** is amended to read:

**31A-12-103. Rates charged to school districts.**

The rates charged to school districts for policies issued under Section 63A-4-204 are not subject to Chapter [19] 19a, except for the filing requirement of Subsection [~~31A-19-203~~] 31A-19a-203(1) and the public availability requirement of Section [~~31A-19-204~~] 31A-19a-204. Rate filing fees under Section 31A-3-103 shall be paid to the department by the Risk Management Fund.

Section 6. Section **31A-19a-101**, which is renumbered from Section 31A-19-101 is renumbered and amended to read:

## **CHAPTER 19a. UTAH RATE REGULATION ACT**

### **Part 1. General Provisions**

~~[31A-19-101].~~ **31A-19a-101. Title -- Scope and purposes.**

~~(1)~~ This chapter is known as the "Utah Rate Regulation Act."

~~[(+)]~~ ~~(2)~~ ~~(a)~~ ~~(i)~~ ~~[This]~~ Except as provided in Subsection (2)(a)(ii), this chapter applies to all kinds and lines of direct insurance written on risks or operations in this state by an insurer authorized to do business in this state~~[, except:].~~

(ii) This chapter does not apply to:

~~[(+)]~~ (A) life insurance other than credit life insurance;

~~[(+)]~~ (B) variable and fixed annuities;

~~[(+)]~~ (C) health and disability insurance other than credit disability insurance; and

~~[(+)]~~ (D) reinsurance~~[; and].~~

~~[(+)]~~ (E) workers' compensation insurance, except that Sections 31A-19-301 through 31A-19-304 and Part IV apply to workers' compensation insurance.]

(b) This chapter applies to all insurers authorized to do any line of business, except those specified in ~~[Subsections (1)(a)(i) through (v)]~~ Subsection (2)(a)(ii).

~~[(2)]~~ (3) It is the purpose of this chapter to:

(a) protect policyholders and the public against the adverse effects of excessive, inadequate, or unfairly discriminatory rates;

(b) encourage independent action by and reasonable price competition among insurers so that rates are responsive to competitive market conditions;

(c) provide formal regulatory controls for use if independent action and price competition fail;

(d) provide regulatory procedures for the maintenance of appropriate data reporting systems;

~~[(+)]~~ (e) authorize cooperative action among insurers in the rate-making process, and regulate that cooperation to prevent practices that bring about a monopoly or lessen or destroy

competition;

~~[(e)]~~ (f) encourage the most efficient and economic marketing practices; and

~~[(f)]~~ (g) regulate the business of insurance in a manner that, under the McCarran-Ferguson Act, 15 U.S.C. Secs. 1011 through 1015, will preclude application of federal antitrust laws.

~~[(3)]~~ (4) Rate filings made prior to July 1, 1986, under former Title 31, Chapter 18, are continued. Rate filings made after July 1, 1986, are subject to the requirements of this chapter.

Section 7. Section **31A-19a-102**, which is renumbered from Section 31A-19-102 is renumbered and amended to read:

~~[31A-19-102].~~        **31A-19a-102. Definitions.**

As used in this chapter:

~~[(1) "Market segment" means any geographical area that can reasonably be considered an economic unit with respect to the marketing of insurance or any line or kind of insurance or, if it is described in general terms, any subdivision of this economic unit, line, or kind of insurance, or any class of risks or combination of classes. It may be formed from any combination of these variables having independent economic significance.]~~

~~[(2) (a) Except as provided in Subsection (2) (b), "rate service organization" means any person who assists insurers in rate making or filing by:]~~

~~[(i) collecting, compiling, and furnishing loss or expense statistics;]~~

~~[(ii) recommending, making, or filing rates or supplementary rate information; or]~~

~~[(iii) advising about rate questions, except as an attorney giving legal advice.]~~

(1) "Classification system" or "classification" means the process of grouping risks with similar risk characteristics so that differences in anticipated costs may be recognized.

(2) (a) "Developed losses" means losses adjusted using standard actuarial techniques to eliminate the effect of differences between:

(i) current payment or reserve estimates; and

(ii) payments or reserve estimates that are anticipated to provide actual ultimate loss payments.

(b) For purposes of Subsection (2)(a), losses includes loss adjustment expense.

(3) "Dividend" means money paid to a policyholder from the remaining portion of the premium paid for a policy:

(a) based on the participating class of business; and

(b) after the insurer has made deductions for:

(i) losses;

(ii) expenses;

(iii) additions to reserves; and

(iv) profit and contingencies.

(4) "Expenses" means that portion of a rate attributable to:

(a) acquisition;

(b) field supervision;

(c) collection expenses;

(d) general expenses;

(e) taxes;

(f) licenses; and

(g) fees.

(5) "Experience rating" means a rating procedure that:

(a) uses the past insurance experience of an individual policyholder to forecast the future losses of the policyholder by measuring the policyholder's loss experience against the loss experience of policyholders in the same classification; and

(b) produces a prospective premium credit, debit, or unity modification.

(6) "Joint underwriting" means a voluntary arrangement established to provide insurance coverage for a risk pursuant to which two or more insurers jointly contract with the insured at a price and under policy terms agreed upon between the insurers.

(7) "Loss adjustment expense" means the expenses incurred by the insurer in the course of settling claims.

(8) (a) "Market" means the interaction between buyers and sellers consisting of a:

(i) product component; and

(ii) geographic component.

(b) A product component consists of identical or readily substitutable products if the products are compared as to factors including:

(i) coverage;

(ii) policy terms;

(iii) rate classifications; and

(iv) underwriting.

(c) A geographic component is a geographical area in which buyers seek access to the insurance product through sales outlets and other distribution mechanisms or patterns.

(9) "Mass marketed plan" means a method of selling insurance when:

(a) the insurance is offered to:

(i) employees of a particular employer;

(ii) members of a particular association or organization; or

(iii) persons grouped in a manner other than described in Subsection (8)(a)(i) or (ii), except groupings formed principally for the purpose of obtaining insurance; and

(b) the employer, association, or other organization, if any, has agreed to, or otherwise affiliated itself with, the sale of insurance to its employees or members.

(10) "Prospective loss costs" means the same as pure premium rate.

(11) "Pure premium rate" means that portion of a rate that:

(a) does not include provisions for profit or expenses, other than loss adjustment expenses;

and

(b) is based on historical aggregate losses and loss adjustment expenses that are:

(i) adjusted through development to their ultimate value; and

(ii) projected through trending to a future point in time.

(12) (a) "Rate" means that cost of insurance per exposure unit either expressed as:

(i) a single number; or

(ii) as a pure premium rate, adjusted before any application of individual risk variations,

based on loss or expense considerations to account for the treatment of:

- (A) expenses;
- (B) profit; and
- (C) individual insurer variation in loss experience.
- (b) "Rate" does not include a minimum premium.

~~[(b) "Rate service organization" does not mean an employee of an insurer, a single insurer or group of insurers under common control, a joint underwriting group, or a natural person serving as an actuarial or legal consultant.]~~

(13) "Rating tiers" means an underwriting and rating plan designed to categorize insurance risks that have common characteristics related to potential insurance loss into broad groups for the purpose of establishing a set of rating levels that reflect definable levels of potential hazard or risk.

~~[(3)]~~ (14) "Riskiness" means the variability of results around the average expected result.

~~[(4)]~~ (15) "Supplementary rate information" includes [any] one or more of the following needed to determine the applicable rate in effect or to be in effect:

- (a) a manual or plan of rates[;];
- (b) a statistical plan[;];
- (c) a classification[;];
- (d) a rating schedule[;];
- (e) a minimum premium[;];
- (f) a policy fee[;];
- (g) a rating rule[;];
- (h) a rate-related underwriting rule[~~;~~and];
- (i) a rate modification plan; or
- (j) any other similar information prescribed by rule of the commissioner as supplementary

rate information.

(16) "Supporting information" includes one or more of the following:

(a) data demonstrating actuarial justification for the basic rate factors, classifications, expenses, and profit factors used by the filer;

(b) the experience and judgment of the filer;

(c) the experience or data of other insurers or rate service organizations relied upon by the filer;

(d) the interpretation of any other data relied upon by the filer;

(e) descriptions of methods used in making the rates; or

(f) any other information defined by rule as supporting information that is required to be filed.

(17) "Trending" means any procedure for projecting, for the period during which the policies are to be effective:

(a) losses to the average date of loss; or

(b) premiums or exposures to the average date of writing.

Section 8. Section **31A-19a-103**, which is renumbered from Section 31A-19-103 is renumbered and amended to read:

**[31A-19-103].            31A-19a-103. Exemptions.**

(1) The commissioner may by rule exempt from any or all of the provisions of this chapter:

(a) any person[;];

(b) a class of persons[;]; or

(c) a market segment [from any or all of the provisions of this chapter. This].

(2) The exemption described in Subsection (1) shall be given only if and to the extent that the commissioner finds the application of the provisions of this chapter to that person or group is unnecessary to achieve the purposes of this chapter.

Section 9. Section **31A-19a-201**, which is renumbered from Section 31A-19-201 is renumbered and amended to read:

**Part 2. General Rate Regulation**

**[31A-19-201].            31A-19a-201. Rate standards.**

(1) Rates may not be excessive, inadequate, or unfairly discriminatory[; nor may an insurer charge any rate which, if continued, may have the effect of destroying competition or creating a monopoly].

(2) (a) Rates are not excessive if a reasonable degree of price competition exists at the

consumer level with respect to the class of business to which they apply. In determining whether a reasonable degree of price competition exists, the commissioner shall consider ~~all~~:

(i) relevant tests ~~including~~ of workable competition pertaining to:

(A) market structure;

(B) market performance; and

(C) market conduct; and

(ii) the practical opportunities available to consumers in the market to:

(A) acquire pricing and other consumer information; and

(B) compare and obtain insurance from competing insurers.

(b) The tests described in Subsection (2)(a) include:

(i) the size and number of insurers actively engaged in the market and class of business;

(ii) ~~their~~ the market shares of insurers actively engaged in the market and changes in market shares;

(iii) the existence of rate differentials in that class of business;

(iv) ease of entry and latent competition of insurers capable of easy entry~~[-]~~;

(v) availability of consumer information concerning the product and sales outlets or other sales mechanisms; and

(vi) efforts of insurers to provide consumer information.

~~(b)~~ (c) If reasonable price competition does not exist, rates are excessive if ~~they~~:

(i) rates are likely to produce a long-term profit that is unreasonably high in relation to the riskiness of the class of business~~[-]~~; or ~~if~~

(ii) expenses are unreasonably high in relation to the services rendered.

(3) Rates are inadequate if:

(a) they are clearly insufficient, when combined with the investment income attributable to them, to sustain the projected losses and expenses in the class of business to which they apply~~[-]~~; and

(b) the use of such rates has or, if continued, will have:

(i) the effect of substantially lessening competition; or

(ii) the tendency to create a monopoly in any market.

(4) (a) A rate is unfairly discriminatory [~~in relation to another rate in the same class if it clearly fails~~] if price differentials fail to equitably reflect the differences in expected losses and expenses[ ~~Rates are~~] after allowing for practical limitations.

(b) A rate is not unfairly discriminatory [~~because different premiums result for policyholders with similar loss exposures but different expense factors, or similar expense factors but different loss exposures, so long as the rates reflect the differences with reasonable accuracy. Rates are not unfairly discriminatory if they are~~] if it is averaged broadly among persons insured under a:

(i) group, franchise, or blanket policy; or

(ii) mass marketed plan.

Section 10. Section ~~31A-19a-202~~, which is renumbered from Section 31A-19-202 is renumbered and amended to read:

~~[31A-19-202].~~        **31A-19a-202. Rating methods.**

(1) To determine whether rates comply with the standards under Section [~~31A-19-201~~] 31A-19a-201, the [~~following~~] commissioner shall consider the:

(a) criteria [~~shall be considered:~~] listed in Subsection (2);

(b) classifications, if any, permitted under Subsection (3);

(c) expenses described in Subsection (4); and

(d) profits described in Subsection (5).

(2) In determining rates the commissioner shall consider within and outside of Utah:

[~~(1) The~~] (a) past and prospective loss [and expense] experience [within and outside of Utah];

(b) catastrophe hazards [and contingencies];

(c) trends [within and outside of Utah];

(d) loadings for leveling premium rates over time[~~, dividends or savings~~];

(e) reasonable margin for profit and contingencies;

(f) dividends, savings, or unabsorbed premium deposits allowed or returned by insurers to their policyholders[~~, members, or subscribers;~~]; and [all]

(g) other relevant factors[~~, including the judgment of technical personnel shall be taken into~~]

~~consideration in determining whether rates are excessive, inadequate, or unfairly discriminating].~~

~~[(2)] (3) (a) Risks may be [classified in any reasonable way] grouped by classifications for the establishment of rates and minimum premiums~~[- except that no classifications may be based on].~~~~

~~(b) (i) A classification rate may be modified to produce rates for individual risks in accordance with rating plans or schedules that establish reasonable standards for measuring probable variations in hazards or expense provisions.~~

~~(ii) The standards described in Subsection (3)(b)(i) may measure any differences among risks that can be demonstrated to have a probable effect upon losses or expenses.~~

~~(c) Notwithstanding Subsection (3)(b), risk classification may not be based upon race, color, creed, [or] national origin, or the religion of the insured. [These classified rates may be modified for individual risks in accordance with rating plans or schedules which establish reasonable standards for measuring probable variations in hazards, expenses, or both. Rates may also be modified for individual risks under Subsection 31A-19-203 (3).]~~

~~[(3)] (4) The expense provisions included in the rates to be used by an insurer [may] shall reflect:~~

~~(a) the operating methods of the insurer; and~~[- so far as it is credible, its own expense experience]~~~~

~~(b) its anticipated expenses.~~

~~[(4)] (5) The rates may contain provision for contingencies and an allowance permitting a profit that is not unreasonable in relation to the riskiness of the class of business. In determining the reasonableness of the profit, consideration may be given to investment income.~~

Section 11. Section **31A-19a-203**, which is renumbered from Section 31A-19-203 is renumbered and amended to read:

~~[31A-19-203].~~      **31A-19a-203. Rate filings.**

(1) (a) Except as provided in Subsections ~~[(2)] (4)~~ and ~~[(3)] (5)~~, every authorized insurer and every rate service organization licensed under Section ~~[31A-19-301]~~ 31A-19a-301 that has been designated by any insurer for the filing of pure premium rates under Subsection ~~[31A-19-205]~~ 31A-19a-205(2), shall file with the commissioner the following for use in this state:

- (i) all rates [and];
  - (ii) all supplementary information; and
  - (iii) all changes and amendments to [them that are made by it for use in this state] rates and supplementary information.
- (b) An insurer shall file its rates by filing:
  - (i) its final rates; or
  - (ii) either of the following to be applied to pure premium rates that have been filed by a rate service organization on behalf of the insurer as permitted by Section 31A-19a-205:
    - (A) a multiplier; or
    - (B) (I) a multiplier; and
    - (II) an expense constant adjustment.
- (c) Every filing under this Subsection (1) shall state:
  - (i) the effective date of the rates; and
  - (ii) the character and extent of the coverage contemplated.
- [~~(b) This~~] (d) Except for workers compensation rates filed under Sections 31A-19a-405 and 31A-19a-406, each filing shall be within 30 days after the rates and supplementary information, changes, and amendments are effective.
- (e) A rate filing is considered filed when it has been received by the commissioner:
  - (i) with the applicable filing fee as prescribed under Section 31A-3-103; and
  - (ii) pursuant to procedures established by the commissioner.
- (f) The commissioner may by rule prescribe procedures for submitting rate filings by electronic means.
- (2) (a) To show compliance with Section 31A-19a-201, at the same time as the filing of the rate and supplementary rate information, an insurer shall file all supporting information to be used in support of or in conjunction with a rate.
  - (b) If the rate filing provides for a modification or revision of a previously filed rate, the insurer is required to file only the supporting information that supports the modification or revision.
  - (c) If the commissioner determines that the insurer did not file sufficient supporting

information, the commissioner shall inform the insurer in writing of the lack of sufficient supporting information.

(d) If the insurer does not provide the necessary supporting information within 45 calendar days of the date on which the commissioner mailed notice under Subsection (2)(c), the rate filing may be:

(i) considered incomplete and unfiled; and

(ii) returned to the insurer as not filed and not available for use.

(e) Notwithstanding Subsection (2)(d), the commissioner may extend the time period for filing supporting information.

(f) If a rate filing is returned to an insurer as not filed and not available for use under Subsection (2)(d), the insurer may not use the rate filing for any policy issued or renewed on or after 60 calendar days from the date the rate filing was returned.

(3) At the request of the commissioner, an insurer using the services of a rate service organization shall provide a description of the rationale for using the services of the rate service organization, including the insurer's own information and method of use of the rate service organization's information.

(4) (a) An insurer may not make or issue a contract or policy except in accordance with the rate filings that are in effect for the insurer as provided in this chapter.

(b) Subsection (4)(a) does not apply to contracts or policies for inland marine risks for which filings are not required.

~~[(2)]~~ (5) Subsection (1) does not apply to inland marine risks, which, by general custom, are not written according to standardized manual rules or rating plans.

~~[(3)]~~ (6) (a) The insurer may file a written application, stating the insurer's reasons for using a higher rate than that otherwise applicable to a specific risk.

(b) If ~~[this]~~ the application described in Subsection (6)(a) is filed with and not disapproved by the commissioner within ten days after filing, the higher rate may be applied to the specific risk.

(c) The rate may be disapproved without a hearing.

(d) If disapproved, the rate otherwise applicable applies from the effective date of the policy,

but the insurer may cancel the policy pro rata on ten days' notice to the policyholder.

(e) If the insurer does not cancel the policy, the insurer shall refund any excess premium from the effective date of the policy.

~~[(4)]~~ (7) (a) Agreements may be made between insurers on the use of reasonable rate modifications for insurance provided under Section 31A-22-310.

(b) These rate modifications shall be filed with the commissioner immediately upon agreement by the insurers.

Section 12. Section **31A-19a-204**, which is renumbered from Section 31A-19-204 is renumbered and amended to read:

~~[31A-19-204].~~        **31A-19a-204. Rates open to inspection.**

~~[Each filing and any supporting]~~

(1) Rates and supplementary rate information filed under this chapter shall~~[, when filed,]~~ be open to public inspection at any reasonable time.

(2) The commissioner shall supply copies to any person on:

(a) request; and [on]

(b) payment of a reasonable charge.

Section 13. Section **31A-19a-205**, which is renumbered from Section 31A-19-205 is renumbered and amended to read:

~~[31A-19-205].~~        **31A-19a-205. Delegation of rate making and rate filing obligation.**

(1) An insurer may:

(a) itself establish rates and supplementary rate information for any market segment based on the factors in Section ~~[31A-19-202,]~~ 31A-19a-202; or [it may]

(b) use rates, pure premium rates, and supplementary rate information prepared by a rate service organization that the insurer selects, with:

(i) average expense factors determined by the rate service organization; or [with]

(ii) any modification for its own expense and loss experience as the credibility of that experience allows.

(2) An insurer may discharge its obligation under Subsection ~~[31A-19-203]~~ 31A-19a-203(1)

by ~~[giving notice to]~~ filing with the commissioner;

(a) notification that ~~[it]~~ the insurer uses pure premium rates and supplementary rate information prepared by a ~~[designated]~~ licensed rate service organization~~[- together with]~~ that the insurer selects; and

(b) any information about modifications ~~[it]~~ the insurer has made to those rates or that information as is necessary fully to inform the commissioner. ~~[The]~~

(3) If an insurer has discharged its obligation in accordance with Subsection (2), the insurer's rates and supplementary rate information shall be those, including any amendments, filed at intervals by the rate service organization, subject to any modifications filed by the insurer.

Section 14. Section **31A-19a-206**, which is renumbered from Section 31A-19-207 is renumbered and amended to read:

~~[31A-19-207].~~            **31A-19a-206. Disapproval of rates.**

~~[(1) If the commissioner finds after a proceeding authorized under Title 63, Chapter 46b, Administrative Procedures Act, that a rate is not in compliance with Section 31A-19-201, the commissioner shall order that its use be discontinued for any policy issued or renewed after a date given in the order.]~~

~~[(2) The order under Subsection (1) shall be issued within 30 days after the close of any proceeding or within a reasonable time extension the commissioner fixes before the expiration of the 30 days.]~~

~~[(3) Within one year after the effective date of an order under Subsection (1), no rate adopted to replace a disapproved one may be used until it has been filed with the commissioner and not disapproved within 30 days after the filing.]~~

(1) (a) Except for a conflict with the requirements of Section 31A-19a-201 or 31A-19a-202, the commissioner may disapprove a rate at any time that the rate directly conflicts with:

(i) this title; or

(ii) any rule made under this title.

(b) The disapproval under Subsection (1)(a) shall:

(i) be in writing;

(ii) specify the statute or rule with which the filing conflicts; and

(iii) state when the rule is no longer effective.

(c) (i) If an insurer's or rate service organization's rate filing is disapproved under Subsection (1)(a), the insurer or rate service organization may request a hearing on the disapproval within 30 calendar days of the date on which the order described in Subsection (1)(a) is issued.

(ii) If a hearing is requested under Subsection (1)(c)(i), the commissioner shall schedule the hearing within 30 calendar days of the date on which the commissioner receives the request for a hearing.

(iii) After the hearing, the commissioner shall issue an order:

(A) approving the rate filing; or

(B) disapproving the rate filing.

(2) (a) If within 90 calendar days of the date on which a rate filing is filed the commissioner finds that the rate filing does not meet the requirements of Section 31A-19a-201 or 31A-19a-202, the commissioner shall send a written order disapproving the rate filing to the insurer or rate organization that made the filing.

(b) The order described in Subsection (2)(a) shall specify how the rate filing fails to meet the requirements of Section 31A-19a-201 or 31A-19a-202.

(c) (i) If an insurer's or rate service organization's rate filing is disapproved under Subsection (2)(a), the insurer or rate service organization may request a hearing on the disapproval within 30 calendar days of the date on which the order described in Subsection (2)(a) is issued.

(ii) If a hearing is requested under Subsection (2)(c)(i), the commissioner shall schedule the hearing within 30 calendar days of the date on which the commissioner receives the request for a hearing.

(iii) After the hearing, the commissioner shall issue an order:

(A) approving the rate filing; or

(B) (I) disapproving the rate filing; and

(II) stating when, within a reasonable time from the date on which the order is issued, the rate is no longer effective.

(d) In a hearing held under this Subsection (2), the insurer or rate service organization bears the burden of proving compliance with the requirements of Section 31A-19a-201 or 31A-19a-202.

(3) (a) If the order described in Subsection (2)(a) is issued after the implementation of the rate filing, the commissioner may order that use of the rate filing be discontinued for any policy issued or renewed on or after a date not less than 30 calendar days from the date the order was issued.

(b) If an insurer or rate service organization requests a hearing under Subsection (2), the order to discontinue use of the rate filing is stayed:

(i) beginning on the date the insurer or rate service organization requests a hearing; and  
(ii) ending on the date the commissioner issues an order after the hearing that addresses the stay.

(4) If the order described in Subsection (2)(a) is issued before the implementation of the rate filing:

(a) an insurer or rate service organization may not implement the rate filing; and  
(b) the rates of the insurer or rate service organization at the time of disapproval continue to be in effect.

(5) (a) If after a hearing the commissioner finds that a rate that has been previously filed and has been in effect for more than 90 calendar days no longer meets the requirements of Section 31A-19a-201 or 31A-19a-202, the commissioner may order that use of the rate by any insurer or rate service organization be discontinued.

(b) The commissioner shall give any insurer that will be affected by an order that may be issued under Subsection (5)(a) notice of the hearing at least ten business days prior to the hearing.

(c) The order issued under Subsection (5)(a) shall:  
(i) be in writing;  
(ii) state the grounds for the order; and  
(iii) state when, within a reasonable time from the date on which the order is issued, the rate is no longer effective.

(d) The order issued under Subsection (5)(a) shall not affect any contract or policy made or

issued prior to the expiration of the period set forth in the order.

(e) The order issued under Subsection (5)(a) may include a provision for a premium adjustment for contracts or policies made or issued after the effective date of the order.

~~[(4) Whenever]~~ (6) (a) When an insurer has no legally effective rates as a result of the commissioner's disapproval of rates or other act, the commissioner shall, on the insurer's request, specify interim rates for the insurer. ~~[These]~~

(b) An interim [rates] rate described in Subsection (6)(a):

(i) shall be high enough to protect the interests of all parties; and

(ii) may, when necessary to protect the policyholders, order that a specified portion of the premiums be placed in an escrow account approved by the commissioner. ~~[-The commissioner may not order the use of an escrow account unless there is reason to be concerned about the financial solidity of the insurer.]~~

(c) When the new rates become effective, the commissioner shall order the escrowed funds or any overcharge in the interim rates to be distributed appropriately, except that minimal refunds to policyholders need not be distributed.

Section 15. Section **31A-19a-207**, which is renumbered from Section 31A-19-206 is renumbered and amended to read:

~~[31A-19-206].~~      **31A-19a-207. Delayed effect of rates.**

(1) [H] (a) The commissioner may by rule require that insurers in a market segment file with the commissioner any changes in rates or supplementary rate information at least 30 calendar days before they become effective if the commissioner finds, after a hearing, that in [any] that market segment[-];

(i) competition is not an effective regulator of the rates charged[-];

(ii) that a substantial number of companies are competing irresponsibly through the rates charged[-]; or

(iii) that there are widespread violations of this chapter[-, the commissioner may adopt a rule requiring that in the market segment comprehended by the finding, any subsequent changes in the rates or supplementary rate information be filed with the commissioner at least 15 days before they

~~become effective].~~

~~(b)~~ The commissioner may extend the waiting period under Subsection (1)(a) for not to exceed ~~[15]~~ 30 additional calendar days by written notice to the filer before the first ~~[15-day]~~ 30-day period expires.

~~(c)~~ In determining whether competition is an effective regulator of the rates charged, the commissioner shall consider, as to the particular market segment:

~~[(a)]~~ (i) the number of insurers actively engaged in providing coverage;

~~[(b)]~~ (ii) the respective market shares of insurers providing coverage;

~~[(c)]~~ (iii) the volatility of market share fluctuations;

~~[(d)]~~ (iv) the ease of entry into the market; and

~~[(e)]~~ (v) any other known relevant factors.

~~[(2)]~~ By rule, the commissioner may require the filing of supporting data in any market segment if he considers it necessary for the proper functioning of the rate monitoring and regulating process. ~~The supporting data shall include:]~~

~~[(a)]~~ the experience and reasoned explanation of the filer, and, to the extent it wishes or the commissioner requires, of other insurers or rate service organizations;]

~~[(b)]~~ its interpretation of any statistical data relied upon;]

~~[(c)]~~ descriptions of the actuarial and statistical methods employed in setting the rates; and]

~~[(d)]~~ any other relevant matters required by the commissioner.]

~~[(3)]~~ A rule adopted under Subsection (1) expires no later than one year after its issuance. ~~The commissioner may renew the rule after a hearing and appropriate findings under Subsection (1).]~~

~~[(4)]~~ Whenever a filing is not accompanied by the information required by Subsection (2), the commissioner may inform the insurer of the lack of required information. ~~The filing is considered to be made when the information is furnished.]~~

~~[(5)]~~ (2)(a) If the commissioner finds that a market segment is noncompetitive under Subsection (1), all rates previously filed and in use may continue to be used until disapproved. ~~[However, upon this]~~

(b) After a finding of a noncompetitive market under Subsection (1), for purposes of

disapproval, the commissioner shall treat the filing of existing rates [~~for purposes of disapproval~~] as having been filed as of the date of the rule under Subsection (1). [~~Section 31A-19-207 then applies.~~]

~~[(6)]~~ (3) A competitive market is presumed to exist, unless the commissioner makes a contrary finding under Subsection (1).

(4) (a) A rule issued under Subsection (1) expires no later than one year [~~after it~~] from the date on which the rule was adopted, unless the commissioner, after a hearing, renews the rule. [~~Renewal hearings~~]

(b) A renewal hearing for a rule issued under Subsection (1) may not be held earlier than nine months after the date on which the rule was issued or last renewed.

Section 16. Section **31A-19a-208**, which is renumbered from Section 31A-19-208 is renumbered and amended to read:

~~[31A-19-208].~~        **31A-19a-208. Special restrictions on individual insurers.**

(1) The commissioner may require by order that a particular insurer file any or all of its rates and supplementary rate information [~~15~~] 30 calendar days prior to their effective date, if [~~he~~] the commissioner finds, after a hearing, that [~~in order~~] to protect the interests of the insurer's insureds and the public in Utah, the commissioner must exercise closer supervision of the insurer's rates, because of the insurer's financial condition or rating practices.

(2) The commissioner may extend the waiting period described in Subsection (1) for any filing for not to exceed [~~15~~] 30 additional calendar days, by written notice to the insurer before the first [~~15-day~~] 30-day period expires.

(3) A filing [~~which~~] that has not been disapproved before the expiration of the waiting period is considered to meet the requirements of this chapter, subject to the possibility of subsequent disapproval under Section [~~31A-19-207~~] 31A-19a-206.

Section 17. Section **31A-19a-209**, which is renumbered from Section 31A-19-209 is renumbered and amended to read:

~~[31A-19-209].~~        **31A-19a-209. Special provisions for title insurance.**

~~[(1) Title insurance is governed by the provisions of this chapter relating to insurance rates~~

and rate filing.]

~~[(2) A title insurance agent, who gives written notice to his title insurance company and receives the title insurance company's written acceptance, may file rates which deviate from those filed by its title insurance company, if the filing is in compliance with this chapter and any rules adopted under it.]~~

~~[(3)] (1) In addition to the considerations in determining compliance with rate standards and rating methods as set forth in ~~[Section 31A-19-202]~~ Sections 31A-19a-201 and 31A-19a-202, the commissioner shall also consider the ~~[cost]~~ costs and ~~[expense]~~ expenses incurred by title insurance companies ~~[and agents in connection with the maintenance of a title plant and other fixed expenses], agencies, and agents peculiar to the business of title insurance[-, including title searches and examination of records required to be performed in the title insurance writing process:]~~ including:~~

(a) the maintenance of title plants; and

(b) the searching and examining of public records to determine insurability of title to real property.

~~[(4) No title insurance company or agent may, in fulfilling the requirements of this chapter, file or use any rate or other charges relating to the business of title insurance which would require the title insurance company or agent to operate at less than the cost of doing business or adequately underwriting the title insurance policies.]~~

~~[(5)] (2) (a) Every title insurance company, agency, and title insurance agent shall file with the commissioner a schedule of the escrow, settlement, and closing charges ~~[which]~~ that it proposes to use in this state for services performed in connection with the issuance of policies of title insurance.~~

~~(b) The filing required by Subsection (2)(a) shall state the effective date of this schedule, which may not be less than 30 calendar days after the date of filing.~~

~~(3) A title insurance company, agency, or agent may not file or use any rate or other charge relating to the business of title insurance, including rates or charges filed for escrow, settlement, and closing charges that would cause the title insurance company, agency, or agent to:~~

~~(a) operate at less than the cost of doing:~~

- (i) the insurance business; or
- (ii) the escrow, settlement, and closing business; or
- (b) fail to adequately underwrite a title insurance policy.

~~[(6)]~~ (4) (a) All or any of the schedule of rates or schedule of charges including the schedule of escrow, settlement, and closing charges, may be changed or amended at any time, subject to the limitations in this ~~[subsection]~~ Subsection (4).

(b) Each change or amendment shall:

- (i) be filed with the commissioner~~[-];~~ and ~~[shall]~~
- (ii) state the effective date of the change or amendment, which may not be less than 30 calendar days after the date of filing.

(c) Any change or amendment remains in force for a period of at least 90 calendar days from its effective date.

~~[(7)]~~ (5) While the schedule of rates and schedule of charges are effective, a copy of each shall be:

- (a) retained in each of the offices of:
  - (i) the insurance company in this state;
  - (ii) its agents in this state~~[-];~~ and~~[-]~~
  - (iii) upon request, ~~[shall be]~~ furnished to the public.

~~[(8)]~~ (6) ~~[No]~~ Except in accordance with the schedules of rates and charges filed with the commissioner, a title insurance company [or title insurance], agency, or agent may not make or impose any premium or other charge;

- (a) in connection with the issuance of a policy of title insurance~~[-];~~ or
- (b) for escrow, settlement, or closing services performed in connection with the issuance of a policy of title insurance~~[-; except in accordance with the schedules of charges filed with the commissioner].~~

Section 18. Section **31A-19a-210** is enacted to read:

**31A-19a-210. Dividend and participating plans.**

(1) (a) This part does not prohibit the distribution by an insurer to a policyholder of any of

the following allowed or returned by the insurer:

(i) dividends;

(ii) savings; or

(iii) unabsorbed premium deposits.

(b) Notwithstanding Subsection (1)(a), an insurer may not distribute dividends, savings, or unabsorbed premium deposits to an entity that has no insurable interest in the insurance.

(2) An insurer may not unfairly discriminate between policyholders in the payment of dividends, savings, or unabsorbed premium deposits.

(3) (a) A declaration of dividends or schedule explaining the basis for the distribution of dividends, savings, or unabsorbed premium deposits allowed or returned by an insurer to its policyholders is not a rating plan or system if the insurer:

(i) determines and declares the declaration or schedule after a specified policy accounting period; and

(ii) files the declaration or schedule pursuant to Section 31A-21-310.

(b) A declaration or schedule described under Subsection (3)(a) is not required to be filed with the commissioner under this chapter.

(4) (a) A dividend or participating plan developed by insurers establishing given criteria for eligibility and the general basis for distribution for a dividend, if declared, is considered a rating plan if the plan is to be applicable to an insurance policy from its inception.

(b) A plan described in Subsection (4)(a) shall be filed with the commissioner pursuant to this part.

(5) An insurer may not make the distribution of a dividend or any portion of a dividend conditioned upon renewal of the policy or contract.

Section 19. Section **31A-19a-211**, which is renumbered from Section 31A-19-210 is renumbered and amended to read:

**[31A-19-210].        31A-19a-211. Premium rate reduction for seniors -- Motor vehicle accident prevention course -- Curriculum -- Certificate -- Exception.**

(1) (a) Each rate, rating schedule, and rating manual for the liability, personal injury

protection, and collision coverages of private passenger motor vehicle insurance policies submitted to or filed with the commissioner shall provide for an appropriate reduction in premium charges for those coverages if the principal operator of the covered vehicle:

(i) is a named insured who is 55 years of age or older; and

(ii) has successfully completed a motor vehicle accident prevention course as outlined in Subsection (2).

(b) Any premium reduction provided by an insurer under this section is presumed to be appropriate unless credible data demonstrates otherwise.

(2) (a) The curriculum for a motor vehicle accident prevention course under this section shall include:

(i) how impairment of visual and audio perception affects driving performance and how to compensate for that impairment;

(ii) the effects of fatigue, medications, and alcohol on driving performance, when experienced alone or in combination, and precautionary measures to prevent or offset ill effects;

(iii) updates on rules of the road and equipment, including safety belts and safe, efficient driving techniques under present day road and traffic conditions;

(iv) how to plan travel time and select routes for safety and efficiency; and

(v) how to make crucial decisions in dangerous, hazardous, and unforeseen situations.

(b) (i) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the Department of Public Safety may make rules to establish and clarify standards pertaining to the curriculum and teaching methods of a course under this section.

(ii) These rules may include provisions allowing the department to conduct on-site visits to ensure compliance with agency rules and this chapter.

(iii) These rules shall be specific as to time and manner of visits and provide for methods to prohibit or remedy forcible visits.

(3) (a) The premium reduction required by this section shall be effective for a named insured for a three-year period after successful completion of the course outlined in Subsection (2).

(b) The insurer may require, as a condition of maintaining the premium reduction, that the

named insured not be convicted or plead guilty or nolo contendere to a moving traffic violation for which points may be assessed against the named insured's driver license except for a violation under Subsection 53-3-221(11).

(4) Each person who successfully completes the course outlined in Subsection (2) shall be issued a certificate by the organization offering the course. The certificate qualifies the person for the premium reduction required by this section.

(5) This section does not apply if the approved course outlined in Subsection (2) is attended as a penalty imposed by a court or other governmental entity for a moving traffic violation.

Section 20. Section **31A-19a-212**, which is renumbered from Section 31A-19-211 is renumbered and amended to read:

~~[31A-19-211].~~      **31A-19a-212. Premium increases prohibited for certain claims or inquiries.**

(1) Each rate, rating schedule, and rating manual filed with the commissioner for insurance covering a vehicle or the operation of a vehicle may not permit a premium increase due to:

(a) a telephone [calls] call or other [inquiries] inquiry that ~~[do]~~ does not result in the payment of a claim; or

(b) a claim resulting from any incident, including acts of vandalism, in which the person named in the policy or any other person using the insured motor vehicle with the express or implied permission of the named insured is not at fault~~[, as defined in Section 78-27-37].~~

(2) This section is an exception to ~~[the provisions of]~~ Section ~~[31A-19-201]~~ 31A-19a-201.

Section 21. Section **31A-19a-213** is enacted to read:

**31A-19a-213. Joint underwriting.**

Notwithstanding Subsection 31A-19a-306(2)(a), insurers participating in joint underwriting associations or joint reinsurance pursuant to Section 31A-20-102 or other arrangements for risk sharing may in connection with such activity act in cooperation with each other in the making of one or more of the following:

(1) rates;

(2) rating systems;

- (3) policy forms;
- (4) underwriting rules;
- (5) surveys;
- (6) inspections and investigations;
- (7) the furnishing of loss and expense statistics or other information; or
- (8) research.

Section 22. Section **31A-19a-214** is enacted to read:

**31A-19a-214. Rating tiers.**

(1) An insurer may file with the commissioner a rate filing that provides for a program with more than one rate level in the same company or group of companies if:

(a) the program is based, to the extent feasible, upon mutually exclusive underwriting rules per tier;

(b) the underwriting rules are based on clear, objective criteria that would lead to a logical distinguishing of potential risk; and

(c) in filing to establish tiers, the insurer provides supporting information that evidences a clear distinction between the expected losses and expenses for each tier.

(2) A rating tier may not be continued if premium, loss, and expense data fail to show a continued clear distinction between the tiers.

Section 23. Section **31A-19a-215** is enacted to read:

**31A-19a-215. False or misleading information.**

A person or organization may not:

(1) willfully withhold from the commissioner, any rate service organization, or any insurer information that will affect the rates or premiums chargeable under this chapter; or

(2) knowingly give false or misleading information to the commissioner, any rate service organization, or any insurer.

Section 24. Section **31A-19a-216** is enacted to read:

**31A-19a-216. Charging of rates.**

An authorized insurer, licensed insurance agent, employee, other representative of an

authorized insurer, or licensed insurance broker may not knowingly:

(1) charge or demand a rate or receive a premium that departs from the rates, rating plans, classifications, schedules, rules, and standards in effect on behalf of the insurer; or

(2) issue or make any policy or contract involving a violation of Subsection (1).

Section 25. Section **31A-19a-217**, which is renumbered from Section 31A-19-418 is renumbered and amended to read:

~~[31A-19-418].~~      **31A-19a-217. Grievance procedures.**

(1) ~~[Any]~~ (a) An insured affected by a rate may submit a written request for information to the rate service organization or insurer that made the rate.

(b) The rate service organization or insurer shall answer ~~[the]~~ a request made under Subsection (1)(a) within ~~[a reasonable time]~~ 45 calendar days from the date it received the request by furnishing all pertinent rating information to:

(i) the insured; or ~~[to his]~~

(ii) the insured's authorized representative.

(2) ~~[Any]~~ (a) A person aggrieved by the manner in which a rate service organization or an insurer has applied its rating system in connection with the insurance afforded to ~~[him]~~ that person may submit a written request for review to the rate service organization or insurer. ~~[The]~~

(b) If a request for review is filed under Subsection (2)(a), the rate service organization or insurer shall provide a reasonable review procedure within Utah.

(c) The ~~[subject of]~~ review shall ~~[be]~~ examine the application of the rating system in connection with the insurance afforded the ~~[applicant]~~ person that requested review.

(d) The ~~[applicant]~~ person that requested review may be heard in person or through an authorized representative.

~~[(3)]~~ (e) If the rate service organization or insurer fails to grant the request for review within 30 calendar days ~~[after it]~~ from the date the request is made, the applicant may appeal in writing to the commissioner. ~~[The]~~

(f) If an appeal is filed under Subsection (2)(e), the commissioner may order the rate service organization or insurer ~~[concerned]~~ to provide the review in accordance with this Subsection (2).

~~[(4) Following]~~ (3) After a review under Subsection (2), the ~~[applicant]~~ person that requested review may request the commissioner to confirm that the insurance afforded was rated according to filed rates and rating plans.

Section 26. Section **31A-19a-218**, which is renumbered from Section 31A-19-419 is renumbered and amended to read:

~~[31A-19-419].~~      **31A-19a-218. Appeal from filing.**

(1) ~~[Any]~~ (a) A person ~~[or organization]~~ aggrieved by a filing that is in effect may apply to the commissioner in writing for a hearing.

(b) The application described under Subsection (1)(a) shall:

(i) specify the grounds upon which the applicant intends to rely to establish the grievance; and ~~[shall]~~

(ii) state why the filing does not meet the requirements of law.

(2) ~~[The]~~ On receipt of an application for hearing under Subsection (1), the commissioner shall grant the requested hearing if ~~[he]~~ the commissioner finds that:

(a) the application was made in good faith;

(b) the grievance is justified, assuming the applicant's grounds can be established; and

(c) the grounds otherwise justify holding such a hearing.

(3) ~~[The]~~ A hearing granted under Subsection (2) shall be held:

(a) within 30 calendar days ~~[after]~~ from the date of receipt of the application; and

(b) not less than ten days after written notice to:

(i) the applicant ~~[and to]~~;

(ii) each insurer ~~[and]~~ that made the filing; and

(iii) each rate service organization that made the filing.

(4) (a) If after the hearing the commissioner finds that the filing is defective, ~~[he]~~ the commissioner shall issue an order:

~~[(a)]~~ (i) specifying the respects in which the filing fails to meet the requirements of the law; and

~~[(b)]~~ (ii) setting a date after which the filing ceases to be effective.

~~[(5) Copies]~~ (b) A copy of the order shall be sent to each party to the dispute.

~~[(6)]~~ (c) The order may not affect any contract or policy made or issued before the date set forth in the order.

Section 27. Section **31A-19a-301**, which is renumbered from Section 31A-19-301 is renumbered and amended to read:

### **Part 3. Rate Service Organization**

~~[31A-19-301].~~ **31A-19a-301. Operation and control of rate service organizations.**

(1) (a) ~~[No]~~ A rate service organization may not provide any service relating to statistical collection or the rates of any insurance ~~[rates]~~ subject to this chapter~~[, and no]~~ unless the organization is licensed under Section 31-19a-302.

(b) An insurer may ~~[utilize]~~ not use the services of the organization for ~~[those purposes]~~ the purposes described in Subsection (1)(a), unless the organization ~~[has obtained a license]~~ is licensed under Section ~~[31A-19-302]~~ 31A-19a-302.

(2) ~~[No]~~ A rate service organization may not refuse to supply any services for which it is licensed in this state to any insurer;

(a) authorized to do business in this state; and ~~[offering]~~

(b) that offers to pay the fair and usual compensation for the services.

Section 28. Section **31A-19a-302**, which is renumbered from Section 31A-19-302 is renumbered and amended to read:

~~[31A-19-302].~~ **31A-19a-302. Licensing of rate service organizations.**

(1) A rate service organization applying for a license shall include with its application:

(a) a copy of its constitution, charter, articles of organization, agreement, association, or incorporation, and a copy of its bylaws, plan of operation, and any other rules or regulations governing the conduct of its business;

(b) a list of its members and subscribers;

(c) the name and address of one or more residents of Utah upon whom notices, processes affecting it, or orders of the commissioner may be served;

(d) a statement explaining in what capacity it plans to function and showing its technical

qualifications for acting in the capacity for which it seeks a license; ~~and~~

(e) biographical information, as defined by the department, of the officers and directors of the organization; and

~~(e)~~ (f) any other relevant information and documents that the commissioner requires.

(2) ~~Every~~ A rate service organization ~~[which has applied]~~ that applies for a license under Subsection (1) shall promptly notify the commissioner of every material change in the facts or in the documents on which its application was based.

(3) ~~If~~ (a) The commissioner shall issue a license specifying the authorized activity of an applicant, if the commissioner finds that:

(i) the applicant and the natural persons through whom it acts are competent, trustworthy, and technically qualified to provide the services proposed; ~~and~~ ~~that~~

(ii) all the requirements of law are met; ~~he shall issue a license specifying the authorized activity of the applicant].~~

(b) The commissioner may not issue a license if the proposed activity would tend to:

(i) create a monopoly; or ~~to~~

(ii) lessen or ~~destroy price~~ substantially lessen the competition in any market.

(4) (a) Any license issued under this chapter shall be subject to annual renewal.

(b) A fee shall be charged for the initial license and for renewal. The fee shall be set by the Legislature under Section 31A-3-103.

(5) Any amendment to a document filed under Subsection (1)(a) shall be filed within at least 30 calendar days ~~before~~ after the day the document becomes effective. Failure to comply with this ~~subsection~~ Subsection (5) is a ground for revocation of the license granted under Subsection (3).

(6) The license of each rate service organization licensed under former Title 31, Chapter 18, is continued under this chapter.

Section 29. Section ~~31A-19a-303~~, which is renumbered from Section 31A-19-303 is renumbered and amended to read:

~~[31A-19-303].~~ **31A-19a-303. Termination of license.**

(1) A license issued under this chapter remains in force until:

(a) revoked, suspended, or limited under Subsection (2);

(b) lapsed under Subsection (3); or

(c) surrendered to and accepted by the commissioner.

(2) (a) After a hearing, the commissioner may revoke, suspend, or limit in whole or in part, the license of any person licensed under this part, if:

(i) the licensee is found to be unqualified ~~[or to]~~;

(ii) the licensee is found to have violated:

(A) an insurance statute~~[;]~~;

(B) a valid rule under Subsection 31A-2-201(3)~~[;]~~; or

(C) a valid order under Subsection 31A-2-201(4)~~[;]~~; or ~~[if]~~

(iii) the licensee's methods and practices in the conduct of business endanger the legitimate interests of policyholders, insurers, or the public. ~~[Every]~~

(b) An order suspending a license issued under this chapter shall specify the period of suspension, but in no event may the suspension period exceed 12 months.

(3) (a) Any license issued under this chapter shall lapse if the licensee fails to pay a fee when due.

(b) A license ~~[lapses]~~ that lapses under this ~~[subsection]~~ Subsection (3) may be reinstated if the licensee, within 90 calendar days ~~[after]~~ from the day the license ~~[has]~~ lapsed, pays twice the usual license renewal fee.

(4) A licensee whose license is suspended or revoked, but who continues to act as a licensee is subject to the penalties applicable to violating Subsection ~~[31A-19-301]~~ 31A-19a-301(1).

(5) (a) An order revoking a license under Subsection (2) may specify a time, not to exceed five years, within which the former licensee may not apply for a new license.

(b) If under Subsection (5)(a) no time is specified, the former licensee may not apply for five years, without the express approval of the commissioner.

(6) (a) Any person whose license is suspended or revoked shall, when the suspension ends or a new license is issued, pay all fees that would have been payable if the license had not been suspended or revoked, unless the commissioner, by order, waives the payment of the interim fees.

(b) If a new license is issued more than three years after the revocation of a similar license, ~~[this subsection shall apply]~~ Subsection (6)(a) applies only to the fees that would have accrued during the three years immediately following the revocation.

Section 30. Section **31A-19a-304**, which is renumbered from Section 31A-19-304 is renumbered and amended to read:

~~[31A-19-304].~~      **31A-19a-304. Probation.**

(1) (a) In any circumstances that would justify a suspension under Section ~~[31A-19-303]~~ 31A-19a-303, instead of a suspension, the commissioner may, after a hearing, put the licensee on probation for a specified period ~~[no longer than]~~ not to exceed 12 months from the date of probation.

(b) The probation order shall state the conditions for retention of the license, which shall be reasonable.

(2) Violation of the probation constitutes grounds for revocation pursuant to a proceeding authorized under Title 63, Chapter 46b, Administrative Procedures Act.

Section 31. Section **31A-19a-305**, which is renumbered from Section 31A-19-305 is renumbered and amended to read:

~~[31A-19-305].~~      **31A-19a-305. Anti-competitive agreements prohibited.**

~~[No]~~ (1) (a) An insurer may not assume any obligation to any person other than a policyholder or other ~~[companies]~~ company under common control, to use or adhere to certain rates or rating procedures~~[, and no other]~~.

(b) Except for a policyholder or other company under common control, a person may not impose any penalty or other adverse consequence for failure of an insurer to adhere to certain rates or rating procedures.

(2) This section does not apply to rates used:

(a) by a joint underwriting group~~[,]~~;

(b) by ~~[pools,]~~ a pool;

(c) under quota share reinsurance treaties~~[,]~~; or

(d) by a residual market ~~[mechanisms]~~ mechanism.

Section 32. Section **31A-19a-306** is enacted to read:

**31A-19a-306. Insurers and rate service organizations -- Prohibited activity.**

(1) An insurer or rate service organization may not:

(a) attempt to monopolize, or combine or conspire with any other person to monopolize an insurance market; or

(b) engage in a boycott of an insurance market on a concerted basis.

(2) (a) Except as provided in Subsection (2)(c), an insurer may not agree with any other insurer or with a rate service organization to mandate adherence to or to mandate use of any:

(i) rate;

(ii) prospective loss cost;

(iii) rating plan;

(iv) rating schedule;

(v) rating rule;

(vi) policy or bond form;

(vii) rate classification;

(viii) rate territory;

(ix) underwriting rule;

(x) survey;

(xi) inspection; or

(xii) material similar to those described in Subsections (2)(a)(i) through (xi).

(b) The fact that two or more insurers, whether or not members or subscribers of a rate service organization, use consistently or intermittently the same materials described in Subsection (2)(a) is not sufficient in itself to support a finding that an agreement exists.

(c) An insurer may enter into an agreement prohibited by Subsection (2)(a):

(i) to the extent needed to facilitate the reporting of statistics to:

(A) a rate service organization;

(B) a statistical agent; or

(C) the commissioner; or

(ii) as provided in Part 4.

(3) Two or more insurers having a common ownership or operating in this state under common management or control may act in concert between or among themselves with respect to any matters pertaining to those activities authorized in this section as if they constituted a single insurer.

(4) An insurer or rate service organization may not make any arrangement with any other insurer, rate service organization, or other person that has the purpose or effect of unreasonably restraining trade or unreasonably lessening competition in the business of insurance.

Section 33. Section **31A-19a-307** is enacted to read:

**31A-19a-307. Rate service organizations -- Permitted activity.**

A rate service organization may on behalf of its members and subscribers:

- (1) develop statistical plans including territorial and class definitions;
- (2) collect statistical data from:
  - (a) members;
  - (b) subscribers; or
  - (c) any other source;
- (3) prepare, file, and distribute prospective loss costs which may include provisions for special assessments;
- (4) prepare, file, and distribute:
  - (a) factors;
  - (b) calculations;
  - (c) formulas pertaining to classification; or
  - (d) territory, increased limits, and other variables;
- (5) prepare, file, and distribute supplementary rating information;
- (6) distribute information that is required or directed to be filed with the commissioner;
- (7) conduct research and on-site inspections to prepare classifications of public fire defenses;
- (8) consult with public officials regarding public fire protection as it would affect members, subscribers, and others;
- (9) conduct research and onsite inspections to discover, identify, and classify information

relating to causes or prevention of losses;

(10) conduct research relating to the impact of statutory changes upon prospective loss costs;

(11) prepare, file, and distribute policy forms and endorsements;

(12) consult with members, subscribers, and others concerning use and application of the policy forms and endorsements described in Subsection (11);

(13) conduct research and on-site inspections for the purpose of providing risk information relating to individual structures;

(14) conduct on-site inspections to determine rating classifications for individual insureds;

(15) collect, compile, and publish past and current prices of individual insurers, provided the information is also made available to the general public at a reasonable cost;

(16) collect and compile exposure and loss experience for the purpose of individual risk experience ratings;

(17) furnish any other services, as approved or directed by the commissioner, related to those enumerated in this section; and

(18) engage in any other activity not prohibited by this title.

Section 34. Section **31A-19a-308** is enacted to read:

**31A-19a-308. Rate service organizations -- Filing requirements.**

(1) A rate service organization shall file with the commissioner any of the following that is used in this state:

(a) any statistical plan;

(b) all prospective loss costs;

(c) provisions for special assessments;

(d) all supplementary rating information; and

(e) any change, amendment, or modification of an item described in Subsections (1)(a) through (d).

(2) The filings required under Subsection (1) shall be subject to Sections 31A-19a-203 and 31A-19a-206 and other provisions of this chapter relating to filings made by insurers.

Section 35. Section **31A-19a-309**, which is renumbered from Section 31A-19-306 is

renumbered and amended to read:

~~[31A-19-306].~~      **31A-19a-309. Recording and reporting of experience.**

(1) (a) The commissioner may adopt rules for the development of statistical plans, for use by all insurers in recording and reporting their loss and expense experience, in order that the experience of those insurers may be made available to the commissioner.

(b) The rules provided for in Subsection (1) may include:

(i) the data that must be reported by an insurer;

(ii) definitions of data elements;

(iii) the timing and frequency of data reporting by an insurer;

(iv) data quality standards;

(v) data edit and audit requirements;

(vi) data retention requirements;

(vii) reports to be generated; and

(viii) the timing of reports to be generated.

(c) Except for workers compensation insurance under Section 31A-19a-404, an insurer may not be required to record or report its experience on a classification basis that is inconsistent with its own rating system.

(2) (a) The commissioner may designate one or more rate service organizations to assist the commissioner in gathering that experience and making compilations of ~~[them, which]~~ the experience.

(b) The compilations developed under Subsection (2)(a) shall be made available to the public. ~~[No insurer may be required to record or report its experience on a classification basis which is inconsistent with its own rating system.]~~

(3) The commissioner may make rules and plans for the interchange of data necessary for the application of rating plans.

(4) To further uniform administration of rate regulatory laws, the commissioner and every insurer and rate service organization may:

(a) exchange information and experience data with insurance supervisory officials, insurers,

and rate service organizations in other states; and

(b) consult with the persons described in Subsection (4)(a) with respect to the application of rating systems and the reporting of statistical data.

Section 36. Section **31A-19a-401**, which is renumbered from Section 31A-19-401 is renumbered and amended to read:

**Part 4. Workers Compensation Rates**

~~[31A-19-401].~~      **31A-19a-401. Scope of part.**

(1) This part applies to ~~[workers']~~ workers compensation insurance and employers' liability insurance written in connection with it.

(2) All insurers writing ~~[workers']~~ workers compensation coverage, including the Workers' Compensation Fund of Utah, are subject to this part.

Section 37. Section **31A-19a-402**, which is renumbered from Section 31A-19-402 is renumbered and amended to read:

~~[31A-19-402].~~      **31A-19a-402. Purpose.**

It is the purpose of this part to:

(1) establish ~~[the general bases and standards]~~ specific provisions for the ~~[making]~~ filing of ~~[workers']~~ workers compensation rates in addition to those provided in Part 2;

(2) provide for review by the department of workers' compensation rate-making and the results of it; and

(3) provide for a designated rate service organization to perform certain functions on behalf of the commissioner.

~~[(3) protect policyholders and the public against the adverse effects of excessive, inadequate, or unfairly discriminatory rates;]~~

~~[(4) promote price competition among insurers to provide rates that are responsive to competitive market conditions;]~~

~~[(5) provide regulatory procedures for the maintenance of appropriate data reporting systems;]~~

~~[(6) improve availability, fairness, and reliability of insurance;]~~

~~[(7) authorize essential cooperation among insurers in the rate-making process and regulate this cooperation to prevent collusion or other practices that tend to diminish competition in any substantial way or create a monopoly; and]~~

~~[(8) encourage the most efficient and economic marketing practices.]~~

Section 38. Section **31A-19a-403**, which is renumbered from Section 31A-19-403 is renumbered and amended to read:

~~[**31A-19-403**].~~      **31A-19a-403**. **Definitions.**

As used in this part:

~~[(1) "Classification system" or "classification" means the plan, system, or arrangement for recognizing differences in exposure to hazards among industries, occupations, or operations of insurance policyholders.]~~

~~[(2) "Expenses" means the portion of any rate attributable to acquisition, field supervision, collection expenses, general expenses, taxes, licenses, and fees.]~~

~~[(3) "Experience rating" means a rating procedure utilizing past insurance experience of the individual policyholder to forecast future losses by measuring the policyholder's loss experience against the loss experience of policyholders in the same classification to produce a prospective premium credit, debit, or unity modification.]~~

~~[(4) "Loss trending" means any procedure for projecting developed losses to average date of loss for the period during which the policies are to be effective.]~~

~~[(5) "Prospective loss costs" are the portion of a rate that:]~~

~~[(a) does not include provisions for profit or expenses, other than loss adjustment expenses; and]~~

~~[(b) is based on historical aggregate losses and loss adjustment expenses adjusted through development to their ultimate value and projected through trending to a future point in time.]~~

~~[(6) (a) "Rate" means the cost of insurance per exposure base unit before any application of individual risk variations based on loss or expense considerations.]~~

~~[(b) "Rate" does not include minimum premiums.]~~

~~[(7) "Statistical plan" means the plan, system, or arrangement used in collecting data.]~~

~~[(8) "Supporting information" means:]~~

~~[(a) the experience and judgment of the filer;]~~

~~[(b) the experience or data of other insurers or organizations upon which the filer relies;]~~

~~[(c) the interpretation of any statistical data upon which the filer relies;]~~

~~[(d) descriptions of methods used in making the rates; and]~~

~~[(e) any other similar information the commissioner requires to be filed.]~~

(1) "Uniform classification plan," in addition to the definition of "classification system" in Section 31A-19a-201, means a plan:

(a) that is consistent between all insurers of classification codes and descriptions; and

(b) by which like workers compensation exposures are grouped for the purposes of underwriting, rating, and statistical reporting.

(2) "Uniform experience rating plan" means a plan that is consistent between all insurers for experience rating entities insured for workers compensation insurance.

(3) "Uniform statistical plan" means a plan that is consistent between all insurers that is used for the reporting of workers compensation insurance statistical data.

Section 39. Section **31A-19a-404**, which is renumbered from Section 31A-19-407 is renumbered and amended to read:

~~[31A-19-407].~~        **31A-19a-404. Designated rate service organization.**

(1) ~~[Each workers' compensation insurer shall adhere to a uniform classification system]~~ For purposes of workers compensation insurance, the commissioner shall designate one rate service organization to:

(a) develop and administer the uniform statistical plan, uniform classification plan, and uniform experience rating plan filed with and approved by the commissioner [by the rate service organization designated by the commissioner and subject to his disapproval.];

~~[(2) An insurer may develop subclassifications of the uniform classification system upon which a rate may be made. Any subclassifications shall be filed with the commissioner 30 days before their use. The commissioner shall disapprove subclassifications if the insurer fails to demonstrate that the data produced by the subclassifications can be reported consistently with the~~

~~uniform statistical plan and classification system. (3) The commissioner shall designate a rate service organization to]~~

~~(b) assist [him] the commissioner in gathering, compiling, and reporting relevant statistical information[. Each workers' compensation insurer shall record and report its workers' compensation experience to the designated rate service organization as set forth in the uniform statistical plan approved by the commissioner. (4) The designated rate service organization shall] on an aggregate basis;~~

~~(c) develop and file manual rules, subject to the approval of the commissioner, that are reasonably related to the recording and reporting of data pursuant to the uniform statistical plan, uniform experience rating plan, and the uniform classification [system. Each workers' compensation insurer shall adhere to the approved manual rules and] plan; and~~

~~(d) develop and file the prospective loss costs pursuant to Section 31A-19a-406.~~

~~(2) The uniform experience rating plan [in writing and reporting its business. An insurer may not agree with any other insurer or with a rate service organization to adhere to manual rules that are not reasonably related to] shall:~~

~~(a) contain reasonable eligibility standards;~~

~~(b) provide adequate incentives for loss prevention; and~~

~~(c) provide for sufficient premium differentials so as to encourage safety.~~

~~(3) Each workers compensation insurer, directly or through its selected rate service organization, shall:~~

~~(a) record and report its workers compensation experience to the designated rate service organization as set forth in the uniform statistical plan approved by the commissioner;~~

~~(b) adhere to a uniform classification plan and uniform experience rating plan filed with the commissioner by the rate service organization designated by the commissioner; and~~

~~(c) adhere to the prospective loss costs filed by the designated rate service organization.~~

~~(4) The commissioner may adopt rules for:~~

~~(a) the development and administration by the designated rate service organization of the:~~

~~(i) uniform statistical plan;~~

(ii) uniform experience rating plan; and

(iii) uniform classification plan;

(b) the recording and reporting of statistical data [pursuant to the uniform classification system or the uniform statistical plan] and experience rating data by the various insurers writing workers compensation insurance;

(c) the selection, retention, and termination of the designated rate service organization; and

(d) providing for the equitable sharing and recovery of the expense of the designated rate service organization to develop, maintain, and provide the plans, services, and filings that are used by the various insurers writing workers compensation insurance.

(5) (a) Notwithstanding Subsection (3), an insurer may develop directly or through its selected rate service organization subclassifications of the uniform classification system upon which a rate may be made.

(b) A subclassification shall be filed with the commissioner 30 days before its use.

(c) The commissioner shall disapprove subclassifications if the insurer fails to demonstrate that the data produced by the subclassifications can be reported consistently with the uniform statistical plan and uniform classification plan.

(6) Notwithstanding Subsection (3), an insurer may, directly or through its selected rate service organization, develop its own experience modifications based on the uniform statistical plan, uniform classification plan, and uniform rating plan filed by the rate service organization designated by the commissioner under Subsection (1).

Section 40. Section **31A-19a-405**, which is renumbered from Section 31A-19-408 is renumbered and amended to read:

~~[31A-19-408].~~      **31A-19a-405. Filing of rates and other rating information.**

(1) (a) [Each insurer shall file with the commissioner all] All workers compensation rates [and], supplementary rate information [that are to be used in this state, except as provided in Section 31A-19-407. Rates, supplementary rate information as defined in Section 31A-19-102], and supporting information [required by the commissioner] shall be filed at least 30 days before the effective date[- Upon] of the rate or information.

(b) Notwithstanding Subsection (1)(a), on application by the filer, the commissioner may authorize an earlier effective date.

(2) The loss and loss adjustment expense factors included in the rates filed under Subsection (1) shall be the prospective loss costs filed by the designated rate service organization under Section ~~[31A-19-414]~~ 31A-19a-406.

~~[(3) Rates filed under this section shall be filed in a form and manner prescribed by the commissioner. If a filing is submitted without the supporting information required by the commissioner under this section, the commissioner shall inform the insurer of the omission as soon as possible. The filing is not considered to be made until this information is furnished.]~~

~~[(4) All rates, supplementary rate information, and any supporting information for risks filed under this part shall, as soon as filed, be open to public inspection at any reasonable time. Copies of these documents may be obtained by any person on request and upon payment of a reasonable charge.]~~

Section 41. Section **31A-19a-406**, which is renumbered from Section 31A-19-414 is renumbered and amended to read:

~~[31A-19-414].~~        **31A-19a-406. Filing requirements for designated rate service organization.**

(1) The rate service organization designated ~~[by the commissioner under this part]~~ under Section 31A-19a-404 shall file with the commissioner the following items proposed for use in this state at least 30 calendar days before the date they are distributed to members, subscribers, or others:

- (a) each prospective loss cost with its supporting information;
- (b) ~~[each manual of]~~ the uniform classification plan and rating [rules] manual;
- (c) ~~[each]~~ the uniform experience rating [schedule; and] plan manual;
- (d) the uniform statistical plan manual; and

~~[(d)]~~ (e) each change, amendment, or modification of any of [these] the items listed in Subsections (1)(a) through (d).

(2) (a) If the commissioner believes that prospective loss costs filed violate the excessive, inadequate, or unfair discriminatory standard in Section ~~[31A-19-404]~~ 31A-19a-201 or any other

applicable requirement of this part, ~~he~~ the commissioner may require that the rate service organization file additional supporting information.

(b) If, after reviewing the supporting information, the commissioner determines that the prospective loss costs violate these requirements, ~~he~~ the commissioner may:

(i) require that adjustments to the prospective loss costs be made~~[-He may also];~~ or

(ii) call a hearing for any purpose regarding the filing.

Section 42. Section **31A-19a-407** is enacted to read:

**31A-19a-407. Cooperation among rating organizations and insurers.**

(1) Notwithstanding Section 31A-19a-305, rate service organizations and insurers may cooperate with each other in rate-making or in other matters within the scope of this part.

(2) (a) The commissioner may review the cooperative activities and practices permitted under Subsection (1).

(b) If, after a hearing, the commissioner finds any of the cooperative activities or practices permitted under Subsection (1) to be unfair, unreasonable, or otherwise inconsistent with the law, the commissioner may issue an order:

(i) specifying in what respects the activity or practice is unfair, unreasonable, or otherwise inconsistent with the law; and

(ii) requiring the persons or entities involved to discontinue the activity or practice.

Section 43. Section **31A-33-107** is amended to read:

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

(1) The board shall:

(a) appoint a chief executive officer to administer the Workers' Compensation Fund;

(b) receive and act upon financial, management, and actuarial reports covering the operations of the Workers' Compensation Fund;

(c) ensure that the Workers' Compensation Fund is administered according to law;

(d) examine and approve an annual operating budget for the Workers' Compensation Fund;

(e) serve as investment trustees and fiduciaries of the Injury Fund;

- (f) receive and act upon recommendations of the chief executive officer;
  - (g) develop broad policy for the long-term operation of the Workers' Compensation Fund, consistent with its mission and fiduciary responsibility;
  - (h) subject to Chapter ~~[19]~~ 19a, Part ~~[IV, Workers']~~ 4, Workers Compensation ~~[Ratemaking]~~ Rates, approve any rating plans that would modify a policyholder's premium;
  - (i) subject to Chapter ~~[19]~~ 19a, Part ~~[IV, Workers']~~ 4, Workers Compensation ~~[Ratemaking]~~ Rates, approve the amount of deviation, if any, from standard insurance rates;
  - (j) approve the amount of the dividends, if any, to be returned to policyholders;
  - (k) adopt a procurement policy consistent with the provisions of Title 63, Chapter 56, Utah Procurement Code;
    - (1) develop and publish an annual report to policyholders, the governor, the Legislature, and interested parties that describes the financial condition of the Injury Fund, including a statement of expenses and income and what measures were taken or will be necessary to keep the Injury Fund actuarially sound;
    - (m) establish a fiscal year;
    - (n) determine and establish an actuarially sound price for insurance offered by the fund;
    - (o) establish conflict of interest requirements that govern the board, officers, and employees;
  - and
  - (p) perform all other acts necessary for the policymaking and oversight of the Workers' Compensation Fund.
    - (2) Subject to board review and its responsibilities under Subsection (1)(e), the board may delegate authority to make daily investment decisions.
    - (3) The fund may form or acquire a subsidiary or enter into a joint enterprise:
      - (a) only if that action is approved by the board; and
      - (b) subject to the limitations in Section 31A-33-103.5.
- Section 44. Section **31A-33-111** is amended to read:
- 31A-33-111. Adoption of rates.**
- (1) The Workers' Compensation Fund shall adopt the rates approved by the insurance

commissioner under Chapter ~~[19]~~ 19a, Part ~~[IV]~~ 4, Workers Compensation Rates.

(2) The chief executive officer, with the approval of the board, may file with the insurance commissioner a resolution to deviate from the rates approved by the insurance commissioner in order to provide workers' compensation insurance at the lowest possible cost to policyholders consistent with maintaining the actuarial soundness of the Injury Fund.

Section 45. Section **34A-2-202** is amended to read:

**34A-2-202. Assessment on employers and counties, cities, towns, or school districts paying compensation direct.**

(1) (a) An employer, including a county, city, town, or school district, who by authority of the division under Section 34A-2-201 is authorized to pay compensation direct shall pay annually, on or before March 31, an assessment in accordance with this section and rules made by the commission under this section.

(b) The assessment required by Subsection (1)(a) is to be collected by the State Tax Commission and paid by the State Tax Commission into the state treasury as provided in Subsection 59-9-101(2).

(c) The assessment under Subsection (1)(a) shall be based on a total calculated premium multiplied by the premium assessment rate established pursuant to Subsection 59-9-101(2).

(d) The total calculated premium, for purposes of calculating the assessment under Subsection (1)(a), shall be calculated by:

(i) multiplying the total of the standard premium for each class code calculated in Subsection (1)(e) by the employer's experience modification factor; and

(ii) multiplying the total under Subsection (1)(d)(i) by a safety factor determined under Subsection (1)(g).

(e) A standard premium shall be calculated by:

(i) multiplying the prospective loss cost for the year being considered, as filed with the insurance department pursuant to Section ~~[31A-19-414]~~ 31A-19a-406, for each applicable class code by 1.10 to determine the manual rate for each class code; and

(ii) multiplying the manual rate for each class code under Subsection (1)(e)(i) by each \$100

of the employer's covered payroll for each class code.

(f) (i) Each employer paying compensation direct shall annually obtain the experience modification factor required in Subsection (1)(d)(i) by using the rate service organization designated by the insurance commissioner in [~~Subsection 31A-19-407(3)~~] Section 31A-19a-404.

(ii) If an employer's experience modification factor under Subsection (1)(f)(i) is less than 0.50, the employer shall use an experience modification factor of 0.50 in determining the total calculated premium.

(g) To provide incentive for improved safety, the safety factor required in Subsection (1)(d)(ii) shall be determined based on the employer's experience modification factor as follows:

EXPERIENCE		
MODIFICATION FACTOR		SAFETY FACTOR
Less than or equal to 0.90	0.56	
Greater than 0.90 but less than or equal to 1.00		0.78
Greater than 1.00 but less than or equal to 1.10		1.00
Greater than 1.10 but less than or equal to 1.20		1.22
Greater than 1.20	1.44	

(h) (i) A premium or premium assessment modification other than a premium or premium assessment modification under this section may not be allowed.

(ii) If an employer paying compensation direct fails to obtain an experience modification factor as required in Subsection (1)(f)(i) within the reasonable time period established by rule by the State Tax Commission, the State Tax Commission shall use an experience modification factor of 2.00 and a safety factor of 2.00 to calculate the total calculated premium for purposes of determining the assessment.

(iii) Prior to calculating the total calculated premium under Subsection (1)(h)(ii), the State Tax Commission shall provide the employer with written notice that failure to obtain an experience modification factor within a reasonable time period, as established by rule by the State Tax Commission:

(A) shall result in the State Tax Commission using an experience modification factor of 2.00

and a safety factor of 2.00 in calculating the total calculated premium for purposes of determining the assessment; and

(B) may result in the division revoking the employer's right to pay compensation direct.

(i) The division may immediately revoke an employer's certificate issued under Section 34A-2-201 that permits the employer to pay compensation direct if the State Tax Commission assigns an experience modification factor and a safety factor under Subsection (1)(h) because the employer failed to obtain an experience modification factor.

(2) Notwithstanding the annual payment requirement in Subsection (1)(a), an employer whose total assessment obligation under Subsection (1)(a) for the preceding year was \$10,000 or more shall pay the assessment in quarterly installments in the same manner provided in Section 59-9-104 and subject to the same penalty provided in Section 59-9-104 for not paying or underpaying an installment.

(3) (a) The State Tax Commission shall have access to all the records of the division for the purpose of auditing and collecting any amounts described in this section.

(b) Time periods for the State Tax Commission to allow a refund or make an assessment shall be determined in accordance with Section 59-9-106.

(4) (a) A review of appropriate use of job class assignment and calculation methodology may be conducted as directed by the division at any reasonable time as a condition of the employer's certification of paying compensation direct.

(b) The State Tax Commission shall make any records necessary for the review available to the commission.

(c) The commission shall make the results of any review available to the State Tax Commission.

Section 46. Section **53-1-106** is amended to read:

**53-1-106. Department duties -- Powers.**

(1) In addition to the responsibilities contained in this title, the department shall:

(a) make rules and perform the functions specified in Title 41, Chapter 6, Traffic Rules and Regulations, including:

(i) setting performance standards for towing companies to be used by the department, as required by Section 41-6-102; and

(ii) advising the Department of Transportation regarding the safe design and operation of school buses, as required by Section 41-6-115;

(b) make rules to establish and clarify standards pertaining to the curriculum and teaching methods of a motor vehicle accident prevention course under Section ~~[31A-19-210]~~ 31A-19a-211;

(c) aid in enforcement efforts to combat drug trafficking using funds appropriated under Section 58-37-20;

(d) as part of the annual budget hearings, provide the Executive Offices, Criminal Justice, and Legislature Appropriations Subcommittee with a complete accounting of expenditures and revenues from the funds under Section 58-37-20;

(e) meet with the Department of Administrative Services to formulate contracts, establish priorities, and develop funding mechanisms for dispatch and telecommunications operations, as required by Section 63A-6-107;

(f) provide assistance to the Crime Victims' Reparations Board and Reparations Office in conducting research or monitoring victims' programs, as required by Section 63-25a-405;

(g) develop sexual assault exam protocol standards in conjunction with the Utah Hospital Association, as required by Section 63-25a-409; and

(h) engage in emergency planning activities, including preparation of policy and procedure and rulemaking necessary for implementation of the federal Emergency Planning and Community Right to Know Act of 1986, as required by Section 63-5-5.

(2) (a) The department may establish a schedule of fees as required or allowed in this title for services provided by the department.

(b) The fees shall be established in accordance with Section 63-38-3.2.

**Section 47. Repealer.**

This act repeals:

**Section 31A-19-404, Rate standard.**

**Section 31A-19-405, Payment of dividends.**

**Section 31A-19-406, Rating criteria.**

**Section 31A-19-409, Excess rates.**

**Section 31A-19-410, Uniform experience rating plan.**

**Section 31A-19-411, Timing of rate disapproval.**

**Section 31A-19-412, Basis for rate disapproval.**

**Section 31A-19-413, Rate disapproval procedure.**

**Section 31A-19-415, Cooperation among rating organizations and insurers.**

**Section 31A-19-416, Rate service organization activities.**

**Section 31A-19-417, Rating organization committee membership.**

**Section 31A-19-420, Cooperation among rating organizations and insurers.**