INSURANCE LAW AMENDMENTS

1999 GENERAL SESSION

STATE OF UTAH

Sponsor: Gerry A. Adair

AN ACT RELATING TO INSURANCE; AMENDING DEFINITIONS; PERMITTING WAIVER OF RETALIATORY REOUIREMENTS: PERMITTING THE DEPARTMENT TO OBTAIN CRIMINAL BACKGROUND INFORMATION IN CERTAIN CIRCUMSTANCES; AMENDING CERTAIN INVESTMENT LIMITATIONS; AMENDING LICENSE CLASSIFICATIONS; AMENDING CONTINUING EDUCATION REQUIREMENTS; PROVIDING SPECIAL REQUIREMENTS FOR THE VARIABLE ANNUITY LINE OF AUTHORITY; ADDRESSING LICENSING FEES; CLARIFYING PROVISIONS FOR AGENCY LICENSES; AMENDING PROVISIONS FOR A RECEIVER SEEKING JUDGMENTS OR ORDERS; PROVIDING FOR IMMUNITY AND INDEMNIFICATION OF RECEIVERS: ADDRESSING RECORDING OF AN ORDER FOR LIQUIDATION: ADDRESSING SETOFFS; ADDRESSING FILING OF CLAIMS IN LIQUIDATION; ADDRESSING DISPUTED CLAIMS IN LIQUIDATION; ADDRESSING RETROSPECTIVE OPERATION OF PRIORITIES IN DISTRIBUTION OF AN INSURER'S ESTATE: ADDRESSING SCOPE OF THE INDIVIDUAL AND SMALL EMPLOYER HEALTH INSURANCE ACT; REENACTING RETROSPECTIVELY THE MEDICAL CARE SAVINGS ACCOUNT ACT; AMENDING PROVISIONS RELATED TO THE BAIL BOND SURETY OVERSIGHT BOARD; AMENDING COMMISSIONER'S RESPONSIBILITIES UNDER BAIL BOND ACT: ALLOWING THE COMMISSIONER TO PROHIBIT BAIL BOND ACTIVITIES BY RULE; ADDRESSING PUBLICATIONS BY THE DEPARTMENT; AMENDING SUNSET PROVISIONS; PROVIDING LEGISLATIVE INTENT; AND MAKING TECHNICAL CHANGES.

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

31A-1-104, as last amended by Chapter 329, Laws of Utah 199831A-1-105, as last amended by Chapter 305, Laws of Utah 1993

- 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-3-401**, as last amended by Chapter 95, Laws of Utah 1987
- 31A-4-106, as last amended by Chapter 227, Laws of Utah 1997
- **31A-5-102**, as last amended by Chapter 20, Laws of Utah 1995
- 31A-5-218, as last amended by Chapter 9, Laws of Utah 1996, Second Special Session
- **31A-16-103**, as last amended by Chapters 4 and 305, Laws of Utah 1993
- **31A-16-111**, as last amended by Chapter 258, Laws of Utah 1992
- 31A-17-201, as last amended by Chapter 9, Laws of Utah 1996, Second Special Session
- 31A-17-202, as last amended by Chapter 9, Laws of Utah 1996, Second Special Session
- 31A-17-609, as last amended by Chapter 185, Laws of Utah 1997
- 31A-18-106, as last amended by Chapter 9, Laws of Utah 1996, Second Special Session
- 31A-18-108, as last amended by Chapter 185, Laws of Utah 1997
- 31A-23-102, as last amended by Chapters 293 and 329, Laws of Utah 1998
- 31A-23-203, as last amended by Chapter 9, Laws of Utah 1996, Second Special Session
- 31A-23-204, as last amended by Chapters 293 and 329, Laws of Utah 1998
- 31A-23-206, as last amended by Chapter 9, Laws of Utah 1996, Second Special Session
- 31A-23-212, as last amended by Chapter 9, Laws of Utah 1996, Second Special Session
- 31A-23-215, as last amended by Chapter 329, Laws of Utah 1998
- **31A-23-405**, as enacted by Chapter 242, Laws of Utah 1985
- 31A-26-204, as enacted by Chapter 242, Laws of Utah 1985
- 31A-26-206, as last amended by Chapter 9, Laws of Utah 1996, Second Special Session
- 31A-27-102, as last amended by Chapter 9, Laws of Utah 1996, Second Special Session
- **31A-27-104**, as enacted by Chapter 242, Laws of Utah 1985
- 31A-27-307, as last amended by Chapter 9, Laws of Utah 1996, Second Special Session
- **31A-27-310**, as enacted by Chapter 242, Laws of Utah 1985
- 31A-27-323, as last amended by Chapter 9, Laws of Utah 1996, Second Special Session
- 31A-27-328, as last amended by Chapter 344, Laws of Utah 1995

31A-27-332, as last amended by Chapter 185, Laws of Utah 1997
31A-27-335, as last amended by Chapter 344, Laws of Utah 1995
31A-30-104, as last amended by Chapter 265, Laws of Utah 1997
31A-35-201, as enacted by Chapter 293, Laws of Utah 1998
31A-35-202, as enacted by Chapter 293, Laws of Utah 1998
31A-35-301, as enacted by Chapter 293, Laws of Utah 1998
31A-35-701, as enacted by Chapter 293, Laws of Utah 1998
49-5-301, as last amended by Chapter 101, Laws of Utah 1993
59-9-105, as last amended by Chapter 305, Laws of Utah 1993
59-10-114, as last amended by Chapter 56, Laws of Utah 1998
ENACTS:

31A-23-211.7, Utah Code Annotated 1953

31A-27-110, Utah Code Annotated 1953

31A-32a-101, Utah Code Annotated 1953

31A-32a-102, Utah Code Annotated 1953

31A-32a-103, Utah Code Annotated 1953

31A-32a-104, Utah Code Annotated 1953

31A-32a-105, Utah Code Annotated 1953

31A-32a-106, Utah Code Annotated 1953

31A-32a-107, Utah Code Annotated 1953

REPEALS:

31A-23-306, as enacted by Chapter 242, Laws of Utah 1985

31A-25-101, as last amended by Chapter 344, Laws of Utah 1995

This act enacts uncodified material.

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

Section 1. Section **31A-1-104** is amended to read:

31A-1-104. Authorization to do insurance business.

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A person may not engage in the following without complying with this title:

(1) do an insurance business as defined under [Subsection] Section 31A-1-301 [(44)];

(2) act as an insurance agent, broker, or consultant as defined under Section 31A-1-301; or

(3) engage in insurance adjusting as defined under Section 31A-26-102.

Section 2. Section **31A-1-105** is amended to read:

31A-1-105. Presumption of jurisdiction.

(1) Any insurer, including the Workers Compensation Fund of Utah, that provides coverage of a resident of this state, property located in this state, or a business activity conducted in this state, or that engages in any activity described in Subsections 31A-15-102(2)(a) through (h), is:

(a) doing an insurance business in this state; and [is]

(b) subject to the jurisdiction of the insurance commissioner and the courts of this state under Sections 31A-2-309 and 31A-2-310 to the extent of that coverage or activity.

(2) Any person doing or purporting to do an insurance business in this state as defined in [Subsection] Section 31A-1-301 [(44)] is subject to the jurisdiction of the insurance commissioner and this title, unless the insurer can establish that the exemptions of Section 31A-1-103 apply.

(3) This section does not limit the jurisdiction of the courts of this state under other applicable law.

Section 3. Section **31A-1-301** is amended to read:

31A-1-301. Definitions.

As used in this title, unless otherwise specified:

[(0.5)] (1) "Administrator" is defined in Subsection [(77)] (90).

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

[(2)] (3) "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)] (4) "Alien insurer" means an insurer domiciled outside the United States.

[(4)] (5) ["Annuities"] "Annuity" means [all agreements] an agreement 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)] (6) "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)] (7) "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)] (8) "Binder" is defined in Section 31A-21-102.

[(8)] (9) "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)] (10) "Business of insurance" is defined in Subsection [(44)] (53).

[(10)] (11) "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:

- (a) Section 31A-7-201[,];
- (b) Section 31A-8-205[,]; or
- (c) Subsection 31A-9-205(2).

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

[(12)] (13) "Casualty insurance" means liability insurance as defined in Subsection [(50)] (59).

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

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

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[(14.5)] (16) "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)] (17) "Claims-made coverage" means [any] an 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)] (18) (a) "Commissioner" or "commissioner of insurance" means Utah's insurance commissioner.

(b) [Where] When appropriate, [these] the terms listed in Subsection (18)(a) apply to the equivalent supervisory official of another jurisdiction.

[(16)] (19) (a) "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:

(i) by contract[,];

(ii) by common management[,];

(iii) through the ownership of voting securities[,]; or

(iv) [otherwise] by a means other than those described in Subsections (19)(a)(i) through (iii).

(b) There is no presumption that an individual holding an official position with another person controls that person solely by reason of the position.

(c) A person having a contract or arrangement giving control is considered to have control despite the illegality or invalidity of the contract or arrangement.

(d) 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)] (20) (a) "Corporation" means insurance corporation, except [where] when referring to:

(i) a corporation doing business as an insurance broker, consultant, or adjuster under:

(A) Chapter 23, Insurance Marketing - Licensing Agents, Brokers [and], Consultants, and Reinsurance Intermediaries[;]; and

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(B) Chapter 26, Insurance Adjusters[, to corporations doing business as insurance agents, brokers, consultants, or adjusters, or where referring]; or

(ii) a noninsurer that is part of a holding company system 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 <u>a</u> mutual insurance corporation.

[(18)] (21) "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)] (22) "Credit insurance" means surety insurance under which mortgagees and other creditors are indemnified against losses caused by the default of debtors.

[(20)] (23) "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)] (24) "Creditor" means a person, including an insured, having any claim, whether:

(a) matured[,];

(b) unmatured[,];

(c) liquidated[;];

(d) unliquidated[;];

<u>(e)</u> secured[,];

(f) unsecured[;];

(g) absolute[,];

(<u>h</u>) fixed[,]; or

(i) contingent.

(25) (a) "Customer service representative" means a person that provides insurance services and insurance product information:

(i) for its agent, broker, or consultant employer; and

(ii) to its employer's customer, client, or organization.

(b) A customer service representative may only operate within the scope of authority of its

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agent, broker, or consultant employer.

[(22)] (26) "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)] (27) "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)] (28) "Department" means the Insurance Department.

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

[(26)] (30) "Disability insurance" means insurance written to:

(a) indemnify for losses and expenses resulting from accident or sickness[, to];

(b) provide payments to replace income lost from accident or sickness[,]; and [to]

(c) pay for services resulting directly from accident or sickness, including medical, surgical, hospital, and other ancillary expenses.

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

[(28)] (32) "Domiciliary state" means the state in which an insurer:

(a) is incorporated [or];

(b) is organized; or[,]

(c) in the case of an alien insurer, [the state of entry] enters into the United States.

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

[(30)] (34) (a) "Employee welfare fund" means a fund:

(i) established or maintained, whether directly or through trustees, by:

(A) one or more employers[;];

(B) one or more labor organizations[;]; or

(C) a combination of employers and labor organizations[, whether directly or through trustees. This fund is to provide]; and

(ii) that provides 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]

(b) "Employee welfare fund" includes [plans] a plan funded or subsidized by user fees or tax revenues.

[(31)] (35) "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)] (36) "Fidelity insurance" means insurance guaranteeing the fidelity of persons holding positions of public or private trust.

[(31.7)] (37) "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)] (38) "Foreign insurer" means an insurer domiciled outside of this state, including an alien insurer.

[(33)] <u>(39) (a)</u> "Form" means a policy, certificate, or application prepared for general use. [Ht]

(b) "Form" does not include [one] <u>a document</u> specially prepared for use in an individual case. [Refer also to "policy" in this section.]

[(34)] (40) "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)] (41) (a) "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.

(b) "Health care insurance" or "health insurance" does not include disability insurance providing benefits for:

[(a)] (i) replacement of income;

[(b)] (ii) short-term accident;

[(c)] (iii) fixed indemnity;

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[(d)] (iv) credit disability;

[(e)] (v) supplements to liability;

[(f)] (vi) workers' compensation;

[(g)] (vii) automobile medical payment;

[(h)] (viii) no-fault automobile;

[(i)] (ix) equivalent self-insurance; or

[(j)] (x) any type of disability insurance coverage that is a part of or attached to another type of policy.

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

[(36)] (43) "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)] <u>(44)</u> "Independently procured insurance" means insurance procured under Section 31A-15-104.

[(37.5)] (45) "Individual" means a natural person.

[(38)] (46) "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)] (47) "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)] (48) (a) "Insurance" means [any]:

(i) an 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]

(ii) an 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] that person's risk.

(b) "Insurance" includes:

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

[(b)] (ii) 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)] (iii) 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)] (49) "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)] (50) "Interinsurance exchange" is defined in Subsection [(69)] (81).

[(42)] (51) Except as provided in Subsection 31A-23-102(2), "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)] (52) Except as provided in Subsection 31A-23-102(2), "insurance broker" or "broker" means a person who acts in procuring insurance on behalf of an applicant for insurance or an insured[,]; and

(b) 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)] (53) "Insurance business" or "business of insurance" includes:

(a) providing health care insurance, as defined in Subsection [(35)] (41), by organizations that are or should be licensed under this title;

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(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:

(i) by single employers or by multiple employer groups; or

(ii) 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)] (65);

(e) providing other persons with insurance as defined in Subsection [(40)] (48);

(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)]
 (53)(a) through (g) in a manner designed to evade the provisions of this title.

[(45)] (54) Except as provided in Subsection 31A-23-102(2), "insurance consultant" or "consultant" means a person who:

(a) advises other persons about insurance needs and coverages[;];

(b) is compensated by the person advised on a basis not directly related to the insurance placed[-]; and

(c) 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)] (55) "Insurance holding company system" means a group of two or more affiliated persons, at least one of whom is an insurer.

[(47)] (56) (a) "Insured" means a person to whom or for whose benefit an insurer makes a promise in an insurance policy[. The term] and includes:

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(i) policyholders[,];

(ii) subscribers[;];

(iii) members[,]; and

(iv) beneficiaries. [This]

(b) The definition in Subsection (56)(a) 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)] (57) (a) (i) "Insurer" means any person doing an insurance business as a principal[,] including:

(A) fraternal benefit societies[;];

(B) issuers of gift annuities other than those specified in Subsections 31A-22-1305(2) and (3)[,];

(C) motor clubs[;];

(D) employee welfare plans[,]; and

(E) any person purporting or intending to do an insurance business as a principal on [his] that person's own account. [Ht]

(ii) "Insurer" 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)] (94)(b).

(c) "Alien insurer" is defined in Subsection [(3)] (4).

(d) "Authorized insurer" is defined in Subsection [(80)] (94)(b).

(e) "Domestic insurer" is defined in Subsection [(27)] (31).

(f) "Foreign insurer" is defined in Subsection [(32)] (38).

(g) "Nonadmitted insurer" is defined in Subsection [(80)] (94)(a).

(h) "Unauthorized insurer" is defined in Subsection [(80)] (94)(a).

[(49)] (58) (a) Except as provided in Section 31A-1-103, "legal expense insurance" means insurance written to indemnify or pay for specified legal expenses. [H]

(b) "Legal expense insurance" includes arrangements that create reasonable expectations of enforceable rights, but it does not include the provision of, or reimbursement for, legal services

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incidental to other insurance coverages. [Refer to Section 31A-1-103 for a list of exemptions.]

[(50)] (59) (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:

(A) Subsection [(53)] (62) for medical malpractice insurance[;];

(B) Subsection [(66)] (77) for professional liability insurance [;]; and

(C) Subsection [(83)] (97) 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:

(A) Subsection [(53)] (62) for medical malpractice insurance[;];

(B) Subsection [(66)] (77) for professional liability insurance[,;]; and

(C) Subsection [(83)] (97) 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:

(i) vehicle liability insurance as defined in Subsection [(81),] (95);

(ii) residential dwelling liability insurance as defined in Subsection [(70.3),] (83); and [also includes]

(iii) 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)] (60) "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

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certificates of authority issued to insurers.

[(52)] (61) (a) "Life insurance" means insurance on human lives and insurances pertaining to or connected with human life.

(b) The business of life insurance includes:

(i) granting annuity benefits[,];

(ii) granting endowment benefits[,];

(iii) granting additional benefits in the event of death by accident or accidental means[7];

(iv) granting additional benefits in the event of the total and permanent disability of the insured[,]; and

(v) providing optional methods of settlement of proceeds.

[(53)] (62) "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)] (63) "Member" means a person having membership rights in an insurance corporation. [Refer also to "insured" in Subsection (47).]

[(55)] (64) "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)] (65) "Motor club" means a person:

(a) licensed under:

(i) Chapter 5, Domestic Stock and Mutual Insurance Corporations[7];

(ii) Chapter 11, Motor Clubs[,]; or

(iii) Chapter 14, Foreign Insurers[;]; and

(b) that promises for an advance consideration to provide for a stated period of time:

(i) legal services under Subsection 31A-11-102(1)(b)[-,];

(ii) bail services under Subsection 31A-11-102(1)(c)[;]; or

(iii) trip reimbursement, towing services, emergency road services, stolen automobile services, a combination of these services, or any other services given in Subsections

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31A-11-102(1)(b) through (f) [for a stated period of time].

[(57)] (66) "Mutual" means mutual insurance corporation.

[(57.5)] (67) "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)] (68) "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)] (69) "Order" means an order of the commissioner.

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

[(60)] (71) "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)] (72) (a) (i) "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]

(ii) "Policy" includes a service contract issued by [motor clubs]:

(A) a motor club under Chapter 11, Motor Clubs[,]; and [by corporations]

(B) a corporation licensed under:

(I) Chapter 7, Nonprofit Health Service Insurance Corporations[;]; or

(II) Chapter 8, Health Maintenance Organizations and Limited Health Plans[, are policies.

(iii) "Policy" does not include:

(A) a certificate under a group insurance contract [is not a policy. A]; or

(B) a document [which] that 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)] (73) "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)] (74) (a) "Premium" means the monetary consideration for an insurance policy, and includes assessments, membership fees, required contributions, or monetary consideration, however designated.

(b) 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)] (75) "Principal officers" of a corporation means the officers designated under Subsection 31A-5-203(3).

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

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

[(67)] (78) "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

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under Subsections [(38)] (46) and [(58)] (68).

[(67.5)] (79) (a) "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.

(b) 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)] (80) (a) Except as provided in Subsection [(68)] (80)(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:

(i) an employee of an insurer[,];

(ii) a single insurer or group of insurers under common control[,];

(iii) a joint underwriting group[,]; or

(iv) a natural person serving as an actuarial or legal consultant.

[(69)] (81) "Reciprocal" or "interinsurance exchange" means any unincorporated association of persons:

(a) operating through an attorney-in-fact common to all of them; and

(b) exchanging insurance contracts with one another that provide insurance coverage on each other.

[(70)] (82) "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:

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- (a) the insurer transferring the risk as the "ceding insurer[,]"; and [to]
- (b) the insurer assuming the risk as the:
- (i) "assuming insurer"; or [the]
- (ii) "assuming reinsurer."

[(70.3)] (83) "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)] (84) "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)] (85) (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

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[(72)] (85)(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)] (86) "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] <u>Subsection (86)</u>, 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.

(d) 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)] (88) Subject to Subsection [(40)] (48)(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.

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

(b) (i) "Permanent surplus" means the surplus of a mutual insurer that has been designated by the insurer as permanent.

(ii) 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.

(iii) 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)] (92), 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)] (92), 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)] (90) "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;

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(c) an employer on behalf of [his] the employer's 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)] (91) "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)] (92) "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)] (93) (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)] (94) (a) "Unauthorized insurer," "unadmitted insurer," or "nonadmitted insurer" means an insurer:

(i) not holding a valid certificate of authority to do an insurance business in this state[,]; or [an insurer]

- (ii) transacting business not authorized by a valid certificate.
- (b) "Admitted insurer" or "authorized insurer" means an insurer:
- (i) holding a valid certificate of authority to do an insurance business in this state; and
- (ii) transacting business as authorized by a valid certificate.

[(81)] (95) "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)] (78).

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

[(83)] (97) "Workers' compensation insurance" means:

- (a) insurance for indemnification of employers against liability for compensation <u>based on</u>:
- (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 4. 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

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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] <u>Subsection (1)</u> 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] When 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) (i) directing compliance with the commissioner's order and restraining further violation of the order[,]; and

(ii) 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] the commissioner's 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[,]:

(a) the commissioner may certify the fact of the failure to the court by affidavit[,]; and

(b) the court may, after a hearing following at least five days written notice to the parties

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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) (a) The proceeds of all forfeitures under this section, including collection expenses, shall be paid into the General Fund.

(b) The expenses of collection shall be credited to the Insurance Department's budget.

(c) 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) (a) 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] on the:

(i) date of entry of the commissioner's order under Subsection (1); or [the]

(ii) date of judgment under Subsection (2).

(b) Interest accrues from the later of the dates described in Subsection (6)(a) until the forfeiture and accrued interest are fully paid.

(7) [No] <u>A</u> forfeiture may <u>not</u> be imposed under Subsection (2)(c) if[,]:

(a) at the time the forfeiture action is commenced, the person was in compliance with the commissioner's order[-,]; or [if]

(b) 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) A person [who] is guilty of a class B misdemeanor if that person:

(i) intentionally violates[,]:

(A) an insurance statute or rule of this state; or

(B) an order issued under Subsection 31A-2-201(4);

(ii) intentionally permits [any] <u>a</u> person over whom [he] <u>that person</u> has authority to violate[,]:

(A) an insurance statute or rule of this state; or

(B) an order issued under Subsection 31A-2-201(4); or

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(iii) intentionally aids any person in violating [any]:

(A) an insurance statute or rule of this state; or [any effective]

(B) an order issued under Subsection 31A-2-201(4) [is guilty of a class B misdemeanor].

(b) Unless a specific criminal penalty is provided elsewhere in this title, the person may be fined not more than:

(i) \$10,000 if a corporation; or [not more than]

(ii) \$5,000 if a person other than a corporation.

(c) If the person is an individual, the person may, in addition, be imprisoned for up to one year.

(d) As used in this [subsection] Subsection (9), "intentionally" has the same meaning as under Subsection 76-2-103(1).

(10) [When] (a) After a hearing, the commissioner may, in whole or in part, revoke, suspend, place on probation, limit, or refuse to renew the licensee's license or certificate of authority:

(i) when a licensee of the [Insurance Department] department, other than a domestic insurer[,]:

(A) persistently or substantially violates the insurance law; or

(B) violates an order of the commissioner under Subsection 31A-2-201(4)[-,];

(ii) if there are grounds for delinquency proceedings against the licensee under Section 31A-27-301 or Section 31A-27-307[,]; or

(iii) if the licensee's methods and practices in the conduct of [his] <u>the licensee's</u> business endanger, or [his] <u>the licensee's</u> financial resources are inadequate to safeguard, the legitimate interests of [his] <u>the licensee's</u> 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].

(b) Additional license termination or probation provisions for licensees other than insurers are set forth in Sections 31A-19-303, 31A-19-304, 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 5. Section **31A-3-401** is amended to read:

31A-3-401. Retaliation against insurers of foreign state or country.

(1) Except as provided in Section 31A-3-402, when, under the laws of another state or foreign country any taxes, licenses, other fees, deposit requirements, or other material obligations, prohibitions, or restrictions are or would be imposed on Utah insurers, or on the agents or representatives of Utah insurers, which are in excess of the taxes, licenses, other fees, deposit requirements, or other obligations, prohibitions, or restrictions directly imposed upon similar insurers, or upon the agents or representatives of those insurers, of that other state or country under the statutes of this state, as long as the laws of that other state or country continue in force or are so applied, the same taxes, licenses, other fees, deposit requirements, or other material obligations, prohibitions, or restrictions of any kind shall be imposed, collected, and enforced by the State Tax Commission, with the assistance of the commissioner, upon the insurers, or upon the agents or representatives of those insurers, or upon the agents or seeking to do business in this state.

(2) Any tax, license, or other obligation imposed by any city, county, or other political subdivision or agency of another state or country on Utah insurers, their agents, or representatives, is considered as being imposed by that state or country within the meaning of this section.

(3) The commissioner may by rule waive the retaliatory requirements for an individual or agency licensee.

Section 6. Section **31A-4-106** is amended to read:

31A-4-106. Provision of health care.

(1) As used in this section, "health care provider" has the same definition as in Section 78-14-3.

(2) Except under Subsection (3) or (4), [no] <u>a</u> person may <u>not</u> directly or indirectly provide health care, or arrange for, manage, or administer the provision or arrangement of, collect advance payments for, or compensate providers of health care unless authorized to do so or employed by someone authorized to do so under Chapter 5, 7, 8, 9, or 14.

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(3) Subsection (2) does not apply to:

(a) a natural person or professional corporation that alone or with others professionally associated with [him or it] the natural person or professional corporation, and without receiving consideration for services in advance of the need for a particular service, provides the service personally with the aid of nonprofessional assistants;

(b) a health care facility as defined in Section 26-21-2 which:

(i) is licensed or exempt from licensing under Title 26, Chapter 21[,]; and [which]

(ii) does not engage in health care insurance as defined under [Subsection] Section

31A-1-301[(35)];

(c) a person who files with the commissioner under Section 31A-1-105 a certificate from the United States Department of Labor, or other evidence satisfactory to the commissioner, showing that the laws of Utah are preempted under Section 514 of the Employee Retirement Income Security Act of 1974 or other federal law;

(d) a person licensed under Chapter 23 who:

(i) has arranged for the insurance of all services under:

(A) Subsection (2) by an insurer authorized to do business in Utah[, or under];

(B) Section 31A-15-103[; or [who]

(C) works for an uninsured employer that complies with Chapter 13; or

(e) an employer that self-funds its obligations to provide health care services or indemnity for its employees[, provided] if the employer complies with Chapter 13.

(4) A person may not provide administrative or management services for any other person subject to Subsection (2) and not exempt under Subsection (3) unless the person is an authorized insurer under Chapter 5, 7, 8, 9, or 14, or complies with Chapter 25.

(5) It is unlawful for any insurer or person providing, administering, or managing health care insurance under Chapter 5, 7, 8, 9, or 14 to enter into a contract that limits a health care provider's ability to advise the health care provider's patients or clients fully about treatment options or other issues that affect the health care of the health care provider's patients or clients.

Section 7. Section **31A-5-102** is amended to read:

31A-5-102. Scope and purposes.

(1) (a) Except as expressly provided otherwise in this title, this chapter applies to all corporations organized under Utah law and doing an insurance business as defined under [Subsection] Section 31A-1-301 [(44)], except those expressly governed by other chapters of this title. This chapter applies to corporations doing a reinsurance business, whether <u>or not</u> they do other insurance business [or not].

(b) Except as expressly provided otherwise, this chapter does not apply to nondomestic insurers.

(c) Except as provided otherwise in this title, Title 16, Chapter 6, Utah Nonprofit Corporation and Co-operative Association Act, and Title 16, Chapter 10a, Utah Revised Business Corporation Act, apply to corporations under this chapter.

(d) If [there are conflicting provisions, Title 31A] <u>Title 16, Chapter 6, or Title 16, Chapter 10a, conflict with this title, this title governs.</u>

(2) The purposes of this chapter include:

(a) to provide a procedure for the formation of insurance corporations;

(b) to assure the solidity of insurance corporations by providing an organizational framework to facilitate sound management, sound operation, and sound regulation;

(c) to provide fair means of corporate transformation; and

(d) where feasible, to strengthen internal corporate democracy through enhancing shareholder and policyholder participation.

Section 8. Section 31A-5-218 is amended to read:

31A-5-218. Subsidiaries.

(1) Subject to the limitations under Subsection 31A-18-106(1)(k), an insurance corporation may form or acquire subsidiaries to do any lawful insurance business.

(2) An insurance corporation may form or acquire subsidiaries to hold or manage any assets that it might hold or manage directly.

(3) (a) An insurance corporation may form or acquire subsidiaries to perform functions or provide services that are ancillary to its insurance operations.

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(b) A subsidiary is an ancillary subsidiary if it is engaged principally in one or more of the following:

(i) acting as an insurance agent or broker;

(ii) investing, reinvesting, or trading in securities, or acting as a securities broker, dealer, or marketing representative;

(iii) managing investment companies registered under the federal Investment Company Act of 1940, as amended, including related sales and services;

(iv) providing investment advice and services;

(v) acting as administrative agent for a government instrumentality performing an insurance, public assistance, or related function;

(vi) providing services related to insurance operations, including accounting, actuarial,pension administration, appraisal, auditing, claims adjusting, collection, data processing,communications, loss prevention, premium financing, safety engineering, and underwriting services;

(vii) holding or managing property used by the corporation, alone or with its affiliates for the convenient transaction of its business;

(viii) engaging in the motor club business under Chapter 11, Motor Clubs;

(ix) engaging in the business of any institution subject to the jurisdiction of the Department of Financial Institutions under [the Financial Institutions Act of 1981 and any successor to that act] <u>Title 7, Financial Institutions;</u>

(x) providing similar services or performing similar activities which the commissioner declares ancillary by rule; and

(xi) owning corporations that would be authorized as subsidiaries under Subsections (3)(b)(i) through (3)(b)(ix) and under Subsections (1) and (2).

(4) An insurance corporation may form or acquire subsidiaries other than those under Subsections (1) through (3), but only to the extent the insurer has excess surplus as defined under [Subsection] Section 31A-1-301[(76)(c)].

(5) (a) An insurance corporation shall notify the commissioner immediately following the formation or acquisition of a subsidiary under this section.

(b) Chapter 16 provides additional requirements [which] that are applicable to the acquisition of certain subsidiaries.

Section 9. Section **31A-16-103** is amended to read:

31A-16-103. Acquisition of control of or merger with domestic insurer -- Required filings -- Content of statement -- Alternative filing materials -- Criminal background information -- Approval by commissioner -- Dissenting shareholders -- Violations --Jurisdiction, consent to service of process.

(1) (a) [Unless] <u>A person may not take the actions described in Subsections (1)(b) or (c)</u> <u>unless</u>, at the time any offer, request, or invitation is made or any such agreement is entered into, or prior to the acquisition of securities if no offer or agreement is involved[<u>-</u>]:

(i) the person [has filed] files with the commissioner[, and also provided copies of the statement to the insurer,] a statement containing the information required by this section;

(ii) the person provides a copy of the statement described in Subsection (1)(a)(i) to the insurer; and

(iii) the commissioner [has approved] approves the offer, request, invitation, agreement or acquisition[:].

[(i) A] (b) Unless the person complies with Subsection (1)(a), a person other than the issuer may not make a tender offer for, a request or invitation for tenders of, or enter into any agreement to exchange securities, or seek to acquire or acquire in the open market or otherwise, any voting security of a domestic insurer if after the acquisition, the person would directly, indirectly, by conversion, or by exercise of any right to acquire be in control of the insurer.

[(ii) A] (c) Unless the person complies with Subsection (1)(a), a person may not enter into an agreement to merge with or otherwise to acquire control of a domestic insurer or any person controlling a domestic insurer.

[(b)] (d) (i) For purposes of this section a domestic insurer includes any person controlling a domestic insurer unless the person as determined by the commissioner is either directly or through its affiliates primarily engaged in business other than the business of insurance.

(ii) The controlling person described in Subsection (1)(d)(i) shall file with the commissioner

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a preacquisition notification containing the information required in Subsection (2) 30 <u>calendar</u> days [prior to] <u>before</u> the proposed effective date of the acquisition.

(iii) For the purposes of this section, "person" does not include any securities broker holding less than 20% of the voting securities of an insurance company or of any person [which] that controls an insurance company in the usual and customary brokers function.

(iv) This section applies to all domestic insurers and other entities licensed under Chapters 5, 7, 8, 9, and 11.

[(c) No] (e) (i) An agreement for acquisition of control or merger as contemplated by this [subsection] Subsection (1) is not valid or enforceable unless the agreement:

 (\underline{A}) is in writing; and

(B) includes a provision that the agreement is subject to the approval of the commissioner upon the filing of any applicable statement required under this chapter.

(ii) A written agreement for acquisition or control [which] that includes [such a] the provision described in Subsection (1)(e)(i) satisfies the requirements of this Subsection (1).

(2) The statement to be filed with the commissioner under Subsection (1) shall be made under oath or affirmation and shall contain the following information:

(a) the name and address of the "acquiring party," which means each person by whom or on whose behalf the merger or other acquisition of control referred to in Subsection (1) is to be effected; and

(i) if the person is an individual[, his]:

(A) the person's principal occupation [and];

(B) a listing of all offices and positions held by the person during the past five years; and

(C) any conviction of crimes other than minor traffic violations during the past ten years; and

(ii) [(A)] if the person is not an individual[,]:

(A) a report of the nature of its business operations during the past five years or for any lesser period as the person and any of its predecessors has been in existence;

(B) an informative description of the business intended to be done by the person and the person's subsidiaries;

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(C) a list of all individuals who are or who have been selected to become directors or executive officers of the person, or individuals who perform, or who will perform functions appropriate to such positions; and

(D) for each individual described in Subsection (2)(a)(ii)(C), the [list shall include for each such individual the] information required by Subsection [(a).] (2)(a)(i)(A) for each individual;

(b) (i) the source, nature, and amount of the consideration used or to be used in effecting the merger or acquisition of control[,];

(ii) a description of any transaction in which funds were or are to be obtained for that purpose of effecting the merger or acquisition of control, including any pledge of the insurer's stock[,] or the stock of any of its subsidiaries or controlling affiliates[,]; and

(iii) the identity of persons furnishing the consideration[-];

[(ii) If the source of the consideration under Subsection (i) is a loan made in the lender's ordinary course of business, the identity of the lender shall remain confidential, if the person filing the statement so requests.]

(c) fully audited financial information, or other financial information considered acceptable by the commissioner, of the earnings and financial condition of each acquiring party for the preceding five fiscal years of each acquiring party, or for any lesser period the acquiring party and any of its predecessors shall have been in existence, and similar unaudited information prepared within the 90 days prior to the filing of the statement[-];

(d) any plans or proposals which each acquiring party may have to:

(i) liquidate the insurer[, to];

(ii) sell its assets[,];

(iii) merge or consolidate the insurer with any person[,;]; or [to]

(iv) make any other material change in the insurer's business, corporate structure, or management[-];

(e) (i) the number of shares of any security referred to in Subsection (1) [which] that each acquiring party proposes to acquire[;]:

(ii) the terms of the offer, request, invitation, agreement, or acquisition referred to in

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Subsection (1)[,]; and

(iii) a statement as to the method by which the fairness of the proposal was arrived at[. The commissioner may require a statement of the adjusted book value assigned by the acquiring party to each security in arriving at the terms of the offer, with "adjusted book value" meaning each security's proportional interest in the capital and surplus of the insurer with adjustments which reflect market conditions, business in force, and other intangible assets or liabilities of the insurer.]:

(f) the amount of each class of any security referred to in Subsection (1) [which] that:

(i) is beneficially owned; or

(ii) concerning which there is a right to acquire beneficial ownership by each acquiring party[-];

(g) a full description of any contract, arrangement, or understanding with respect to any security referred to in Subsection (1) in which any acquiring party is involved, including:

(i) the transfer of any of the securities[;];

(ii) joint ventures[;];

- (iii) loan or option arrangements[;];
- (iv) puts or calls[;];
- (v) guarantees of loans[,];
- (vi) guarantees against loss or guarantees of profits[,];
- (vii) division of losses or profits[;]; or

(viii) the giving or withholding of proxies[. The description shall identify the persons with whom the contracts, arrangements, or understandings have been entered into.]:

(h) a description of the purchase by any acquiring party of any security referred to in Subsection (1) during the 12 calendar months preceding the filing of the statement including:

(i) the dates of purchase[,];

(ii) the names of the purchasers[,]; and

(iii) the consideration paid or agreed to be paid for the purchase[-];

(i) a description of any recommendations to purchase by any acquiring party any security referred to in Subsection (1) made during the 12 calendar months preceding the filing of the

statement or any recommendations made by anyone based upon interviews or at the suggestion of the acquiring party[-]:

(j) (i) copies of all tender offers for, requests for, or invitations for tenders of, exchange offers for, and agreements to acquire or exchange any securities referred to in Subsection (1)[-7]; and [-7]

(ii) if distributed, <u>copies</u> of additional soliciting material relating to the [same.] <u>transactions</u> described in Subsection (2)(j)(i);

(k) (i) the term of any agreement, contract, or understanding made with, or proposed to be made with, any broker-dealer as to solicitation of securities referred to in Subsection (1) for tender[-]; and

(ii) the amount of any fees, commissions, or other compensation to be paid to broker-dealers with regard to any agreement, contract, or understanding[.] described in Subsection (2)(k)(i); and

(l) any additional information the commissioner requires by rule, which [he] the <u>commissioner</u> determines to be:

(i) necessary or appropriate for the protection of policyholders of the insurer[,]; or [to be]

(ii) in the public interest.

(3) The department may request:

(a) (i) criminal background information maintained pursuant to Title 53, Chapter 10, Part 2, from the Bureau of Criminal Identification; and

(ii) complete Federal Bureau of Investigation criminal background checks through the national criminal history system.

(b) Information obtained by the department from the review of criminal history records received under Subsection (3)(a) shall be used by the department for the purpose of:

(i) verifying the information in Subsection (2)(a)(i);

(ii) determining the integrity of persons who would control the operation of an insurer; and

(iii) preventing persons who violate 18 U.S.C. Sections 1033 and 1034 from engaging in the business of insurance in the state.

(c) If the department requests the criminal background information, the department shall:

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(i) pay to the Department of Public Safety the costs incurred by the Department of Public Safety in providing the department criminal background information under Subsection (3)(a)(i);

(ii) pay to the Federal Bureau of Investigation the costs incurred by the Federal Bureau of Investigation in providing the department criminal background information under Subsection (3)(a)(ii); and

(iii) charge the person required to file the statement referred to in Subsection (1) a fee equal to the aggregate of Subsections (3)(c)(i) and (ii).

(4) (a) If the source of the consideration under Subsection (2)(b)(i) is a loan made in the lender's ordinary course of business, the identity of the lender shall remain confidential, if the person filing the statement so requests.

(b) Under Subsection (2)(e), the commissioner may require a statement of the adjusted book value assigned by the acquiring party to each security in arriving at the terms of the offer, with "adjusted book value" meaning each security's proportional interest in the capital and surplus of the insurer with adjustments that:

(i) reflect market conditions;

(ii) business in force; and

(iii) other intangible assets or liabilities of the insurer.

(c) The description required by Subsection (2)(g) shall identify the persons with whom the contracts, arrangements, or understandings have been entered into.

[(3)] (5) (a) If the person required to file the statement referred to in Subsection (1) is a partnership, limited partnership, syndicate, or other group, the commissioner may require that all the information called for by [Subsection] Subsections (2), (3), or (4) shall be given with respect to each:

(i) partner of the partnership or limited partnership[, each];

(ii) member of the syndicate or group[,]; and [each]

(iii) person who controls the partner or member.

(b) If any partner, member, or person referred to in Subsection (5)(a) is a corporation, or if the person required to file the statement referred to in Subsection (1) is a corporation, the commissioner may require that the information called for by Subsection (2) shall be given with

respect to:

(i) the corporation[;];

(ii) each officer and director of the corporation[,]; and

(iii) each person who is directly or indirectly the beneficial owner of more than 10% of the outstanding voting securities of the corporation.

[(4)] (6) If any material change occurs in the facts set forth in the statement filed with the commissioner and sent to the insurer pursuant to Subsection (2), an amendment setting forth the change, together with copies of all documents and other material relevant to the change, shall be filed with the commissioner and sent to the insurer within two business days after the filing person learns of such change.

[(5)] (7) If any offer, request, invitation, agreement, or acquisition referred to in Subsection (1) is proposed to be made by means of a registration statement under the Securities Act of 1933, or under circumstances requiring the disclosure of similar information under the Securities Exchange Act of 1934, or under a state law requiring similar registration or disclosure, a person required to file the statement referred to in Subsection (1) may [utilize] use copies of any registration or disclosure documents in furnishing the information called for by the statement.

[(6)] (8) (a) The commissioner shall approve any merger or other acquisition of control referred to in Subsection (1) unless, after a public hearing on the merger or acquisition, [he] the <u>commissioner</u> finds that:

[(a)] (i) after the change of control, the domestic insurer referred to in Subsection (1) would not be able to satisfy the requirements for the issuance of a license to write the line or lines of insurance for which it is presently licensed;

[(b)] (ii) the effect of the merger or other acquisition of control would substantially lessen competition in insurance in this state or tend to create a monopoly in insurance;

[(c)] (iii) the financial condition of any acquiring party might:

(A) jeopardize the financial stability of the insurer[,]; or

(B) prejudice the interest of:

(I) its policyholders[;]; or [the interest of]

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(II) any remaining securityholders who are unaffiliated with the acquiring party;

[(d)] (iv) the terms of the offer, request, invitation, agreement, or acquisition referred to in Subsection (1) are unfair and unreasonable to the securityholders of the insurer[, but this offering price for each security may not be considered unfair if the adjusted book values under Subsection (2)(e) are disclosed to the securityholders and determined by the commissioner to be reasonable];

[(e)] (v) the plans or proposals which the acquiring party has to liquidate the insurer, sell its assets, or consolidate or merge it with any person, or to make any other material change in its business or corporate structure or management, are:

(A) unfair and unreasonable to policyholders of the insurer; and [are]

(B) not in the public interest; or

[(f)] (vi) the competence, experience, and integrity of those persons who would control the operation of the insurer are such that it would not be in the interest of the policyholders of the insurer and the public to permit the merger or other acquisition of control.

(b) For purposes of Subsection (8)(a)(iv), the offering price for each security may not be considered unfair if the adjusted book values under Subsection (2)(e):

(i) are disclosed to the securityholders; and

(ii) determined by the commissioner to be reasonable.

[(7)] (9) (a) The public hearing referred to in Subsection [(6)] (8) shall be held within 30 days after the statement required by Subsection (1) is filed.

(b) (i) At least 20 days notice of the hearing shall be given by the commissioner to the person filing the statement.

(ii) Affected parties may waive the notice required by this [subsection] Subsection (9)(b).

(iii) Not less than seven days notice of the public hearing shall be given by the person filing the statement to:

(A) the insurer; and [to]

(B) any [other persons] person designated by the commissioner.

(c) The commissioner shall make a determination within 30 days after the conclusion of the hearing.

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(d) At the hearing, the person filing the statement, the insurer, any person to whom notice of hearing was sent, and any other person whose interest may be affected by the hearing [shall have the right to] may:

(i) present evidence[;];

(ii) examine and cross-examine witnesses[7]; and

(iii) offer oral and written arguments[; they may also].

(e) (i) A person or insurer described in Subsection (9)(d) may conduct discovery proceedings in the same manner as is presently allowed in the district courts of this state.

(ii) All discovery proceedings shall be concluded not later than three days [prior to] before the commencement of the public hearing.

[(8)] (10) At the acquiring person's expense and consent, the commissioner may retain any attorneys, actuaries, accountants, and other experts not otherwise a part of the commissioner's staff, which are reasonably necessary to assist the commissioner in reviewing the proposed acquisition of control.

[(9)] (11) (a) (i) If a domestic insurer proposes to merge into another insurer, any securityholder electing to exercise a right of dissent may file with the insurer a written request for payment of the adjusted book value given in the statement required by Subsection (1) and approved under Subsection [(6)] (8), in return for the surrender of [his] the security holder's securities.

(ii) The request described in Subsection (11)(a)(i) shall be filed not later than ten days after the [securityholder's] day of the securityholders' meeting where the corporate action is approved.

(b) The <u>dissenting</u> securityholder is entitled to and the insurer is required to pay to the dissenting securityholder the specified value within 60 days of receipt of the <u>dissenting security</u> <u>holder's</u> security.

(c) Persons electing under this [subsection] Subsection (11) to receive cash for their securities waive the dissenting shareholder and appraisal rights otherwise applicable under Title 16, Chapter 10a, Part 13, Dissenters' Rights.

[(b)] (d) (i) This Subsection [(9)(a)](11) provides an elective procedure for dissenting securityholders to resolve their objections to the plan of merger.

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(ii) This section does not restrict the rights of dissenting securityholders under Title 16, Chapter 10a, Utah Revised Business Corporation Act, unless this election is made under this Subsection [(9)(a)] (11).

[(10)] (12) (a) All statements, amendments, or other material filed under Subsection (1), and all notices of public hearings held under Subsection [(6)] (8), shall be mailed by the insurer to its securityholders within five business days after the insurer has received the statements, amendments, other material, or notices.

(b) Mailing expenses shall be paid by the person making the filing. As security for the payment of these expenses, that person shall file with the commissioner an acceptable bond or other deposit in an amount determined by the commissioner.

[(11)] (13) This section does not apply to any offer, request, invitation, agreement, or acquisition [which] that the commissioner by order exempts from the requirements of this section as:

(a) not having been made or entered into for the purpose of, and not having the effect of, changing or influencing the control of a domestic insurer; or

(b) as otherwise not comprehended within the purposes of this section.

[(12)] (14) The following are violations of this section:

(a) the failure to file any statement, amendment, or other material required to be filed pursuant to Subsections (1) [through (3)], (2), and (5); or

(b) the effectuation, or any attempt to effectuate, an acquisition of control of or merger with a domestic insurer unless the commissioner has given [his] the commissioner's approval to the acquisition or merger.

[(13)] (15) (a) The courts of this state are vested with jurisdiction over:

(i) [every] <u>a</u> person who:

(A) files a statement with the commissioner under this section [,;]; and [who]

(B) is not resident, domiciled, or authorized to do business in this state; and

(ii) overall actions involving persons described in Subsection (15)(a)(i) arising out of
 [violations] a violation of this section.

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(b) [Each] <u>A</u> person described in Subsection (15)(a) is considered to have performed acts equivalent to and constituting an appointment of the commissioner by that person, to be [his] that person's lawful attorney upon whom may be served all lawful process in any action, suit, or proceeding arising out of [violations] <u>a violation</u> of this section.

(c) [Copies] <u>A copy</u> of [all] <u>a</u> lawful process described in Subsection (15)(b) shall be:

(i) served on the commissioner; and

(ii) transmitted by registered or certified mail by the commissioner to the person at [his] that person's last-known address.

Section 10. Section **31A-16-111** is amended to read:

31A-16-111. Required sale of improperly acquired stock -- Penalties.

(1) If the commissioner finds that the acquiring person has not substantially complied with the requirements of this chapter in acquiring control of a domestic insurer, [he] <u>the commissioner</u> may require the acquiring person to sell [his] <u>the acquiring person's</u> stock of the domestic insurer in the manner specified in Subsection (2).

(2) (a) The commissioner shall effect the sale required by Subsection (1) in the manner which, under the particular circumstances, appears most likely to result in the payment of the full market value for the stock by persons who have the collective competence, experience, financial resources, and integrity to obtain approval under Subsection 31A-16-103[(6)](8).

(b) Sales made under this section are subject to approval by the Third Judicial District Court for Salt Lake County, which court has the authority to effect the terms of the sale.

(3) The proceeds from sales made under this section shall be distributed first to the person required by this section to sell the stock, but only up to the amount originally paid by the person for the securities. Additional sale proceeds shall be paid to the General Fund.

(4) The person required to sell and persons related to or affiliated with the seller may not purchase the stock at the sale conducted under this section.

(5) (a) Every director or officer of an insurance holding company system who knowingly violates, participates in, or assents to, or who knowingly permits any of the officers or agents of the insurer to engage in transactions or make investments [which] that have not been properly reported

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or submitted pursuant to Subsections 31A-16-105 (1) and (2), or 31A-16-106 (1)(b), or which otherwise violate this chapter, shall pay, in their individual capacity, a civil penalty of not more than \$20,000 per violation, upon a finding by the commissioner of a violation, after notice and hearing before the commissioner.

(b) In determining the amount of the civil penalty <u>under Subsection (5)(a)</u>, the commissioner shall take into account:

(i) the appropriateness of the penalty with respect to the gravity of the violation[,];

(ii) the history of previous violations[,]; and

(iii) any other matters [which] that justice requires.

(6) (a) [Whenever] When it appears to the commissioner that any insurer or any director, officer, employee, or agent of the insurer, has committed a willful violation of this chapter, the commissioner may cause criminal proceedings to be instituted in the district court for the county in this state in which the principal office of the insurer is located, or if the insurer has no principal office in this state, then in the Third District Court for Salt Lake County against the insurer or the responsible director, officer, employee, or agent of the insurer. [Any]

(b) An insurer [which] that willfully violates this chapter may be fined not more than \$20,000. Any individual who willfully violates this chapter is guilty of a third degree felony, and upon conviction may be:

(i) fined in [his] that person's individual capacity not more than \$5,000 [or be];

(ii) imprisoned[,]; or [may be]

(iii) both fined and imprisoned.

(7) This section does not limit the other sanctions applicable to violations of this title under Section 31A-2-308.

Section 11. Section **31A-17-201** is amended to read:

31A-17-201. Qualified assets.

(1) Except as provided under Subsections (3) and (4), only the qualified assets listed in Subsection (2) may be used in determining the financial condition of an insurer, except to the extent an insurer has shown to the commissioner that the insurer has excess surplus, as defined in

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[Subsection] Section 31A-1-301[(76)(c)].

(2) For purposes of Subsection (1), "qualified assets" means:

(a) investments, securities, properties, and loans acquired or held in accordance with Sections 31A-18-105 and 31A-18-106, and the income due and accrued on these;

(b) the net amount of uncollected and deferred premiums for a life insurer [which] that carries the full annual mean tabular reserve liability;

(c) premiums in the course of collection, other than for life insurance, not more than 90 days past due, less commissions payable on the premiums, with the 90-day limitation being inapplicable to premiums payable directly or indirectly by the United States government or any of its instrumentalities;

(d) installment premiums, other than life insurance premiums, in accordance with:

(i) the rules adopted by the commissioner[7]; or[7]

(ii) in the absence of [these] rules <u>adopted by the commissioner</u>, [in accordance with] practices formulated or adopted by the National Association of Insurance Commissioners;

(e) notes and similar written obligations that are:

(i) not past due[;];

(ii) taken for premiums other than life insurance premiums[,];

(iii) on policies permitted to be issued on that basis[;]; and

(iv) to the extent of the unearned premium reserves carried on the policies;

(f) amounts recoverable or receivable from reinsurers under a reinsurance contract that qualifies for reserve credit under Section 31A-17-404;

(g) electronic and mechanical machines constituting a data processing and accounting system, the cost of which is depreciated in full over a period of five years or less;

(h) tangible components of the health care delivery systems of insurers licensed under Chapter 7, with the cost of these assets having a finite useful life being depreciated in full over periods provided by rule;

(i) cash or currency; and

(j) other assets authorized by rule.

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(3) (a) Subject to Subsection (5) and even if they could not otherwise be counted under this chapter, assets acquired in the bona fide enforcement of creditors' rights may be counted for the purposes of Subsection (1) and Sections 31A-18-105 and 31A-18-106[;]:

(i) for five years after their acquisition if they are real property[;]; and

(ii) for one year if they are not real property[, even if they could not otherwise be counted under this chapter].

(b) (i) The commissioner may allow reasonable extensions of [these] the periods described in Subsection (3)(a), if disposal of the assets within the periods given is not possible without substantial loss. [These extensions]

(ii) Extensions under Subsection (3)(b)(i) may not, as to any particular asset, exceed a total of five years.

(4) Subject to Subsection (5), and even though under this chapter the assets could not <u>otherwise be counted</u>, assets acquired in connection with mergers, consolidations, or bulk reinsurance, or as a dividend or distribution of assets, may be counted for the same purposes, in the same manner, and for the same periods as assets acquired under Subsection (3)[, even though under this chapter the assets could not otherwise be counted].

(5) Assets described under Subsection (3) or (4) may not be counted for the purposes of Subsection (1), except to the extent they are counted as assets in determining insurer solvency under the laws of the state of domicile of the creditor or acquired insurer.

Section 12. Section **31A-17-202** is amended to read:

31A-17-202. Status of assets that are not "qualified assets."

(1) (a) Except as provided in Subsection (1)(b), if an insurer owns assets that are not qualified assets under Section 31A-17-201, the assets shall be disregarded in determining and reporting the financial condition of the insurer.

(b) An insurer may invest its funds in investments that are permitted under Section 31A-18-105 but in excess of the limits under Sections 31A-18-103 and 31A-18-106 or other assets approved by the commissioner and these assets may be recognized and reported in the financial condition of the insurer to the extent the insurer has excess surplus, as defined under [Subsection]

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<u>Section</u> 31A-1-301[(76)(c)].

(2) Insurers bear the burden of establishing the extent to which they have excess surplus.

Section 13. Section **31A-17-609** is amended to read:

31A-17-609. Alternate adjusted capital.

(1) Except as provided in Section 31A-17-602, insurers licensed under Chapters 5, 7, 9, and 14 shall maintain total adjusted capital as defined in [Subsection] Section 31A-1-301[(78.5)] in an amount equal to the greater of:

(a) 175% of the minimum required capital, or of the minimum permanent surplus in the case of nonassessable mutuals, required by Section 31A-5-211, 31A-7-201, 31A-9-209, or 31A-14-205; or

(b) the net total of:

(i) 10% of net insurance premiums earned during the year; plus

(ii) 5% of the admitted value of common stocks and real estate; plus

(iii) 2% of the admitted value of all other invested assets, exclusive of cash deposits, short-term investments, policy loans, and premium notes; less

(iv) the amount of any asset valuation reserve being maintained by the insurer, but not to exceed the sum of Subsections (1)(b)(ii) and (iii).

(2) As used in Subsection (1)(b), "premiums earned" means premiums and other consideration earned for insurance in the 12-month period ending on the date the calculation is made.

(3) The commissioner may consider an insurer to be financially hazardous under Subsection 31A-27-307(3), if the insurer does not have qualified assets in an aggregate value exceeding the sum of the insurer's liabilities and the total adjusted capital required by Subsection (1).

(4) The commissioner shall consider an insurer to be financially hazardous under Subsection 31A-27-307(3) if the insurer does not have qualified assets in an aggregate value exceeding the sum of the insurer's liabilities and 70% of the total adjusted capital required by Subsection (1).

Section 14. Section **31A-18-106** is amended to read:

31A-18-106. Investment limitations generally applicable.

(1) The [following] investment limitations listed in Subsections (1)(a) through (l) apply to

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each insurer[:].

(a) [For] (i) Except as provided in Subsection (1)(a)(ii), for investments authorized under Subsection 31A-18-105(1) that are not amortizable under applicable valuation rules, the limitation is 5% of assets[, except that this].

(ii) The limitation of Subsection (1)(a)(i) and the limitation of Subsection (2) do not apply to demand deposits and certificates of deposit in solvent banks and savings and loan institutions to the extent they are insured by a federal deposit insurance agency.

(b) For investments authorized under Subsection 31A-18-105(2), the limitation is 10% of assets.

(c) For investments authorized under Subsection 31A-18-105(3), the limitation is 50% of assets.

(d) For investments authorized under Subsection 31A-18-105(4), that are considered to be investments in kinds of securities or evidences of debt pledged, those investments are subject to the class limitations applicable to the pledged securities or evidences of debt.

(e) For investments authorized under Subsection 31A-18-105(5), the limitation is 35% of assets.

(f) For investments authorized under Subsection 31A-18-105(6), the limitation is:

(i) 20% of assets for life insurers; and

(ii) 50% of assets for nonlife insurers.

(g) For investments authorized under Subsection 31A-18-105(7), the limitation is 5% of assets, except as to insurers organized and operating under Chapter 7, in which case the limitation is 25% of assets.

(h) For investments authorized under Subsection 31A-18-105(8), the limitation is 20% of assets inclusive of home office and branch office properties, except as to insurers organized and operating under Chapter 7, in which case the limitation is 35% of assets, inclusive of home office and branch office properties.

(i) For investments authorized under Subsection 31A-18-105(10), the limitation is 1% of assets.

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(j) For investments authorized under Subsection 31A-18-105(11), the limitation is <u>the</u> <u>greater of</u> that permitted or required for compliance with Section 31A-18-103[, whichever is greater].

(k) [For investments] Except as provided in Subsection (1)(1), an insurer's investments in subsidiaries is limited to 50% of the insurer's total adjusted capitol. Investments by an insurer in its subsidiaries[7] includes:

(i) the insurer's loans, advances, and contributions to its subsidiaries[7]; and

(ii) the insurer's holding of bonds, notes, and stocks of its subsidiaries are included. ["Subsidiary" is defined in Subsection 31A-1-301(74). Except as provided in Subsection (1)(l), no insurer's investments in subsidiaries may, for the purposes stated in Chapter 17, Part 6, Risk-Based Capital, exceed the sum of 50% of the company action level RBC and 100% of the insurer's excess surplus.]

(1) Under a plan of merger approved by the commissioner, the commissioner may allow an insurer [to count for purposes of Chapter 17, Part 6, Risk-Based Capital,] any portion of its assets invested in an insurance subsidiary. The approved plan of merger shall require the acquiring insurer to conform its accounting for investments in subsidiaries to Subsection (1)(k) within a specified period[. This period] that may not exceed five years.

(2) [For purposes of Chapter 17, Part 6, Risk-Based Capital, all of the following] <u>The</u> limits on investments <u>listed in Subsections (2)(a) through (e)</u> apply to each insurer[:].

(a) For all investments in a single entity, its affiliates, and subsidiaries, the limitation is 10% of assets[. The], except that the limit imposed by this [subsection] Subsection (2)(a) does not apply to:

(i) investments in the government of the United States or its agencies;

(ii) investments guaranteed by the government of the United States; or

(iii) investments in the insurer's insurance subsidiaries.

(b) [The investments] <u>Investments</u> authorized by Subsection 31A-18-105(3) shall comply with the [following] requirements[:] <u>listed in this Subsection (2)(b).</u>

(i) (A) [The] Except as provided in Subsection (2)(b)(i), the amount of any loan secured by a mortgage or deed of trust may not exceed 80% of the value of the real estate interest mortgaged,

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unless the excess over 80%:

(I) is insured or guaranteed by the United States, any state of the United States, [or] any instrumentality, agency, or political subdivision of the United States, any of its states, or a combination of any of these[,]; or [the excess over 80% is]

(II) insured by an insurer approved by the commissioner and qualified to insure that type of risk in this state.

(B) Mortgage loans representing purchase money mortgages acquired from the sale of real estate are not subject to [this] the limitation of Subsection (2)(b)(i)(A).

(ii) Subject to Subsection (2)(b)(v), loans or evidences of debt secured by real estate may only be secured by unencumbered real property, or an unencumbered interest in real property that is located in the United States.

(iii) Evidence of debt secured by first mortgages or deeds of trust upon leasehold estates shall require that:

(A) the leasehold estate exceed the maturity of the loan by not less than 10% of the lease term[, that];

(B) the real estate not be otherwise encumbered[,]; and [that]

(C) the mortgagee is entitled to be subrogated to all rights under the leasehold.

(iv) Subject to Subsection (2)(b)(v)[,]:

(A) participation in any mortgage loan must:

(I) be senior to other participants; and

(II) give the holder substantially the rights of a first mortgagee[,;]; or

(B) the interest of the insurer in the evidence of indebtedness must be of equal priority, to the extent of the interest, with other interests in the real property.

(v) A fee simple or leasehold real estate or any interest in either of them is not considered to be encumbered within the meaning of this chapter by reason of any prior mortgage or trust deed held or assumed by the insurer as a lien on the property, if:

(A) the total of the mortgages or trust deeds held does not exceed 70% of the value of the property; and [if]

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(B) the security created by the prior mortgage or trust deed is a first lien.

(c) Loans permitted under Subsection 31A-18-105(4) may not exceed 75% of the market value of the collateral pledged, except that loans upon the pledge of United States government bonds may be equal to the market values of the pledge.

(d) For an equity interest in a single real estate property authorized under Subsection 31A-18-105(8), the limitation is 5% of assets.

(e) Investments authorized under Subsection 31A-18-105(10) shall be in connection with potential changes in the value of specifically identified:

(i) assets which the insurer owns; or [in specifically identified]

(ii) liabilities which the insurer has incurred.

(3) [For the purposes of Chapter 17, Part 6, Risk-Based Capital, the following] The restrictions on investments <u>listed in Subsections (3)(a) and (b)</u> apply[:] to each insurer.

(a) Except for financial futures contracts and real property acquired and occupied by the insurer for home and branch office purposes, [no securities] <u>a security</u> or other [investments are] <u>investment is not</u> eligible for purchase or acquisition under this chapter unless [they are] it is:

(i) interest bearing or income paying[,]; and [are]

(ii) not then in default.

(b) A security is not eligible for purchase at a price above its market value.

(4) Computation of percentage limitations under this section:

(a) is based only upon the insurer's total qualified invested assets described in Section

31A-18-105 and this section, as these assets are valued under Section 31A-17-401[;]; and [exclude]

(b) excludes investments permitted under Section 31A-18-108 and Subsections

31A-17-203(2) and (3).

(5) An insurer may not make an investment that, because the investment does not conform to Section 31A-18-105 and this section, has the result of rendering the insurer, under Chapter 17, Part [6] <u>VI</u>, Risk-Based Capital, subject to proceedings under Chapter 27.

(6) A pattern of persistent deviation from the investment diversification standards set forth in Section 31A-18-105 and this section may be grounds for a finding that the person or persons with

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authority to make the insurer's investment decisions are "incompetent" as used in Subsection 31A-5-410(3).

(7) Section 77r-1 of the Secondary Mortgage Market Enhancement Act of 1984 does not apply to the purchase, holding, investment, or valuation limitations of assets of insurance companies subject to this chapter.

Section 15. Section **31A-18-108** is amended to read:

31A-18-108. Investment of excess surplus.

(1) If an insurer has excess surplus, as defined under [Subsection] Section

31A-1-301[(76)(c)], then to the extent of its excess surplus, the insurer may invest in a manner inconsistent with the limitations of Section 31A-18-106 or in other assets approved by the commissioner.

(2) This section does not empower any insurer to make investments that are:

(a) illegal; or [that are]

(b) prohibited under Section 31A-4-107.

(3) Each insurer has the burden of establishing the extent of its excess surplus.

Section 16. Section **31A-23-102** is amended to read:

31A-23-102. Definitions.

As used in this chapter:

(1) Except as provided in Subsection (2):

(a) "Escrow" is a license category that allows a person to conduct escrows, settlements, or closings on behalf of a title insurance agency or a title insurer.

(b) "Limited license" means a license that is issued for a specific product of insurance and limits an individual or agency to transact only for those products.

(c) "Search" is a license category that allows a person to issue title insurance commitments or policies on behalf of a title insurer.

(d) "Title marketing representative" means a person who:

(i) represents a title insurer in soliciting, requesting, or negotiating the placing of:

(A) title insurance; or

(B) escrow, settlement, or closing services; and

(ii) does not have a search or escrow license.

(2) The following persons are not acting as agents, brokers, title marketing representatives, or consultants when acting in the following capacities:

(a) any regular salaried officer, employee, or other representative of an insurer or licensee under this chapter who devotes substantially all of the officer's, employee's, or representative's working time to activities other than those described in Subsection (1) and Subsections 31A-1-301[(42)] (51), [(43)] (52), and [(45)] (54) including the clerical employees of persons required to be licensed under this chapter;

(b) a regular salaried officer or employee of a person seeking to purchase insurance, who receives no compensation that is directly dependent upon the amount of insurance coverage purchased;

(c) a person who gives incidental advice in the normal course of a business or professional activity, other than insurance consulting, if neither that person nor that person's employer receives direct or indirect compensation on account of any insurance transaction that results from that advice;

(d) a person who, without special compensation, performs incidental services for another at the other's request, without providing advice or technical or professional services of a kind normally provided by an agent, broker, or consultant;

(e) (i) a holder of a group insurance policy, or any other person involved in mass marketing, but only:

(A) with respect to administrative activities in connection with that type of policy, including the collection of premiums; and

(B) if the person receives no compensation for the activities described in Subsection (2)(e)(i) beyond reasonable expenses including a fair payment for the use of capital; and

(f) a person who gives advice or assistance without direct or indirect compensation or any expectation of direct or indirect compensation.

(3) "Actuary" means a person who is a member in good standing of the American Academy of Actuaries.

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(4) "Agency" means a person other than an individual, and includes a sole proprietorship by which a natural person does business under an assumed name.

(5) "Broker" means an insurance broker or any other person, firm, association, or corporation that for any compensation, commission, or other thing of value acts or aids in any manner in soliciting, negotiating, or procuring the making of any insurance contract on behalf of an insured other than itself.

(6) "Bail bond agent" means any individual:

(a) appointed by an authorized bail bond surety insurer or appointed by a licensed bail bond surety company to execute or countersign undertakings of bail in connection with judicial proceedings; and

(b) who receives or is promised money or other things of value for this service.

(7) "Captive insurer" means:

(a) an insurance company owned by another organization whose exclusive purpose is to insure risks of the parent organization and affiliated companies; or

(b) in the case of groups and associations, an insurance organization owned by the insureds whose exclusive purpose is to insure risks of member organizations, group members, and their affiliates.

(8) "Controlled insurer" means a licensed insurer that is either directly or indirectly controlled by a broker.

(9) "Controlling broker" means a broker who either directly or indirectly controls an insurer.

(10) "Controlling person" means any person, firm, association, or corporation that directly or indirectly has the power to direct or cause to be directed, the management, control, or activities of a reinsurance intermediary.

(11) "Insurer" is as defined in Subsection 31A-1-301(48), except the following persons or similar persons are not insurers for purposes of Part 6 of this chapter:

(a) all risk retention groups as defined in:

(i) the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499;

(ii) the Risk Retention Act, 15 U.S.C. Sec. 3901 et seq.; and

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(iii) Title 31A, Chapter 15, Part [2] II, Risk Retention Groups Act;

(b) all residual market pools and joint underwriting authorities or associations; and

(c) all captive insurers.

(12) (a) "Managing general agent" means any person, firm, association, or corporation that:

(i) manages all or part of the insurance business of an insurer, including the management of a separate division, department, or underwriting office;

(ii) acts as an agent for the insurer whether it is known as a managing general agent, manager, or other similar term;

(iii) with or without the authority, either separately or together with affiliates, directly or indirectly produces and underwrites an amount of gross direct written premium equal to, or more than 5% of, the policyholder surplus as reported in the last annual statement of the insurer in any one quarter or year; and

(iv) either adjusts or pays claims in excess of an amount determined by the commissioner, or that negotiates reinsurance on behalf of the insurer.

(b) Notwithstanding Subsection (12)(a), the following persons may not be considered as managing general agent for the purposes of this chapter:

(i) an employee of the insurer;

(ii) a U.S. manager of the United States branch of an alien insurer;

(iii) an underwriting manager that, pursuant to contract:

(A) manages all the insurance operations of the insurer;

(B) is under common control with the insurer;

(C) is subject to Title 31A, Chapter 16, Insurance Holding Companies; and

(D) is not compensated based on the volume of premiums written; and

(iv) the attorney-in-fact authorized by and acting for the subscribers of a reciprocal insurer or inter-insurance exchange under powers of attorney.

(13) "Producer" is a person who arranges for insurance coverages between insureds and insurers.

(14) "Qualified U.S. financial institution" means an institution that:

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(a) is organized or, in the case of a U.S. office of a foreign banking organization licensed, under the laws of the United States or any state;

(b) is regulated, supervised, and examined by U.S. federal or state authorities having regulatory authority over banks and trust companies; and

(c) has been determined by either the commissioner, or the Securities Valuation Office of the National Association of Insurance Commissioners, to meet the standards of financial condition and standing that are considered necessary and appropriate to regulate the quality of financial institutions whose letters of credit will be acceptable to the commissioner.

(15) "Reinsurance intermediary" means a reinsurance intermediary-broker or a reinsurance intermediary-manager as these terms are defined in Subsections (16) and (17).

(16) "Reinsurance intermediary-broker" means a person other than an officer or employee of the ceding insurer, firm, association, or corporation who solicits, negotiates, or places reinsurance cessions or retrocessions on behalf of a ceding insurer without the authority or power to bind reinsurance on behalf of the insurer.

(17) (a) "Reinsurance intermediary-manager" means a person, firm, association, or corporation who:

(i) has authority to bind or who manages all or part of the assumed reinsurance business of a reinsurer, including the management of a separate division, department, or underwriting office; and

(ii) acts as an agent for the reinsurer whether the person, firm, association, or corporation is known as a reinsurance intermediary-manager, manager, or other similar term.

(b) Notwithstanding Subsection (17)(a), the following persons may not be considered reinsurance intermediary-managers for the purpose of this chapter with respect to the reinsurer:

(i) an employee of the reinsurer;

(ii) a U.S. manager of the United States branch of an alien reinsurer;

(iii) an underwriting manager that, pursuant to contract:

(A) manages all the reinsurance operations of the reinsurer;

(B) is under common control with the reinsurer;

(C) is subject to Title 31A, Chapter 16, Insurance Holding Companies; and

(D) is not compensated based on the volume of premiums written; and

(iv) the manager of a group, association, pool, or organization of insurers that:

(A) engage in joint underwriting or joint reinsurance; and

(B) are subject to examination by the insurance commissioner of the state in which the manager's principal business office is located.

(18) "Reinsurer" means any person, firm, association, or corporation duly licensed in this state as an insurer with the authority to assume reinsurance.

(19) "Surplus lines broker" means a person licensed under Subsection 31A-23-204(5) to place insurance with unauthorized insurers in accordance with Section 31A-15-103.

(20) "Underwrite" means the authority to accept or reject risk on behalf of the insurer.

Section 17. Section 31A-23-203 is amended to read:

31A-23-203. General requirements for license issuance and renewal.

(1) The commissioner shall issue or renew a license to act as an agent, broker, or consultant to any person who, as to the license classification applied for under Section 31A-23-204[, has]:

[(1)] (a) has satisfied the character requirements under Section 31A-23-205;

[(2)] (b) has satisfied any applicable continuing education requirements under Section 31A-23-206;

[(3)] (c) has satisfied any applicable examination requirements under Section 31A-23-207;

[(4)] (d) has satisfied any applicable training period requirements under Section 31A-23-208;

[(5)] (e) if a nonresident[,]:

(i) has complied with Section 31A-23-209; and

(ii) holds an active similar license in that person's state of residence;

[(6)] (f) as to applicants for licenses to act as title insurance agents, <u>has</u> satisfied the requirements of Section 31A-23-211; and

[(7)] (g) has paid the applicable fees under Section 31A-3-103.

(2) (a) The department may request:

(i) criminal background information maintained pursuant to Title 53, Chapter 10, Part 2, from the Bureau of Criminal Identification; and

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(ii) complete Federal Bureau of Investigation criminal background checks through the national criminal history system.

(b) Information obtained by the department from the review of criminal history records received under Subsection (2)(a) shall be used by the department for the purposes of:

(i) determining if a person satisfies the character requirements under Section 31A-23-205 for issuance or renewal of a license;

(ii) determining if a person has failed to maintain the character requirements under Section 31A-23-205; and

(iii) preventing persons who violate the federal Violent Crime Control and Law Enforcement Act of 1994, 18 U.S.C. Secs. 1033 and 1034 from engaging in the business of insurance in the state.

(c) If the department requests the criminal background information, the department shall:

(i) pay to the Department of Public Safety the costs incurred by the Department of Public Safety in providing the department criminal background information under Subsection (2)(a)(i);

(ii) pay to the Federal Bureau of Investigation the costs incurred by the Federal Bureau of Investigation in providing the department criminal background information under

Subsection(2)(a)(ii); and

(iii) charge the person applying for a license or for renewal of a license a fee equal to the aggregate of Subsections (2)(c)(i) and (ii).

Section 18. Section **31A-23-204** is amended to read:

31A-23-204. License classifications.

Licenses issued under this chapter shall be issued under the classifications described under Subsections (1) through (6). These classifications are intended to describe the matters to be considered under any education, examination, and training required of license applicants under Sections 31A-23-206 through 31A-23-208.

- (1) Agent and broker license classifications include:
- (a) life insurance, including nonvariable annuities;
- (b) variable annuities;
- (c) disability insurance, including contracts issued to policyholders under Chapter 7 or 8;

- (d) property/liability insurance, which includes:
- (i) property insurance;
- (ii) liability insurance;
- (iii) surety and other bonds; and
- (iv) policies containing any combination of these coverages; [and]
- (e) title insurance under one of the following categories:
- (i) search, including authority to act as a title marketing representative;
- (ii) escrow, including authority to act as a title marketing representative;
- (iii) search and escrow, including authority to act as a title marketing representative; and
- (iv) title marketing representative only; and
- (f) workers compensation insurance.
- (2) Limited license product classification includes:
- (a) credit life and credit disability insurance;
- (b) travel;
- (c) motor club;
- (d) car rental related;
- (e) credit involuntary unemployment insurance and credit property insurance; [and]
- (f) bail bond agent; and
- (g) customer service representative.
- (3) Consultant license classification includes:
- (a) life insurance, including nonvariable annuities;
- (b) variable annuities;
- (c) disability insurance, including contracts issued to policyholders under Chapter 7 or 8;

[and]

- (d) property/liability insurance, which includes:
- (i) property insurance;
- (ii) liability insurance;
- (iii) surety and other bonds; and

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(iv) policies containing any combination of these coverages; and

(e) workers compensation insurance.

(4) A holder of licenses under Subsections (1)(a) and (1)(c) has all qualifications necessary to act as a holder of a license under Subsection (2)(a).

(5) (a) Upon satisfying the additional applicable requirements, a holder of a brokers license may obtain a license to act as a surplus lines broker. [This type of license]

(b) A license to act as a surplus lines broker gives the holder the authority to arrange insurance contracts with unauthorized insurers under Section 31A-15-103, but only as to the types of insurance under Subsection (1) for which [he] the broker holds a brokers license.

(6) The commissioner may by rule recognize other agent, broker, limited license, or consultant license classifications as to kinds of insurance not listed under Subsections (1), (2), and (3).

Section 19. Section **31A-23-206** is amended to read:

31A-23-206. Continuing education requirements -- Regulatory authority.

(1) The commissioner shall by rule prescribe the continuing education requirements for each class of agent's license under Subsection 31A-23-204(1), except that [no] the commissioner may not impose a continuing education requirement [may be imposed upon holders of licenses] on a holder of a license under:

(a) Subsection 31A-23-204(2); or [other]

(b) a license [classifications] classification other than under Subsection 31A-23-204(2) that is recognized by the commissioner by rule as provided in Subsection 31A-23-204(6).

(2) (a) [Educational requirements may not be stated] The commissioner may not state a continuing education requirement in terms of formal education. [These requirements]

(b) The commissioner may [be stated] state a continuing education requirement in terms of classroom hours, or their equivalent, of insurance-related instruction received[, for which insurance-related].

(c) Insurance-related formal education may be a substitute, in whole or in part, for classroom hours, or their equivalent, required under Subsection (2)(b).

(3) (a) [No more than 12 classroom hours, or their equivalent, of continuing education may be required for a two-year period regardless of the number of lines for which an agent or broker may be licensed. Licensees who,] The commissioner shall impose continuing education requirements in accordance with a two-year licensing period in which the licensee meets the requirements of this Subsection (3).

(b) Except as provided in Subsection (3)(c), for a two-year licensing period described in Subsection (3)(a) the commissioner shall require that the licensee for each line of authority held by the licensee:

(i) receive six hours of continuing education; or

(ii) pass a line of authority continuing education examination.

(c) Notwithstanding Subsection (3)(b):

(i) the commissioner may not require continuing education for more than four lines of authority held by the licensee;

(ii) the commissioner shall require:

(A) a minimum of:

(I) 12 hours of continuing education;

(II) passage of two line of authority continuing education examinations; or

(III) a combination of Subsections (3)(c)(ii)(A)(I) and (II);

(B) that the minimum continuing education requirement of Subsection (3)(c)(ii)(A) include:

(I) at least six hours or one line of authority continuing education examination for each line of authority held by the licensee not to exceed four lines of authority held by the licensee; and

(II) three hours of ethics training, which may be taken in place of three hours of the hours required for a line of authority.

(d) (i) If a licensee completes the licensee's continuing education requirement without taking a line of authority continuing education examination, the licensee shall complete at least 1/2 of the required hours through classroom hours of insurance-related instruction.

(ii) The hours not completed through classroom hours in accordance with Subsection (3)(d)(i) may be obtained through:

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(A) home study;

(B) video tape;

(C) experience credit; or

(D) other method provided by rule.

(e) (i) A licensee may obtain continuing education hours at any time during the two-year licensing period.

(ii) The licensee may not take a line of authority continuing education examination more than 90 calendar days before the date on which the licensee's license is renewed.

(f) The commissioner shall make rules for the content and procedures for line of authority continuing education examinations.

(g) (i) Beginning May 3, 1999, a licensee is exempt from continuing education requirements under this section if:

(A) as of April 1, 1990, [have] the licensee has completed 20 years of licensure in good standing [shall be exempt from the requirement of continuing education.];

(B) the licensee requests an exemption from the department; and

(C) the department approves the exemption.

(ii) If the department approves the exemption under Subsection (3)(g)(i), the licensee is not required to apply again for the exemption.

[(b) The rules shall provide for home study, video tapes, and experience credits in addition to other provisions. However, not less than half of the required hours shall be met through actual class attendance.]

(h) A licensee with a variable annuity line of authority is exempt from the requirement for continuing education for that line of authority so long as the:

(i) National Association of Securities Dealers requires continuing education for licensees having a securities license; and

(ii) the licensee complies with the National Association of Securities Dealers' continuing education requirements for securities licensees.

(i) The commissioner shall, by rule:

(i) publish a list of insurance professional designations whose continuing education requirements can be used to meet the requirements for continuing education under Subsection (3)(c); and

[(c) The rules shall] (ii) authorize professional agent associations to:

(A) offer qualified programs for all classes of licenses on a geographically accessible basis; and [to]

(B) collect reasonable fees for funding and administration of the continuing education program, subject to the review and approval of the commissioner.

(j) (i) The fees permitted under Subsection (3)(i)(ii) that are charged to fund and administer the program shall reasonably relate to the costs of administering the program.

(ii) Nothing in this section prohibits a provider of continuing education programs or courses from charging fees for attendance at courses offered for continuing education credit.

[(d)] (iii) The fees <u>permitted under Subsection (3)(i)(ii) that are</u> charged for attendance at a professional agent association program may be less for an association member, based on the member's affiliation expense, but shall preserve the right of a nonmember to attend without affiliation.

(4) The commissioner shall designate courses, including those presented by insurers, which satisfy the requirements of this section.

(5) The requirements of this section apply only to applicants who are natural persons.

(6) The commissioner may waive the requirements of this section as to any person who has been an active insurance agent or broker in another state for two years immediately prior to applying for a license in this state, but only if the applicant's state of residence has imposed upon the applicant education requirements which are substantially as rigorous as those of this state.

Section 20. Section **31A-23-211.7** is enacted to read:

<u>31A-23-211.7.</u> Special requirements for variable annuity line of authority.

(1) Before applying for a variable annuity line of authority, an agent, broker, or consultant shall be licensed under Section 61-1-3 as a:

(a) broker-dealer; or

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(b) agent.

(2) An agent's, broker's, or consultant's variable annuity line of authority is revoked on the day on which an agent's, broker's, or consultant's license under Section 61-1-3 is no longer valid.

Section 21. Section **31A-23-212** is amended to read:

31A-23-212. Form and contents of license.

(1) Licenses issued under this chapter shall be in the form the commissioner prescribes and shall set forth:

(a) the name, address, and telephone number of the licensee;

(b) the license classifications under Section 31A-23-204;

(c) the date of license issuance; and

(d) any other information the commissioner considers necessary.

(2) (a) An agency [acting as an agent, broker, surplus lines broker, or consultant] shall be licensed as an agency[; and the] if the agency acts as:

(i) an agent;

(ii) a broker;

(iii) a surplus lines broker;

(iv) a managing general agent; or

(v) a consultant.

(b) The agency license required under Subsections (2) shall set forth the names of all natural persons licensed under this chapter who are authorized to act in those capacities for the agency in this state.

(3) So far as is practicable, the commissioner shall issue a single license to each agent, broker, or consultant for a single fee. [The fee for the less expensive license is subsumed within the most expensive license.]

Section 22. Section **31A-23-215** is amended to read:

31A-23-215. Agency licensees -- Reports -- Suspension, revocation, or limitation of license.

(1) (a) Every two years each agency licensed as an agent, managing general agent, broker,

or consultant shall report to the commissioner all natural [person agents, brokers, or consultants] <u>persons</u> acting in [those] the following capacities for the [organization] agency:

(i) agent;

(ii) broker;

(iii) surplus lines broker;

(iv) managing general agent; or

(v) consultant.

(b) The report required by Subsection (1)(a) shall be made:

(i) on a date specified by rule; and

(ii) in a form the commissioner establishes by rule.

(2) An agency licensed under this chapter shall report to the commissioner promptly, in the detail and form prescribed by rule, every change in the list of natural [person agents, managing general agents, brokers, or consultants authorized to act in those capacities for the agency] persons required under Subsection (1).

(3) (a) An agency licensed under this chapter shall report to the commissioner the cause of termination of a designated licensee's appointment.

(b) The information provided the commissioner <u>under Subsection (3)(a)</u> shall remain confidential.

[(b)] (c) An agency is immune from civil action, civil penalty, or damages if the agency complies in good faith with Subsection (3)(a) in reporting to the commissioner the cause of termination of licensees' appointments.

[(c)] (d) Notwithstanding any other provision in this section, an agency is not immune from any action or resulting penalty imposed on the reporting agency as a result of proceedings brought by or on behalf of the department if the action is based on evidence other than the report submitted in compliance with this Subsection (3).

(4) An agency licensed under this chapter may act in the capacities for which it is licensed only through natural persons who are licensed under this chapter to act in the same manner.

(5) An agency licensed under this chapter shall designate and report promptly to the

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commissioner the name of at least one natural person who has authority to act on behalf of the agency in all matters pertaining to compliance with this title and orders of the commissioner.

(6) For purposes of this section, if a license is held by an agency, both the agency itself and any natural person named on the license are considered to be the holders of the license.

(7) If a natural person named on the agency license commits any act or fails to perform any duty that is a ground for suspending, revoking, or limiting the natural person's license, the commissioner may suspend, revoke, or limit the license of:

(a) that natural person;

(b) the agency, if the agency:

(i) is reckless or negligent in its supervision of the natural person; or

(ii) knowingly participated in the act or failure to act that is the ground for suspending, revoking, or limiting the license; or

(c) (i) [both] the natural person; and

(ii) the agency if the agency meets the requirements of Subsection (7)(b).

Section 23. Section **31A-23-405** is amended to read:

31A-23-405. Services performed for unauthorized insurers.

[No] (1) A person licensed under Chapter 23 may not perform any act that assists any person not authorized as an insurer to act as an insurer.

(2) It is a violation of this section to assist any person purporting to be exempt from state insurance regulation under Section 514 of the Employee Retirement Income Security Act of 1974, unless that person has rebutted the presumption of jurisdiction under Section 31A-1-105.

(3) It is not a violation of this section:

(a) to assist persons engaged in self insurance as defined under [Subsection] Section 31A-1-301 [(73),]; or

(b) for a surplus lines broker to engage in the placement of insurance under Section 31A-15-103.

Section 24. Section **31A-26-204** is amended to read:

31A-26-204. License classifications.

Licenses issued under this chapter shall be issued under the classifications described under Subsections (1), (2), and (3). These classifications are intended to describe the matters to be considered under any prerequisite education and examination required of license applicants under Sections 31A-26-206 and 31A-26-207.

- (1) Independent adjuster license classifications include:
- (a) disability insurance, including related service insurance under Chapter 7 or 8;
- (b) property and liability insurance, which includes:
- (i) property insurance;
- (ii) liability insurance;
- (iii) surety bonds; and
- (iv) policies containing combinations or variations of these coverages;
- (c) service insurance;
- (d) title insurance; [and]
- (e) credit insurance; and
- (f) workers compensation insurance.
- (2) Public adjuster license classifications include:
- (a) disability insurance, including related service insurance under Chapter 7 or 8;
- (b) property and liability insurance, which includes:
- (i) property insurance;
- (ii) liability insurance;
- (iii) surety bonds; and
- (iv) policies containing combinations or variations of these coverages;
- (c) service insurance;
- (d) title insurance; [and]
- (e) credit insurance; and
- (f) workers compensation insurance.

(3) The commissioner may by rule recognize other independent adjuster or public adjuster license classifications as to other kinds of insurance not listed under Subsection (1). The

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commissioner may also by rule create license classifications which grant only part of the authority arising under another license class.

Section 25. Section **31A-26-206** is amended to read:

31A-26-206. Continuing education requirements.

(1) The commissioner shall by rule prescribe continuing education requirements for each class of license under Section 31A-26-204.

[(2) (a) No more than 12 classroom hours, or their equivalent, of continuing education may be required for a two-year period.]

[(b) The rules shall provide for home study, video tapes, and experience credits in addition to other provisions. However, not less than half of the required hours shall be met through actual class attendance.]

[(c) (i) The rules shall]

(2) (a) The commissioner shall impose continuing education requirements in accordance with a two-year licensing period in which the licensee meets the requirements of this Subsection (2).

(b) Except as provided in Subsection (2)(c), for a two-year licensing period described in Subsection (2)(a) the commissioner shall require that the licensee for each line of authority held by the licensee:

(i) receive six hours of continuing education; or

(ii) pass a line of authority continuing education examination.

(c) Notwithstanding Subsection (2)(b):

(i) the commissioner may not require continuing education for more than four lines of authority held by the licensee:

(ii) the commissioner shall require:

(A) a minimum of:

(I) 12 hours of continuing education;

(II) passage of two line of authority continuing education examinations; or

(III) a combination of Subsection (2)(c)(ii)(A)(I) and (II);

(B) that the minimum continuing education requirement of Subsection (2)(c)(ii)(A) include:

(I) at least six hours or one line of authority continuing education examination for each line of authority held by the licensee not to exceed four lines of authority held by the licensee; and

(II) three hours of ethics training, which may be taken in place of three hours of the hours required for a line of authority.

(d) (i) If a licensee completes the licensee's continuing education requirement without taking a line of authority continuing education examination, the licensee shall complete at least 1/2 of the required hours through classroom hours of insurance-related instruction.

(ii) The hours not completed through classroom hours in accordance with Subsection (2)(d)(i) may be obtained through:

(A) home study;

(B) video tape;

(C) experience credit; or

(D) other method provided by rule.

(e) (i) A licensee may obtain continuing education hours at any time during the two-year licensing period.

(ii) The licensee may not take a line of authority continuing education examination more than 90 calendar days before the date on which the licensee's license is renewed.

(f) The commissioner shall make rules for the content and procedures for line of authority continuing education examinations.

(g) (i) Beginning May 3, 1999, a licensee is exempt from the continuing education requirements of this section if:

(A) as of April 1, 1990, the licensee has completed 20 years of licensure in good standing;

(B) the licensee requests an exemption from the department; and

(C) the department approves the exemption.

(ii) If the department approves the exemption under Subsection (2)(g)(i), the licensee is not required to apply again for the exemption.

(h) A licensee with a variable annuity line of authority is exempt from the requirement for continuing education for that line of authority so long as:

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(i) the National Association of Securities Dealers requires continuing education for licensees having a securities license; and

(ii) the licensee complies with the National Association of Securities Dealers' continuing education requirements for securities licensees.

(i) The commissioner shall by rule:

(i) publish a list of insurance professional designations whose continuing education requirements can be used to meet the requirements for continuing education under Subsection (2)(c); and

(ii) authorize professional adjuster associations to:

(A) offer qualified programs for all classes of licenses on a geographically accessible basis; and [to]

(B) collect reasonable fees for funding and administration of the continuing education programs, subject to the review and approval of the commissioner.

[(ii)] (j) (i) The fees permitted under Subsection (2)(i) that are charged to fund and administer a program shall reasonably relate to the costs of administering the program.

[(iii)] (ii) Nothing in this section shall prohibit a provider of continuing education programs or courses from charging fees for attendance at courses offered for continuing education credit.

[(iv)] (iii) The fees <u>permitted under Subsection (2)(i)(ii) that are</u> charged for attendance at an association program may be less for an association member, based on the member's affiliation expense, but shall preserve the right of a nonmember to attend without affiliation.

(3) The requirements of this section apply only to licensees who are natural persons.

(4) The requirements of this section do not apply to members of the Utah State Bar.

(5) The commissioner shall designate courses that satisfy the requirements of this section, including those presented by insurers.

Section 26. Section **31A-27-102** is amended to read:

31A-27-102. Definitions.

(1) As used in this chapter:

(a) "Alien insurer domiciled in Utah" means an insurer domiciled outside the United States

whose entry into the United States is through Utah.

(b) "Ancillary state" means any state other than an insurer's state of domicile.

(c) "Contingent claims" means a claim or demand upon which:

(i) a right of action has accrued at the date of the order of liquidation; and [upon which]

(ii) liability has not been determined.

(d) "Date of liquidation" means the date of the filing of a petition for liquidation that results in an order for liquidation.

(e) "Delinquency proceeding" means any:

(i) proceeding commenced against an insurer for the purpose of liquidating, rehabilitating, reorganizing, or conserving the insurer[,]; and [any]

(ii) summary proceeding under Sections 31A-27-201 through 31A-27-203.

(f) "Domestic insurer" includes, for purposes of this chapter, foreign insurers commercially domiciled in this state under Section 31A-14-206.

(g) (i) "Estate" or "property of the estate" means:

(A) all legal or equitable interests of an insurer that are the subject of a rehabilitation,

liquidation, conservation, or other proceeding under this chapter in property as of the date of filing of the petition for rehabilitation, liquidation, or conservation;

(B) any interest in property recoverable by the receiver under the provisions of this title;

- (C) any interest in property acquired after the date of filing of the petition; and
- (D) all proceeds, products, rents, and profits from this property.

(ii) [H] <u>"Estate" or "property of the estate"</u> includes property in which the insurer holds only legal title, but no equitable interest, only to the extent of the insolvent insurer's interest.

(h) "Fair consideration" is given for property or an obligation:

(i) when in exchange for the property or obligation, as a fair equivalent for it, and in good faith[,]:

(A) property is conveyed[,];

(B) services are rendered[,];

(C) an obligation is incurred[,]; or

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(D) an antecedent debt is satisfied; or

(ii) when the property or obligation is received in good faith to secure a present advance or an antecedent debt in amount not disproportionately small compared to the value of the property or obligation obtained.

(i) (i) "General assets" means all property not encumbered by a security agreement for the security or benefit of specified persons or classes of persons. [H]

(ii) "General assets" does not include separate account assets under Section 31A-5-217.

(iii) For encumbered property, "general assets" includes all that property or its proceeds which is in excess of the amount necessary to discharge the sums secured by the property.

(iv) Assets held in trust or on deposit for the security or benefit of all policyholders, or all policyholders and creditors, in more than a single state, are general assets.

(j) "Guaranty association" means:

(i) the applicable association under Chapter 28; or

(ii) the similar association under the laws of another state.

(k) "Immature claim" means a claim or demand upon which payment is due, except for the passage of time.

(1) "Insolvency" has the same meaning as in [Subsection] Section 31A-1-301[(39)].

(m) "Insurer" means any person who is doing, has done, purports to do, or is licensed to do an insurance business on its own account and is or has been subject to the authority of, or to liquidation, rehabilitation, reorganization, or supervision by, a commissioner. A separate account created under Section 31A-5-217 is an "insurer" for purposes of Chapter 27.

(n) "Preferred claim" means any claim [which] <u>that</u> the law gives priority of payment from the general assets of the insurer.

(o) "Receiver" means receiver, liquidator, rehabilitator, or conservator, as the context requires.

(p) "Reciprocal state" means any state other than this state:

(i) in which in substance Subsection 31A-27-310(1), Subsections 31A-27-403(1) and (3), Sections 31A-27-404 and 31A-27-406 through 31A-27-409 are in force[, and];

(ii) which has laws requiring the commissioner to be the receiver of a delinquent insurer[,]; and

(iii) which has laws for the avoidance of fraudulent conveyances and preferential transfers by the receiver of a delinquent insurer.

(q) "Secured claim" means any claim secured by mortgage, trust deed, security agreement, pledge, deposit as security, escrow or otherwise, but not including special deposit claims. The term also includes claims that have become liens upon specific assets through judicial processes.

(r) "Separate account assets" means those assets allocated to separate accounts under Section 31A-5-217.

(s) "Special deposit claim" means any claim secured by a deposit in trust made pursuant to this title for the security or benefit of one or more limited classes of persons.

(t) "Transfer" means every mode, direct or indirect, absolute or conditional, voluntarily or involuntarily, by or without judicial proceedings, of disposing of or parting with property or with an interest in property. The retention of a security interest in or title to property delivered to a debtor is considered a transfer by the debtor.

(u) "Unliquidated claim" means a claim or demand upon which:

(i) a right of action has accrued at the date of the order of liquidation; and

(ii) liability has been established but the amount of which has not been determined.

(2) If the subject of a rehabilitation or liquidation proceeding under this chapter is an insurer engaged in a surety business, then as used in this chapter:

(a) "Policy" includes a bond issued by a surety.

(b) "Policyholder" includes a principal on a bond.

(c) "Beneficiary" includes an obligee of a bond.

(d) "Insured" includes both the principal and obligee of a bond.

Section 27. Section **31A-27-104** is amended to read:

31A-27-104. Injunctions and orders.

(1) Any receiver appointed in a proceeding under this chapter may, at any time, apply for and any court of general jurisdiction in this state may grant, under the relevant provisions of the Utah

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Rules of Civil Procedure, any restraining orders, temporary and permanent injunctions, and other orders as are necessary and proper to prevent:

- (a) the transaction of further business;
- (b) the transfer of property;
- (c) interference with the receiver or with the proceedings, including those against:
- (i) the insurer; and [those against]
- (ii) insureds the insurer is obligated to defend;
- (d) waste of the insurer's assets;
- (e) dissipation and transfer of bank accounts;
- (f) the institution or further prosecution of any actions or proceedings, including those against:
 - (i) the insurer; and [those against]
 - (ii) insureds the insurer is obligated to defend;
- (g) the obtaining of preferences, judgments, attachments, garnishments, or liens against the insurer or its assets;
 - (h) the levying of execution against the insurer or its assets;
- (i) the making of any sale or deed for nonpayment of taxes or assessments that would lessen the value of the assets of the insurer;
- (j) the withholding from the receiver of books, accounts, documents, or other records relating to the business of the insurer; [or]
 - (k) any other threatened or contemplated action that might:
 - (i) lessen the value of the insurer's assets; or
- (ii) prejudice the rights of policyholders, creditors or shareholders, or the administration of the proceeding; or
- (1) institution of a proceeding against the receiver as defined in and subject to Section 31A-27-110.
- (2) The receiver may apply to any court outside of this state for the relief described in Subsection (1).

Section 28. Section **31A-27-110** is enacted to read:

<u>31A-27-110.</u> Immunity and indemnification of the receiver.

(1) For the purposes of this section:

(a) "Legal action subject to this section" means a suit or liability:

(i) against the receiver either:

(A) personally; or

(B) in the receiver's official capacity; and

(ii) alleging a claim for damage to or loss of property or personal injury or other civil liability caused by or resulting from any alleged act, error, or omission of the receiver arising out of or by reason of the receiver's duties or employment.

(b) "Person retained to assist" means:

(i) a present or former special deputy or assistant special deputy appointed by a receiver; and

(ii) a person that the receiver, special deputy, or assistant special deputy employs or retains to assist in a delinquency proceeding under this chapter.

(c) "Receiver" means a person responsible for the conduct of a delinquency proceeding under this chapter including:

(i) a former or present receiver;

(ii) a supervisor;

(iii) a rehabilitator;

(iv) a deputy rehabilitator;

(v) a liquidator;

(vi) a deputy liquidator; or

(vii) a person retained to assist a person described in Subsection (1)(c)(i) through (vi) in the performance of that person's duties.

(2) (a) Except as provided in Subsection (2)(b), a receiver has judicial immunity and is immune from a legal action subject to this section.

(b) A receiver is not immune from suit or liability for any damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of the receiver.

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(3) (a) Except as provided in Subsection (3)(b), if a legal action subject to this section is commenced against the receiver, the receiver shall be indemnified from the assets of the insurer for any:

(i) expense;

(ii) attorneys' fees;

(iii) judgment;

(iv) settlement;

(v) decree; or

(vi) amount due and owing or paid in satisfaction of or incurred in the defense of the legal action.

(b) Notwithstanding Subsection (3)(a), a receiver is not indemnified from the assets of the insurer if a court determines on a final adjudication on the merits that the alleged act, error, or omission of the receiver giving rise to the claim:

(i) did not arise out of or by reason of the receiver's duties or employment; or

(ii) was caused by the intentional or willful and wanton misconduct of the receiver.

(4) (a) Attorneys' fees and any expenses incurred in defending a legal action for which immunity or indemnity is available under this section shall be paid from the assets of the insurer as they are incurred in advance of the final disposition of the legal action once the receiver of the insurer's estate receives an undertaking by or on behalf of the receiver to repay the attorneys' fees and expenses if a court determines on a final adjudication on the merits that the receiver is not entitled to immunity or indemnity under this section.

(b) Any indemnification paid or to be paid from the insurer's assets pursuant to this section shall be an administrative expense of the insurer.

(c) (i) If there is actual or threatened legal action against a receiver for which immunity or indemnity may be available under this section, the receiver may take the actions described in Subsection (4)(c)(ii) as security for the payment of indemnity until such time as all:

(A) applicable statutes of limitation have run;

(B) actual or threatened actions against the receiver have been completely and finally

resolved; and

(C) obligations of the insurer and the receiver under this section shall have been satisfied.

(ii) In accordance with Subsection (4)(c)(i), the receiver may at the receiver's discretion:

(A) segregate and reserve from the assets of the insurer a reasonable amount of funds that in the judgment of the receiver is needed to provide immunity or indemnity; or

(B) obtain a surety bond or make other arrangements that enable the receiver to fully secure the payment of all obligations under this section.

(5) (a) Except as provided in Subsection (5)(b), if a legal action against a receiver for which indemnity may be available under this section is settled prior to final adjudication on the merits, the estate shall:

(i) pay the settlement amount on behalf of the receiver; or

(ii) indemnify the receiver for the settlement amount.

(b) An estate is not required to pay the amounts under Subsection (5)(a) if the receiver determines that the claim:

(i) did not arise out of or by reason of the receiver's duties or employment; or

(ii) was caused by the intentional or willful and wanton misconduct of the receiver.

(6) (a) In a legal action in which the receiver is a defendant, the portion of a settlement relating to the alleged act, error, or omission of the receiver is subject to the approval of the court before which the delinquency proceeding is pending.

(b) The court shall not approve that portion of the settlement if it determines:

(i) that the claim did not arise out of or by reason of the receiver's duties or employment; or

(ii) that the claim was caused by the intentional or willful and wanton misconduct of the receiver.

(7) (a) Subsection (2) applies to any suit based in whole or in part on any alleged act, error, or omission that takes place on or after May 3, 1999.

(b) A legal action may not be filed or maintained against the receiver based in whole or in part on any alleged act, error, or omission which took place prior to May 3, 1999, unless on or before November 3, 1999:

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(i) suit is filed; and

(ii) valid service of process is obtained.

(c) Subsections (3) through (6) apply to any suit that is pending on or filed after May 3,

1999, without regard to when the alleged act, error, or omission took place.

(8) This section:

(a) does not apply to an action brought by or on behalf of the receiver; and

(b) may not be interpreted or applied to deprive the receiver of any immunity, indemnity, benefits of law, rights, or any defense otherwise available to the receiver.

Section 29. Section **31A-27-307** is amended to read:

31A-27-307. Grounds for liquidation.

The commissioner may apply by verified petition to the Third District Court for Salt Lake County or to the district court of the county in which the principal office of the insurer is located, for an order directing the commissioner to liquidate a domestic insurer or an alien insurer domiciled in this state on any of the following grounds:

(1) any ground on which the commissioner may apply for an order of rehabilitation under Section 31A-27-301, whenever the commissioner believes that attempts to rehabilitate the insurer would:

(a) substantially increase the risk of loss to:

(i) its creditors[;];

(ii) its policyholders[;]; or

(iii) the public[,]; or [would]

(b) be futile, or that rehabilitation would serve no useful purpose;

(2) that the insurer is insolvent or is about to become insolvent as defined in [Subsection]
 <u>Section</u> 31A-1-301[(39)];

(3) that the insurer is in the condition that the further transaction of business would be hazardous, financially or otherwise, to its policyholders, its creditors, or the public, including the occurrence of an authorized control level event as defined in Section 31A-17-605;

(4) that the insurer:

(a) during the previous 12 months:

(i) has not transacted the business of insurance [during the previous 12 months or];

(ii) has transacted only a token insurance business [during that period,] although authorized to do so throughout that period[,]; or [that]

(b) more than 12 months after incorporation [it], has failed to become authorized to do an insurance business;

(5) that during the previous 12 months, the insurer has systematically attempted to compromise with its creditors or renegotiate previously agreed settlements on the ground that it is financially unable to pay its claims in full;

(6) that the insurer has commenced, or within the previous year has attempted to commence, voluntary liquidation otherwise than under this title;

(7) that the insurer has concealed records or assets from the commissioner or improperly removed them from the jurisdiction;

(8) that the insurer does not satisfy the requirements that would be applicable if it were seeking initial authorization to do an insurance business in this state, except for:

(a) requirements that are intended to apply only at the time the initial authorization to do business is obtained and not after that time; and

(b) requirements that are expressly made inapplicable by the laws establishing the requirements;

(9) that the holders of 2/3 of the shares entitled to vote, or 2/3 of the members or policyholders entitled to vote in an insurer controlled by its members or policyholders, have consented to the petition; or

(10) the conditions of Subsection 31A-1-106(7) are present.

Section 30. Section **31A-27-310** is amended to read:

31A-27-310. Liquidation orders.

(1) (a) An order to liquidate the business of a domestic insurer shall:

(i) appoint the commissioner and each of [his] the commissioner's successors in office as liquidator; and [shall]

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(ii) direct the liquidator to immediately take possession of the assets of the insurer and to administer them under the orders of the court.

(b) Except as qualified by Section 31A-27-309, the liquidator is vested by operation of law with the title to all of the property, contracts, and rights of action and all of the books and records of the insurer ordered liquidated, wherever located, as of the date of the filing of the petition for liquidation.

(c) The liquidator may recover and reduce them to possession, except that ancillary receivers in reciprocal states have, as to assets located in their respective states, the rights and powers prescribed in Subsection 31A-27-404(3) for ancillary receivers appointed in Utah as to assets located in Utah.

(d) The filing or recording of the order of liquidation with [any] <u>a</u> county recorder in Utah <u>or equivalent agency outside of Utah</u> imparts the same notice as a deed, bill of sale, or other evidence of title properly filed or recorded with that county recorder <u>in Utah or equivalent agency outside of Utah</u>.

(2) Upon issuance of the order of liquidation, the rights and liabilities of the named insurer and of its creditors, policyholders, shareholders, members, and all other persons interested in its estate are fixed as of the date of filing the petition for liquidation, except as provided in Sections 31A-27-311 and 31A-27-330.

(3) An order to liquidate the business of an alien insurer domiciled in Utah shall be in the same terms and has the same legal effect as an order to liquidate a domestic insurer, except that the assets and the business in the United States shall be the only assets and business included under the order.

(4) (a) At the time of petitioning for an order of liquidation, or at any time [thereafter,] after the petition the commissioner may petition the court to declare the insurer insolvent[, and after].

(b) After the notice and hearing on a petition under Subsection (4)(a) that the court considers proper, the court may make the declaration.

Section 31. Section **31A-27-323** is amended to read:

31A-27-323. Setoffs.

(1) Mutual debts or mutual credits between the insurer and another person in connection with any action or proceeding under this chapter shall be set off and only the balance shall be allowed or paid, except as provided in Subsection (2).

(2) A setoff may not be allowed in favor of any person under any of the following conditions <u>if</u>:

(a) [if] the obligation of the insurer to the person:

(i) is illusory; or

(ii) would not at the date of the filing of a petition for liquidation entitle the person to share as a claimant in the assets of the insurer;

(b) [if] the obligation of the insurer was purchased by or transferred to the person asserting it within 120 days prior to the petition for liquidation or with a view to its being used as a set off; or

(c) [if] the obligation of the person is:

(i) to pay an assessment levied against the members or subscribers of the insurer[, or is];

(ii) to pay a balance upon a subscription to the capital stock of the insurer[,]; or [is]

(iii) in any other way in the nature of a capital contribution.

(3) [Subsections] Subsection (2)[(b) and (2)(c)] may not be construed to deny a reinsurer its right to set off amounts due from the direct insurer against reinsurance proceeds to be paid to the direct insurer or its rehabilitator or liquidator.

Section 32. Section **31A-27-328** is amended to read:

31A-27-328. Filing of claims.

Proof of all claims shall be filed with the liquidator in the form required by Section 31A-27-329 on or before the last day for filing specified in the notice required under Section 31A-27-315, except that:

(a) proof of claims under Subsections 31A-27-335(2)(a) and (2)(g) through (2)(i) need not be filed at all; and

(b) proof of claims for unearned premiums and claims for cash surrender values or other investment values in life insurance and annuities need not be filed unless the liquidator expressly requires it.

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(2) (a) The liquidator may permit a claimant making a late filing to share in distributions, whether past or future, as if the claim were not late, to the extent that the payment will not prejudice the orderly administration of the liquidation, if one of the following exists:

[(a) The] (i) (A) the existence of a claim was not known to the claimant [who]; and

(B) the claim was filed as promptly as reasonably possible after learning of it; [or the claimant shall receive, at each distribution, the same percentage of the amount allowed on the late claim as is then being paid to other claimants of the same priority plus the same percentage of the amount allowed on the late claim as is then being paid to claimants of any lower priority. This shall continue until the late claim has been paid in full.]

[(b) The] (ii) the claim was:

(A) for unearned premiums or for cash surrender values or other investment values in life insurance or annuities which was not required to be filed[, was];

(B) omitted from the liquidator's recommendations to the court under Section 31A-27-336[,]; and [was]

(C) filed as promptly as reasonably possible after the claimant learned of the omission [-];

[(c) A] (iii) a transfer to a creditor was:

(A) avoided under Section 31A-27-319, Section 31A-27-320, or Section 31A-27-321; or [was]

(B) voluntarily surrendered under Subsection (5)[-];

[(d) Valuation] (iv) valuation under Section 31A-27-334 of security held by a secured creditor shows a deficiency, which is filed within 30 days after the valuation[:]:

[(e) The] (v) the claim was:

(A) contingent and became absolute[;]; and [was]

(B) filed within 30 days after it became absolute[-]; or

[(f) The] (vi) the claim was late for some other good cause.

(b) Until the late claim has been paid in full, a claimant described in Subsection (2)(a)(i) shall receive at each distribution:

(i) the same percentage of the amount allowed on the late claim as is then being paid to other

claimants of the same priority; plus

(ii) the same percentage of the amount allowed on the late claim as is then being paid to claimants of any lower priority.

(3) (a) The liquidator shall consider any claim filed late [which] that is not covered by Subsection (2), and permit it to receive distributions, other than the first distribution, which are subsequently declared on any claims of the same or lower priority, if the payment does not prejudice the orderly administration of the liquidation. [The]

(b) Until the late claim has been paid in full, a late-filing claimant permitted to receive distributions under Subsection (3)(a) shall receive[,] at each distribution[,]:

(i) the same percentage of the amount allowed on the late claim as is then being paid to other claimants of the same priority; plus

(ii) the same percentage of the amount allowed on the late claim as is then being paid to claimants of any lower priority. [This shall continue until the late claim has been paid in full.]

(4) Claims by guaranty associations under Chapter 28 shall be filed periodically by the associations pursuant to rules adopted by the commissioner. These claims shall share in all subsequently declared distributions as if they were not late.

(5) (a) [No claims] <u>A claim</u> of a creditor who has received or acquired a preference, lien, conveyance, transfer, assignment, or encumbrance, which is voidable under this chapter, may <u>not</u> be allowed unless the creditor surrenders the preference, lien, conveyance, transfer, assignment, or encumbrance.

(b) If the avoidance is effected by a proceeding in which a final judgment has been entered, the claim may not be allowed unless the money is paid or the property is delivered to the liquidator within 30 days from the date of the entering of the final judgment, except that the court having jurisdiction over the liquidation may allow further time if there is an appeal or other continuation of the proceeding.

(6) A claim allowable under Subsection (5) by reason of the avoidance, whether voluntary or involuntary, of a preference, lien, conveyance, transfer, assignment, or encumbrance may be filed as an excused late filing under Subsection (2) if it is filed within:

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(a) 30 days from the date of the avoidance; or [within]

(b) the further time allowed by the court under Subsection (5).

Section 33. Section **31A-27-332** is amended to read:

31A-27-332. Disputed claims.

(1) (a) When a claim is disallowed in whole or in part by the liquidator, written notice of the determination and of the right to object shall be given promptly to the claimant or the claimant's attorney of record, if any, by first-class mail at the addresses shown in the proof of claim.

(b) (i) Within 60 days from the mailing of the notice required by Subsection (1)(a), the claimant may file objections with the court.

(ii) If objections are not filed within [that] the period provided in Subsection (1)(b)(i), the claimant may not further object to the determination.

(2) (a) Whenever objections are filed with the court and the liquidator does not alter [his] the liquidator's ruling, the liquidator shall ask the court for a hearing as soon as practicable.

(b) The court shall issue an order setting a date as early as possible[, but no sooner than 20 days after the order].

(c) At the request of the liquidator, the court may establish procedures for the objections hearing.

(d) The liquidator shall give notice of the hearing by first-class mail to:

(i) the claimant or [his] the claimant's attorney; and [to]

(ii) any other persons directly affected[, not less than ten nor more than 30 days before the date of the hearing].

(e) A hearing shall be heard without a jury.

(f) The matter may be heard by:

(i) the court; or [by]

(ii) a court-appointed referee [who].

(g) If a referee is appointed under Subsection (2)(f), the referee shall:

(i) review and be limited to the evidence upon which the liquidator made the determination of the claims; and

(ii) submit to the court findings of fact together with [his] recommendations.

(h) Consistent with Subsection 31A-27-336(2), the court may approve, disapprove, or modify the liquidator's determination of or referee's recommendations on a claim.

(3) A court order issued after a hearing and pursuant to this section may be appealed as a final order for purposes of Rule 54 of the Utah Rules of Civil Procedure.

Section 34. Section **31A-27-335** is amended to read:

31A-27-335. Priority of distribution.

(1) (a) Every claim in each class of claims from the insurer's estate shall be paid in full or adequate funds retained for the payment before the members of the next class receive any payment.

(b) Once the funds are retained by the liquidator and approved by the court, the insurer's estate shall have no further liability to members of that class except to the extent of the retained funds and any other undistributed funds.

[(b)] (c) Subclasses may not be established within any class.

[(c) No] (d) <u>A</u> claim by a shareholder, policyholder, or other creditor [shall] <u>may not</u> be permitted to circumvent the priority classes through the use of equitable remedies.

(2) The classes and order of distribution are as [follows:] described in Subsections (2)(a) through (i).

(a) Class one is the costs and expenses of administration expressly approved by the liquidator, including:

(i) the actual and necessary costs of preserving or recovering the assets of the insurer;

(ii) compensation for all authorized services rendered in the supervision, rehabilitation, or liquidation;

(iii) any necessary filing fees;

(iv) the fees and mileage payable to witnesses; and

(v) reasonable attorney's fees and other professional services rendered in the supervision, rehabilitation, or liquidation.

(b) (i) Class two is the administrative expenses of guaranty associations.

(ii) For purposes of this section, "administrative expenses of a guaranty association" means

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the reasonable expenses incurred by a guaranty association:

(A) when the expenses are not payments or expenses that are required to be incurred as direct policy benefits in fulfillment of the terms of the insurance contract or $policy[_7]$; and

(B) that are of the type and nature that, but for the activities of the guaranty association, otherwise would have been incurred by the liquidator, including:

[(A)] (I) evaluations of policy coverage;

[(B)] (II) activities involved in the adjustment and settlement of claims under policies, including those of in-house or outside adjusters; and

[(C)] (III) the reasonable expenses incurred in connection with the arrangements for ongoing coverage through transfer to other insurers, policy exchanges, or maintaining policies in force.

(iii) The liquidator may in the liquidator's sole discretion approve as an administrative expense of a guaranty association any other reasonable expenses of the guaranty association if the liquidator finds:

(A) the expenses are not expenses required to be paid or incurred as direct policy benefits by the terms of the policy; and

(B) the expenses were incurred in furtherance of activities that provided material economic benefit to the estate as a whole, irrespective of whether the activities resulted in additional benefits to covered claimants.

(iv) The court shall approve the expenses approved by the liquidator under Subsection
 (2)(b)[(iv)](iii) unless the court finds the liquidator abused the liquidator's discretion in approving the expenses.

(c) (i) Class three is all claims under policies for losses incurred including:

(A) claims of the federal, state, or local government;

(B) third party claims;

(C) claims for unearned premiums; and

(D) claims of a guaranty association, other than those included in class two, including claims for payment of covered claims or covered obligations of the insurer.

(ii) All claims under life and health insurance and annuity policies shall be treated as loss

claims.

(iii) That portion of any loss for which indemnification is provided by other benefits or advantages recovered or recoverable by the claimant are not included in this class, other than benefits or advantages recovered or recoverable in discharge of familial obligations of support, by way of succession at death, as proceeds of life insurance, or as gratuities. [No] \underline{A} payment made by an employer to the employer's employee may <u>not</u> be treated as a gratuity.

(iv) Notwithstanding Subsections (2)(c)(i), (ii), and (iii), the following claims shall be excluded from class three priority:

(A) obligations of the insolvent insurer arising out of reinsurance contracts;

(B) obligations incurred after:

(I) the expiration date of the insurance policy;

(II) the policy has been replaced by the insured [or];

(III) the policy has been canceled at the insured's request; or

[(HH)] (IV) the policy has been canceled as provided in the chapter;

(C) obligations to insurers, insurance pools, or underwriting associations and their claims for contribution, indemnity, or subrogation, equitable or otherwise;

(D) any claim that is in excess of any applicable limits provided in the insurance policy issued by the insolvent insurer;

(E) any amount accrued as punitive or exemplary damages unless expressly covered under the terms of the policy; and

(F) tort claims of any kind against the insurer, and claims against the insurer for bad faith or wrongful settlement practices.

(v) Notwithstanding Subsection (2)(c)(iv)(B), unearned premium claims on policies, other than reinsurance agreements, may not be excluded.

(d) Class four is claims of the federal government other than those claims included under class three.

(e) (i) Class five is debts due employees for services, benefits, contractual or otherwise due, arising out of reasonable compensation to employees for services performed:

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(A) to the extent that they:

(I) do not exceed two months of monetary compensation; and

(II) represent payment for services performed within six months before the filing of the petition for liquidation; or[,]

(B) if rehabilitation preceded liquidation, within one year before the filing of the petition for rehabilitation.

(ii) Principal officers and directors are not entitled to the benefit of class five priority except as otherwise approved by the liquidator and the court.

(iii) Class five priority shall be in lieu of any other similar priority that may be authorized by law as to wages or compensation of employees.

(f) (i) Class six is claims of:

(A) any person, including claims of state or local governments, except those specifically classified elsewhere in this section[-]; or [claims of]

(B) attorneys for fees and expenses owed them by a person for services rendered in opposing a formal delinquency proceeding.

(ii) To prove the claim for attorneys' fees and expenses, the claimant shall show that:

(A) the insurer that is the subject of the delinquency proceeding incurred the fees and expenses based on its best knowledge, information, and belief, formed after reasonable inquiry indicating opposition was:

(I) in the best interests of the person[, was];

(II) well grounded in fact[;]; and [was]

(III) warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law[,]; and [that]

(B) opposition was not pursued for any improper purpose, such as to:

(I) harass [or to];

(II) cause unnecessary delay; or

(III) cause needless increase in the cost of litigation.

(g) (i) Class seven is claims of any state or local government for a penalty or forfeiture, but

only to the extent of the pecuniary loss sustained from the act, transaction, or proceeding out of which the penalty or forfeiture arose, including the reasonable and actual costs incurred from the act, transaction, or proceeding.

(ii) The remainder of the claims shall be postponed to class eight claims.

- (h) Class eight is:
- (i) surplus or contribution notes or similar obligations;
- (ii) premium refunds on assessable policies;
- (iii) interest on claims of classes one through seven; and

(iv) any other claims specifically subordinated to this class.

(i) Class nine is claims of shareholders or other owners, including policyholders of a mutual insurance corporation within the limits of Subsection 31A-27-337(4)(b) except as they may be qualified in class three or four.

(3) (a) If the liquidator determines that the assets of the estate will be sufficient to pay all class one claims in full, class two claims shall be paid currently, only after the liquidator secures from each of the guaranty associations receiving disbursements under this section an agreement to return to the liquidator the disbursements, together with investment income actually earned on the disbursements, as may be required to pay class one claims.

(b) A guaranty association entering into an agreement under Subsection (3)(a) may not be required to post a bond.

(4) As to a nonprofit corporation organized and operating under Chapter 7 with assets not fully liquidated under Subsections (1) and (2), the remaining assets shall be distributed under Subsections 16-6-70(2), (3), (4), and (5).

(5) (a) If any claimant of this state, another state, or foreign country [shall be] is entitled to or [shall receive] receives a distribution upon the claimant's claim out of a statutory deposit or the proceeds of any bond or other asset located in another state or foreign country, unless the deposit or proceeds shall have been delivered to the domiciliary liquidator, the claimant is not entitled to any further distribution from the liquidator until and unless all other claimants of the same class, irrespective of residence or place of the acts or contracts upon which their claims are based, shall

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have received an equal distribution upon their claims.

(b) After the equalization under Subsection (5)(a), the claimants of the same class are entitled to share in the further distributions by the liquidator, along with and like all other creditors of the same class, wherever the claimants reside.

(6) Upon the declaration of a distribution, the liquidator shall apply the amount of the distribution against any indebtedness owed to the insurer by the person entitled to the distribution. There shall be no claim allowed for and deductible charged by a guaranty association or entity performing a similar function.

(7) This section applies retrospectively to any proceeding under this chapter initiated after January 1, 1992.

Section 35. Section 31A-30-104 is amended to read:

31A-30-104. Applicability and scope.

- (1) This chapter applies to any:
- (a) health benefit plan that provides coverage to:
- (i) individuals[;];
- (ii) small employer groups[;]; or
- (iii) both Subsections (1)(a)(i) and (ii); or
- (b) conversion policy for purposes of Section 31A-30-106.5.

(2) (a) Except as provided in Subsection (2)(b), for the purposes of this chapter, carriers that are affiliated companies or that are eligible to file a consolidated tax return shall be treated as one carrier and any restrictions or limitations imposed by this chapter shall apply as if all health benefit plans delivered or issued for delivery to covered insureds in this state by [such] the affiliated carriers were issued by one carrier.

(b) An affiliated carrier that is a health maintenance organization having a certificate of authority under this title may be considered to be a separate carrier for the purposes of this chapter.

(c) Unless otherwise authorized by the commissioner, a covered carrier may not enter into one or more ceding arrangements with respect to health benefit plans delivered or issued for delivery to covered insureds in this state if such arrangements would result in less than 50% of the insurance

obligation or risk for such health benefit plans being retained by the ceding carrier.

(d) The provisions of Section 31A-22-1201 apply if a covered carrier cedes or assumes all of the insurance obligation or risk with respect to one or more health benefit plans delivered or issued for delivery to covered insureds in this state.

(3) (a) A Taft Hartley trust created in accordance with Section 302(c)(5) of the Federal Labor Management Relations Act, or a carrier with the written authorization of such a trust, may make a written request to the commissioner for a waiver from the application of any of the provisions of Subsection 31A-30-106(1) with respect to a health benefit plan provided to the trust.

(b) The commissioner may grant such a waiver if the commissioner finds that application with respect to the trust would:

(i) have a substantial adverse effect on the participants and beneficiaries of the trust; and

(ii) require significant modifications to one or more collective bargaining arrangements under which the trust is established or maintained.

(c) A waiver granted under this [subsection] <u>Subsection (3)</u> may not apply to an individual if the person participates in such a trust as an associate member of any employee organization.

(4) A carrier who offers individual and small employer health benefit plans may use the small employer index rates to establish the rate limitations for individual policies, even if some individual policies are rated below the small employer base rate.

(5) Sections 31A-30-106, 31A-30-106.5, 31A-30-106.7, 31A-30-107, 31A-30-108, and 31A-30-111 apply to:

(a) any insurer engaging in the business of insurance related to the risk of a small employer for medical, surgical, hospital, or ancillary health care expenses of its employees provided as an employee benefit; and

(b) any contract of an insurer, other than a workers compensation policy, related to the risk of a small employer for medical, surgical, hospital, or ancillary health care expenses of its employees provided as an employee benefit.

(6) The commissioner may make rules requiring that the marketing practices be consistent with this chapter for:

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(a) an insurer and its agent;

(b) an insurance broker; and

(c) an insurance consultant.

Section 36. Section **31A-32a-101** is enacted to read:

CHAPTER 32a. MEDICAL CARE SAVINGS ACCOUNT ACT

31A-32a-101. Title and scope.

(1) This chapter is known as the "Medical Care Savings Account Act."

(2) (a) This chapter applies only to medical care savings accounts established for the purpose of seeking a tax deduction under Section 59-10-114.

(b) This chapter does not apply to medical care savings accounts that will not be subject to tax deductions under Section 59-10-114.

Section 37. Section **31A-32a-102** is enacted to read:

31A-32a-102. Definitions.

As used in this chapter:

(1) "Account administrator" means any of the following:

(a) a depository institution as defined in Section 7-1-103;

(b) a trust company as defined in Section 7-1-103;

(c) an insurance company authorized to do business in this state under this title;

(d) a third party administrator licensed under Section 31A-25-203; and

(e) an employer if the employer has a self-insured health plan under ERISA.

(2) "Account holder" means the resident individual who establishes a medical care savings account or for whose benefit a medical care savings account is established.

(3) "Deductible" means the total deductible for an employee and all the dependents of that employee for a calendar year.

(4) "Dependent" means the same as "dependent" under Section 31A-30-103.

(5) "Eligible medical expense" means an expense paid by the taxpayer for:

(a) medical care described in Section 213(d), Internal Revenue Code;

(b) the purchase of a health coverage policy, certificate, or contract, including a qualified

higher deductible health plan; or

(c) premiums on long-term care insurance policies as defined in Section 31A-22-1402.

(6) "Employee" means the individual for whose benefit or for the benefit of whose dependents a medical care savings account is established. Employee includes a self-employed individual.

(7) "ERISA" means the Employee Retirement Income Security Act of 1974, Public Law 93-406, 88 Stat. 829.

(8) "Higher deductible" means a deductible of not less than \$1,000.

(9) "Medical care savings account" or "account" means a trust account established at a depository institution in this state pursuant to a medical care savings account program to pay the eligible medical expenses of:

(a) an employee or account holder; and

(b) the dependents of the employee or account holder.

(10) "Medical care savings account program" or "program" means one of the following programs:

(a) a program established by an employer in which the employer:

(i) purchases a qualified higher deductible health plan for the benefit of an employee and the employee's dependents; and

(ii) contributes on behalf of an employee into a medical care savings account; or

(b) a program established by an account holder in which the account holder:

(i) purchases a qualified higher deductible health plan for the benefit of the account holder and the account holder's dependents; and

(ii) contributes an amount to the medical care savings account.

(11) "Qualified higher deductible health plan" means a health coverage policy, certificate, or contract that:

(a) provides for payments for covered benefits that exceed the higher deductible; and

(b) is purchased by:

(i) an employer for the benefit of an employee for whom the employer makes deposits into

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a medical care savings account; or

(ii) an account holder.

Section 38. Section **31A-32a-103** is enacted to read:

<u>31A-32a-103.</u> Establishing medical care savings accounts.

(1) For tax years beginning 1995, both of the following apply:

(a) an employer, except as otherwise provided by contract or a collective bargaining agreement, may offer a medical care savings account program to the employer's employees; and

(b) a resident individual may establish a medical care savings account program for the individual or for the individual's dependents.

(2) A contribution into an account made by an employer on behalf of an employee, or made by an individual account holder may not exceed the greater of:

(a) (i) \$2,000 in any tax year; or

(ii) an amount of money equal to the sum of all eligible medical expenses paid by the employee or account holder in that tax year on behalf of the employee, account holder, or the employee's or account holder's dependents.

(b) For purposes of Subsection (2)(a)(ii), eligible medical expenses as defined in Subsection 31A-32a-102(5), are limited to expenses in that tax year which an insurance carrier has applied to the employee's or account holder's deductible.

(3) An employer that offers a medical care savings account program shall, before making any contributions:

(a) inform all employees in writing of the fact that these contributions may not be deductible under the federal tax laws; and

(b) obtain from the employee a written election to participate in the medical care savings account program.

(4) Except as provided in Sections 31A-32a-105 and 59-10-114, principal contributed to and interest earned on a medical care savings account and money reimbursed to an employee or account holder for eligible medical expenses are exempt from taxation.

(5) (a) An employer may select a single account administrator for all of the employer's

employee's medical care savings accounts.

(b) If a single account administrator is not selected, an employer may contribute directly to the account holder's individual medical care savings account.

Section 39. Section **31A-32a-104** is enacted to read:

<u>31A-32a-104.</u> Administration of medical care savings account.

(1) An account administrator shall administer the medical care savings account from which the payment of claims is made and has a fiduciary duty to the person for whose benefit the account administrator administers an account.

(2) (a) Except as provided in Subsection 31A-32a-105(1), the account administrator shall use the funds held in a medical care savings account solely for the purpose of paying or reimbursing the employee or account holder for eligible medical expenses of the employee or account holder or of the employee's or account holder's dependents.

(b) The commissioner shall adopt rules concerning the coordination of benefits between a medical care savings account and medical expenses payable from automobile insurance policies, workers compensation insurance policies, or other health care insurance policies or contracts.

(3) The employee or account holder may submit documentation of eligible medical expenses paid by the employee or account holder in the tax year to the account administrator, and the account administrator shall reimburse the employee or account holder from the employee's or account holder's account for eligible medical expenses.

(4) If an employer makes contributions to a medical care savings account program on a periodic installment basis, the employer may advance to an employee an amount necessary to cover eligible medical expenses incurred that exceed the amount in the employee's medical care savings account at the time the expense is incurred if the employee agrees to repay the advance.

Section 40. Section **31A-32a-105** is enacted to read:

<u>31A-32a-105.</u> Withdrawals -- Termination -- Transfers.

(1) Subject to Subsection (3), if the employee or account holder withdraws money for any purpose other than a medical expense at any time in which the balance in the account is below \$4,000 all of the following apply:

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(a) the amount of the withdrawal is income for the purposes of Title 59, Chapter 10, Individual Income Tax Act; and

(b) the administrator shall withhold from the amount of the withdrawal, and on behalf of the employee or account holder shall pay a penalty to the State Tax Commission equal to 10% of the amount of the withdrawal.

(2) If an employee or account holder withdraws money from the employee's or account holder's medical care savings account for any purpose other than a medical expense, but the withdrawal occurs when the balance in the medical care savings account is over \$4,000, and the withdrawal will not result in the account balance dropping below \$4,000, the withdrawal:

(a) is not subject to the penalties described in Subsection (1)(b); and

(b) is subject to taxation as provided in Subsection (1)(a).

(3) The amount of a disbursement of any assets of a medical care savings account pursuant to a filing for protection under Title 11 of the United States Code, 11 U.S.C. 101 to 1330 by an employee, account holder, or person for whose benefit the account was established:

(a) is not considered a withdrawal for purposes of this section; and

(b) is subject to taxation under Title 59, Chapter 10, Individual Income Tax Act.

(4) (a) Upon the death of the employee or account holder, the account administrator shall distribute the principal and accumulated interest of the medical care savings account to the estate of the employee or account holder.

(b) A distribution under this Subsection (4) is not subject to the penalties described in Subsection (1)(b).

(5) (a) If an employee is no longer employed by an employer that participates in a medical care savings account program, and if the employee's account is administered by the employer's account administrator, the money in the medical care savings account may be used for the benefit of the employee or the employee's dependents in accordance with this chapter, and remains exempt from taxation if the employee, not more than 60 days after the employee's final day of employment:

(i) transfers the account to a new account administrator; or

(ii) (A) requests in writing to the former employer's account administrator that the account

remain with that administrator; and

(B) the account administrator agrees to retain the account.

(b) Not more than 30 days after the expiration of the 60 days, if an account administrator has not accepted the former employee's account, the employer shall mail a check to the former employee at the employee's last-known address equal to the amount in the account on that day.

(c) The amount mailed to the employee is subject to taxation pursuant to Subsection (1)(a), but is not subject to the penalties under Subsection (1)(b).

(d) If an employee becomes employed with a different employer that participates in a medical care savings account program, the employee may transfer the employee's medical care savings account to that new employer's account administrator.

(e) If an account holder becomes an employee of an employer that participates in a medical care savings account program, the account holder may transfer the account holder's account to the employer's account administrator.

Section 41. Section **31A-32a-106** is enacted to read:

<u>31A-32a-106.</u> Regulation of account administrators -- Administration of tax deductions.

(1) The department shall regulate account administrators and may adopt rules necessary to administer this chapter.

(2) Before adopting rules to administer this chapter, the department shall report the proposed rules to the Utah Health Policy Commission.

(3) The tax commission may adopt rules necessary to monitor and implement the tax deductions established by this chapter and Section 59-10-114.

Section 42. Section **31A-32a-107** is enacted to read:

<u>31A-32a-107.</u> Penalties for noncompliance with tax requirements.

An account administrator who fails to comply with the statutes and rules governing the tax deduction established by this chapter and Section 59-10-114 is subject to:

(1) the civil penalties provided in Section 59-1-401; and

(2) interest at the rate and in the manner provided in Section 59-1-402.

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Section 43. Section **31A-35-201** is amended to read:

31A-35-201. Bail Bond Surety Oversight Board creation -- Membership.

(1) There is created a Bail Bond Surety Oversight Board within the [insurance] department, consisting of:

(a) the following seven voting members [and one nonvoting member,] to be appointed by the [insurance] commissioner:

[(a)] (i) one representative each from four licensed bail bond surety companies;

[(b)] (ii) two members of the general public who do not have any financial interest in or professional affiliation with any bail bond surety company; and

[(c)] (iii) one attorney in good standing licensed to practice law in Utah; and

[(d) one] (b) a nonvoting member who is a staff member of the insurance department appointed by the commissioner.

(2) (a) The appointments are for terms of four years. A board member may not serve more than two consecutive terms.

(b) Except as required by Subsection (2)(c), the [current] members <u>as of May 5, 1998</u>, of the Bail Bond Surety Licensing Board created under Section 77-20-11 shall serve the remainder of their terms as members of the board. Upon expiration of their terms they are eligible for appointment to another term.

(c) The insurance commissioner shall, at the time of initial appointments, adjust the length of terms to ensure that the terms of board members are staggered so approximately half of the board is appointed every two years.

(3) [Board members serve] A board member serves until:

(a) removed by the insurance commissioner;

(b) [their] the member's resignation; or

(c) the expiration of [their] the member's term and the appointment of a successor.

(4) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the remainder of the unexpired term.

(5) The board shall annually elect one of its members as chair.

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(6) Four members constitute a quorum for the transaction of business.

(7) (a) Members do not receive compensation or benefits for their services, but may receive per diem and expenses incurred in the performance of official duties at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

(b) Members may decline to receive per diem and expenses for their services.

(8) (a) The commissioner, with a majority vote of the board, may remove any member of the board for misconduct, incompetency, or neglect of duty.

(b) The board shall conduct a hearing if requested by the board member that is to be removed.

(9) Members of the board are immune from suit with respect to all acts done and actions taken in good faith in carrying out the purposes of this chapter.

Section 44. Section **31A-35-202** is amended to read:

31A-35-202. Board responsibilities.

The board shall:

- (1) meet:
- (a) at least quarterly[,]; and [also]
- (b) at the call of the chair;

(2) make written recommendations to the [insurance] commissioner for rules governing the following aspects of the bail bond surety insurance business:

- (a) certification qualifications, applications, and fees;
- (b) bonding limits;
- (c) unprofessional conduct;
- (d) procedures for hearing and resolving allegations of unprofessional conduct; and
- (e) sanctions for unprofessional conduct;
- (3) screen bail bond surety company certificate applicants and applications;
- (4) recommend to the insurance commissioner action regarding the granting, renewing,

suspending, revoking, and reinstating of bail bond surety company certificates; and

(5) (a) conduct investigations of allegations of unprofessional conduct on the part of persons

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or sureties involved in the business of bail bond surety insurance; and

(b) provide the results of the investigations to the insurance commissioner with recommendations for action and any appropriate sanctions[; and].

[(6) maintain and publish a current list of licensed bail bond surety companies.]

Section 45. Section **31A-35-301** is amended to read:

31A-35-301. The insurance commissioner's authority.

(1) The [insurance] commissioner shall:

- (a) make rules as necessary for the administration of this chapter;
- (b) with information as provided by the board, issue or deny certification under this chapter;

[and]

(c) take action regarding a certificate, including suspension or revocation; and

(d) maintain and publish a current list of licensed bail bond surety companies and agents.

(2) The [insurance] commissioner may establish fees for the issuance, renewal, and

reinstatement of bail bond surety company certificates of authority under Section 63-38-3.2.

Section 46. Section **31A-35-701** is amended to read:

31A-35-701. Prohibited acts.

(1) A bail bond agent or bail bond surety may not:

(a) solicit business in or about any place where persons in the custody of the state or any local law enforcement or correctional agency are confined, or in or about any court;

(b) pay a fee or rebate or give or promise anything of value to any person in order to secure a settlement, compromise, remission, or reduction of the amount of any undertaking or bail bond;

(c) pay a fee or rebate or give anything of value to an attorney in regard to any bail bond matter, except payment for legal services actually rendered for the bail bond agent or bail bond surety; [or]

(d) pay a fee or rebate or give or promise anything of value to the principal or anyone in his behalf<u>; or</u>

(e) engage in any other act prohibited by the commissioner by rule.

(2) The following persons may not act as bail bond agents and may not, directly or indirectly,

receive any benefits from the execution of any bail bond:

(a) [any] <u>a</u> person employed at any jail, correctional facility, or other facility used for the incarceration of persons;

(b) <u>a</u> law enforcement [officers] officer;

(c) [judges] <u>a judge;</u>

(d) [sheriffs] <u>a sheriff</u>, deputy [sheriffs] <u>sheriff</u>, [and constables] <u>or constable</u>; and

(e) [trustees or prisoners] <u>a trustee or prisoner</u> incarcerated in any jail, correctional facility, or other facility used for the incarceration of persons.

(3) A bail bond agent may not sign or countersign in blank any bail bond, or give the power of attorney to, or otherwise authorize, anyone to countersign [his] in the bail bond agent's name to bonds.

(4) A bail bond agent may not advertise or hold himself out to be a bail bond surety.

(5) The following persons or members of their immediate families may not solicit business on behalf of a bail bond surety or bail bond agent:

(a) a person employed at any jail, correctional facility, or other facility used for the incarceration of persons;

(b) a law enforcement officer;

(c) a judge;

(d) a sheriff, deputy sheriff, or constable; and

(e) a trustee or prisoner incarcerated in any jail, correctional facility, or other facility used for the incarceration of persons.

Section 47. Section **49-5-301** is amended to read:

49-5-301. Contributions of members.

(1) The system shall be maintained on a financially and actuarially sound basis by means of contributions made by the state, the employing units, and the active members of the system. For purposes of determining contribution rates and benefits, the system is divided into two divisions according to social security coverage. Firefighters with on-the-job social security coverage are Division A, and firefighters without on-the-job social security coverage are Division B.

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(2) Any city, town, special district, or county may elect to pay all or part of its members' required contributions, in addition to the required employer contributions. Any amount contributed by a city, town, or county under this subsection shall vest to the member's credit as though the member had made the contribution. The member's required contribution shall be reduced by the amount that is paid by the employer.

(3) All contributions are credited to the account of the individual and held in trust for the payment of benefits to the member or the member's beneficiaries. All member contributions are 100% vested and nonforfeitable.

(4) Each member is deemed to consent to monthly deductions. The payment of compensation less retirement payroll deductions is considered to be full payment of the salary of the employee.

(5) The board shall report to the governor, the Legislature, and each employing unit under Division A or B the contribution rates and any adjustments necessary to maintain the system on a financially and actuarially sound basis, and the employer and employee shall pay the certified contribution rates.

(6) In addition, there shall be paid to the Firefighters' Retirement Trust Fund:

(a) 50% of the annual tax for each year that is levied, assessed, and collected under Title 59, Chapter 9, Taxation of Admitted Insurers, upon property insurance premiums, as defined by
 [Subsection] Section 31A-1-301 [(67)], and as applied to fire and allied lines insurance collected by insurance companies within the state; and

(b) 10% of all money assessed and collected under Title 59, Chapter 9, Taxation of Admitted Insurers, upon life insurance premiums within the state. Payments to the fund shall be made annually until the prior service liability is liquidated, after which the tax revenue provided in this subsection for the Firefighters' Retirement Trust Fund ceases.

Section 48. Section **59-9-105** is amended to read:

59-9-105. Tax on certain insurers to pay for relative value study and other publications.

(1) Each insurer providing coverage for motor vehicle liability, uninsured motorist, and

personal injury protection shall pay to the State Tax Commission on or before March 31 of each year, a tax of .01% on the total premiums received for these coverages during the preceding calendar year from policies covering motor vehicle risks in this state.

(2) The taxable premium under this section shall be reduced by all premiums returned or credited to policyholders on direct business subject to tax in this state.

(3) All money received by the state under this section shall be deposited in the General Fund as a dedicated credit for the purpose of providing funds to pay for any costs and expenses incurred by the Insurance Department:

(a) in conducting, maintaining, and administering the relative value study referred to in Section 31A-22-307; and

(b) to prepare, publish, and distribute publications relating to insurance and consumers of insurance as provided in Section 31A-2-208.

Section 49. Section 59-10-114 is amended to read:

59-10-114. Additions to and subtractions from federal taxable income of an individual.

(1) There shall be added to federal taxable income of a resident or nonresident individual:

(a) the amount of any income tax imposed by this or any predecessor Utah individual income tax law and the amount of any income tax imposed by the laws of another state, the District of Columbia, or a possession of the United States, to the extent deducted from federal adjusted gross income, as defined by Section 62, Internal Revenue Code, in determining federal taxable income;

(b) a lump sum distribution allowable as a deduction under Section 402(e)(3), Internal Revenue Code, to the extent deductible under Section 62(a)(8), Internal Revenue Code, in determining federal adjusted gross income;

(c) 25% of the personal exemptions, as defined and calculated in the Internal Revenue Code;

(d) a withdrawal from a medical care savings account and any penalty imposed in the taxable year if:

(i) the taxpayer did not deduct or include the amounts on his federal tax return pursuant to Section 220, Internal Revenue Code; and

(ii) the withdrawal is subject to Subsections [31A-32-105] 31A-32a-105(1) and (2); and

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(e) the amount refunded to a participant under Title 53B, Chapter 8a, Higher Education Savings Incentive Program, in the year in which the amount is refunded.

(2) There shall be subtracted from federal taxable income of a resident or nonresident individual:

(a) the interest or dividends on obligations or securities of the United States and its possessions or of any authority, commission, or instrumentality of the United States, to the extent includable in gross income for federal income tax purposes but exempt from state income taxes under the laws of the United States, but the amount subtracted under this subsection shall be reduced by any interest on indebtedness incurred or continued to purchase or carry the obligations or securities described in this subsection, and by any expenses incurred in the production of interest or dividend income described in this subsection to the extent that such expenses, including amortizable bond premiums, are deductible in determining federal taxable income;

(b) 1/2 of the net amount of any income tax paid or payable to the United States after all allowable credits, as reported on the United States individual income tax return of the taxpayer for the same taxable year;

(c) the amount of adoption expenses which, for purposes of this subsection, means any actual medical and hospital expenses of the mother of the adopted child which are incident to the child's birth and any welfare agency, child placement service, legal, and other fees or costs relating to the adoption;

(d) amounts received by taxpayers under age 65 as retirement income which, for purposes of this section, means pensions and annuities, paid from an annuity contract purchased by an employer under a plan which meets the requirements of Section 404 (a)(2), Internal Revenue Code, or purchased by an employee under a plan which meets the requirements of Section 408, Internal Revenue Code, or paid by the United States, a state, or political subdivision thereof, or the District of Columbia, to the employee involved or the surviving spouse;

(e) for each taxpayer age 65 or over before the close of the taxable year, a \$7,500 personal retirement exemption;

(f) 75% of the amount of the personal exemption, as defined and calculated in the Internal

Revenue Code, for each dependent child with a disability and adult with a disability who is claimed as a dependent on a taxpayer's return;

(g) any amount included in federal taxable income that was received pursuant to any federal law enacted in 1988 to provide reparation payments, as damages for human suffering, to United States citizens and resident aliens of Japanese ancestry who were interned during World War II;

(h) subject to the limitations of Subsection (3)(e), 60% of the amounts paid by the taxpayer during the taxable year for health care insurance, as defined in Title 31A, Chapter 1, Insurance Code, for the taxpayer, the taxpayer's spouse, and the taxpayer's dependents to the extent the amounts paid for health insurance were not deductible under Sections 125, 162, or 213, Internal Revenue Code, in determining federal taxable income;

(i) except as otherwise provided in this subsection, the amount of a contribution made in the tax year on behalf of the taxpayer to a medical care savings account and interest earned on a contribution to a medical care savings account established pursuant to Title 31A, Chapter [32] 32a, Medical Care Savings Account Act, to the extent the contribution is accepted by the account administrator as provided in the Medical Care Savings Account Act, and if the taxpayer did not deduct or include amounts on his federal tax return pursuant to Section 220, Internal Revenue Code. A contribution deductible under this subsection may not exceed either of the following:

(i) the maximum contribution allowed under the Medical Care Savings Account Act for the tax year multiplied by two for taxpayers who file a joint return, if neither spouse is covered by health care insurance as defined in Section 31A-1-301 or self-funded plan that covers the other spouse, and each spouse has a medical care savings account; or

(ii) the maximum contribution allowed under the Medical Care Savings Account Act for the tax year for taxpayers:

(A) who do not file a joint return; or

(B) who file a joint return, but do not qualify under Subsection (2)(i)(i); and

(j) the amount included in federal taxable income that was derived from money paid by the taxpayer to the program fund and investment income earned on those payments under Title 53B, Chapter 8a, Higher Education Savings Incentive Program.

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(3) (a) For purposes of Subsection (2)(d), the amount of retirement income subtracted for taxpayers under 65 shall be the lesser of the amount included in federal taxable income, or \$4,800, except that:

(i) for married taxpayers filing joint returns, for each \$1 of adjusted gross income earned over \$32,000, the amount of the retirement income exemption that may be subtracted shall be reduced by 50 cents;

(ii) for married taxpayers filing separate returns, for each \$1 of adjusted gross income earned over \$16,000, the amount of the retirement income exemption that may be subtracted shall be reduced by 50 cents; and

(iii) for individual taxpayers, for each \$1 of adjusted gross income earned over \$25,000, the amount of the retirement income exemption that may be subtracted shall be reduced by 50 cents.

(b) For purposes of Subsection (2)(e), the amount of the personal retirement exemption shall be further reduced according to the following schedule:

(i) for married taxpayers filing joint returns, for each \$1 of adjusted gross income earned over \$32,000, the amount of the personal retirement exemption shall be reduced by 50 cents;

(ii) for married taxpayers filing separate returns, for each \$1 of adjusted gross income earned over \$16,000, the amount of the personal retirement exemption shall be reduced by 50 cents; and

(iii) for individual taxpayers, for each \$1 of adjusted gross income earned over \$25,000, the amount of the personal retirement exemption shall be reduced by 50 cents.

(c) For purposes of Subsections (3)(a) and (b), adjusted gross income shall be calculated by adding to federal adjusted gross income any interest income not otherwise included in federal adjusted gross income.

(d) For purposes of determining ownership of items of retirement income common law doctrine will be applied in all cases even though some items may have originated from service or investments in a community property state. Amounts received by the spouse of a living retiree because of the retiree's having been employed in a community property state are not deductible as retirement income of such spouse.

(e) For purposes of Subsection (2)(h), a subtraction for an amount paid for health care

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insurance as defined in Title 31A, Chapter 1, Insurance Code, is not allowed:

(i) for an amount that is reimbursed or funded in whole or in part by the federal government, the state, or an agency or instrumentality of the federal government or the state; and

(ii) for a taxpayer who is eligible to participate in a health plan maintained and funded in whole or in part by the taxpayer's employer or the taxpayer's spouse's employer.

Section 50. Section 63-55-231 is amended to read:

63-55-231. Repeal dates, Title 31A.

(1) Section 31A-2-208.5, Comparison tables, is repealed July 1, 2005.

(2) Section 31A-22-315, Motor Vehicle Insurance Reporting, is repealed July 1, 2000.

(3) Title 31A, Chapter 31, Insurance Fraud Act, is repealed July 1, 2007.

[(4) Title 31A, Chapter 32, Medical Care Savings Account Act, is repealed beginning with the 1999 taxable year and shall be reviewed by July 1, 1998.]

[(5) Title 31A, Chapter 34, Voluntary Health Insurance Purchasing Alliance Act, is repealed July 1, 1999.]

Section 51. Repealer.

This act repeals:

Section 31A-23-306, Countersignature requirement.

Section 31A-25-101, Third party administrator defined.

Section 52. Legislative intent -- Retrospective operation.

(1) (a) By enacting Title 31A, Chapter 32a, Medical Care Savings Account Act, in this act, the Legislature intends to correct the inadvertent repeal of Title 31A, Chapter 32, Medical Care Savings Account Act, repealed under Section 63-55-231 beginning with the 1999 taxable year.

(b) Except as provided in Subsection (1)(d), Title 31A, Chapter 32a, is intended to only reinstate the law as it existed prior to the repeal with technical corrections and is not intended as a substantive change of law.

(c) It is the intent of the Legislature that medical care saving accounts created before or after the repeal of the previous Chapter 32 operate as though Chapter 32a was continuously in effect as of the tax year beginning on or after January 1, 1995.

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(d) The enacted Title 31A, Chapter 32a, substantively changed the previous Chapter 32 by including premiums on long-term care insurance policies as defined in Section 31A-22-1402 within the definition of an eligible medical expense.

(2) Title 31A, Chapter 32a, Medical Care Savings Account Act, shall have retrospective operation to taxable years beginning on or after January 1, 1999.

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