

- 28 **31A-1-104**, as last amended by Chapter 329, Laws of Utah 1998
- 29 **31A-1-105**, as last amended by Chapter 305, Laws of Utah 1993
- 30 **31A-1-301**, as last amended by Chapters 13 and 329, Laws of Utah 1998
- 31 **31A-2-308**, as last amended by Chapter 293, Laws of Utah 1998
- 32 **31A-3-401**, as last amended by Chapter 95, Laws of Utah 1987
- 33 **31A-4-106**, as last amended by Chapter 227, Laws of Utah 1997
- 34 **31A-5-102**, as last amended by Chapter 20, Laws of Utah 1995
- 35 **31A-5-218**, as last amended by Chapter 9, Laws of Utah 1996, Second Special Session
- 36 **31A-16-103**, as last amended by Chapters 4 and 305, Laws of Utah 1993
- 37 **31A-16-111**, as last amended by Chapter 258, Laws of Utah 1992
- 38 **31A-17-201**, as last amended by Chapter 9, Laws of Utah 1996, Second Special Session
- 39 **31A-17-202**, as last amended by Chapter 9, Laws of Utah 1996, Second Special Session
- 40 **31A-17-609**, as last amended by Chapter 185, Laws of Utah 1997
- 41 **31A-18-106**, as last amended by Chapter 9, Laws of Utah 1996, Second Special Session
- 42 **31A-18-108**, as last amended by Chapter 185, Laws of Utah 1997
- 43 **31A-23-102**, as last amended by Chapters 293 and 329, Laws of Utah 1998
- 44 **31A-23-203**, as last amended by Chapter 9, Laws of Utah 1996, Second Special Session
- 45 **31A-23-204**, as last amended by Chapters 293 and 329, Laws of Utah 1998
- 46 **31A-23-206**, as last amended by Chapter 9, Laws of Utah 1996, Second Special Session
- 47 **31A-23-212**, as last amended by Chapter 9, Laws of Utah 1996, Second Special Session
- 48 **31A-23-215**, as last amended by Chapter 329, Laws of Utah 1998
- 49 **31A-23-405**, as enacted by Chapter 242, Laws of Utah 1985
- 50 **31A-26-204**, as enacted by Chapter 242, Laws of Utah 1985
- 51 **31A-26-206**, as last amended by Chapter 9, Laws of Utah 1996, Second Special Session
- 52 **31A-27-102**, as last amended by Chapter 9, Laws of Utah 1996, Second Special Session
- 53 **31A-27-104**, as enacted by Chapter 242, Laws of Utah 1985
- 54 **31A-27-307**, as last amended by Chapter 9, Laws of Utah 1996, Second Special Session
- 55 **31A-27-310**, as enacted by Chapter 242, Laws of Utah 1985
- 56 **31A-27-323**, as last amended by Chapter 9, Laws of Utah 1996, Second Special Session
- 57 **31A-27-328**, as last amended by Chapter 344, Laws of Utah 1995
- 58 **31A-27-332**, as last amended by Chapter 185, Laws of Utah 1997

- 59 **31A-27-335**, as last amended by Chapter 344, Laws of Utah 1995
- 60 **31A-30-104**, as last amended by Chapter 265, Laws of Utah 1997
- 61 **31A-35-201**, as enacted by Chapter 293, Laws of Utah 1998
- 62 **31A-35-202**, as enacted by Chapter 293, Laws of Utah 1998
- 63 **31A-35-301**, as enacted by Chapter 293, Laws of Utah 1998
- 64 **31A-35-701**, as enacted by Chapter 293, Laws of Utah 1998
- 65 **49-5-301**, as last amended by Chapter 101, Laws of Utah 1993
- 66 **59-9-105**, as last amended by Chapter 305, Laws of Utah 1993
- 67 **59-10-114**, as last amended by Chapter 56, Laws of Utah 1997
- 68 **63-55-231**, as last amended by Chapter 36, Laws of Utah 1998

69 ENACTS:

- 70 **31A-27-110**, Utah Code Annotated 1953
- 71 **31A-23-211.7**, Utah Code Annotated 1953
- 72 **31A-32a-101**, Utah Code Annotated 1953
- 73 **31A-32a-102**, Utah Code Annotated 1953
- 74 **31A-32a-103**, Utah Code Annotated 1953
- 75 **31A-32a-104**, Utah Code Annotated 1953
- 76 **31A-32a-105**, Utah Code Annotated 1953
- 77 **31A-32a-106**, Utah Code Annotated 1953
- 78 **31A-32a-107**, Utah Code Annotated 1953

79 REPEALS:

- 80 **31A-23-306**, as enacted by Chapter 242, Laws of Utah 1985
- 81 **31A-25-101**, as last amended by Chapter 344, Laws of Utah 1995

82 This act enacts uncodified material.

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

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

85 **31A-1-104. Authorization to do insurance business.**

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

- 87 (1) do an insurance business as defined under [Subsection] Section 31A-1-301 [(44)];
- 88 (2) act as an insurance agent, broker, or consultant as defined under Section 31A-1-301;

89 or

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

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

92 **31A-1-105. Presumption of jurisdiction.**

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

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

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

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

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

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

106 **31A-1-301. Definitions.**

107 As used in this title, unless otherwise specified:

108 [(0.5)] (1) "Administrator" is defined in Subsection [(77)] (90).

109 [(1)] (2) "Adult" means a natural person who has attained the age of at least 18 years.

110 [(2)] (3) "Affiliate" means any person who controls, is controlled by, or is under common
111 control with, another person. A corporation is an affiliate of another corporation, regardless of
112 ownership, if substantially the same group of natural persons manages the corporations.

113 [(3)] (4) "Alien insurer" means an insurer domiciled outside the United States.

114 [(4)] (5) ["Annuities"] "Annuity" means [all agreements] an agreement to make periodical
115 payments for a period certain or over the lifetime of one or more natural persons if the making or
116 continuance of all or some of the series of the payments, or the amount of the payment, is
117 dependent upon the continuance of human life.

118 [(5)] (6) "Articles" or "articles of incorporation" means the original articles, special laws,
119 charters, amendments, restated articles, articles of merger or consolidation, trust instruments, and
120 other constitutive documents for trusts and other entities that are not corporations, and

121 amendments to any of these. [~~Refer also to "bylaws" in this section and Section 31A-5-203.~~]

122 ~~[(6)]~~ (7) "Bail bond insurance" means a guarantee that a person will attend court when
123 required, or will obey the orders or judgment of the court, as a condition to the release of that
124 person from confinement.

125 ~~[(7)]~~ (8) "Binder" is defined in Section 31A-21-102.

126 ~~[(8)]~~ (9) "Board," "board of trustees," or "board of directors" means the group of persons
127 with responsibility over, or management of, a corporation, however designated. [~~Refer also to~~
128 "~~trustee" in this section.~~]

129 ~~[(9)]~~ (10) "Business of insurance" is defined in Subsection [~~(44)]~~ (53).

130 ~~[(10)]~~ (11) "Business plan" means the information required to be supplied to the
131 commissioner under Subsections 31A-5-204(2)(i) and (j), including the information required when
132 these subsections are applicable by reference under:

133 (a) Section 31A-7-201~~[-];~~

134 (b) Section 31A-8-205~~[-];~~ or

135 (c) Subsection 31A-9-205(2).

136 ~~[(11)]~~ (12) "Bylaws" means the rules adopted for the regulation or management of a
137 corporation's affairs, however designated~~[-. It]~~ and includes comparable rules for trusts and other
138 entities that are not corporations. [~~Refer also to "articles" and Section 31A-5-203.~~]

139 ~~[(12)]~~ (13) "Casualty insurance" means liability insurance as defined in Subsection [~~(50)]~~
140 (59).

141 ~~[(13)]~~ (14) "Certificate" means the evidence of insurance given to an insured under a group
142 policy.

143 ~~[(14)]~~ (15) "Certificate of authority" is included within the term "license."

144 ~~[(14.5)]~~ (16) "Claim," unless the context otherwise requires, means a request or demand
145 on an insurer for payment of benefits according to the terms of an insurance policy.

146 ~~[(14.6)]~~ (17) "Claims-made coverage" means ~~[any]~~ an insurance contract or provision
147 limiting coverage under a policy insuring against legal liability to claims that are first made against
148 the insured while the policy is in force.

149 ~~[(15)]~~ (18) (a) "Commissioner" or "commissioner of insurance" means Utah's insurance
150 commissioner.

151 (b) [~~Where]~~ When appropriate, [~~these]~~ the terms listed in Subsection (18)(a) apply to the

152 equivalent supervisory official of another jurisdiction.

153 ~~[(16)]~~ (19) (a) "Control," "controlling," "controlled," or "under common control" means
154 the direct or indirect possession of the power to direct or cause the direction of the management
155 and policies of a person. This control may be:

156 (i) by contract~~[-];~~;

157 (ii) by common management~~[-];~~;

158 (iii) through the ownership of voting securities~~[-];~~ or

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

160 (iii).

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

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

165 (d) There is a rebuttable presumption of control in a person who directly or indirectly
166 owns, controls, holds with the power to vote, or holds proxies to vote 10% or more of the voting
167 securities of another person. ~~[Refer also to "affiliate" in this section.]~~

168 ~~[(17)]~~ (20) (a) "Corporation" means insurance corporation, except ~~[where]~~ when referring
169 to:

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

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

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

175 (ii) a noninsurer that is part of a holding company system under Chapter 16, Insurance
176 Holding Companies~~[- to a noninsurer which is part of a holding company system].~~

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

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

179 ~~[(18)]~~ (21) "Credit disability insurance" means insurance on a debtor to provide indemnity
180 for payments coming due on a specific loan or other credit transaction while the debtor is disabled.
181 ~~[Refer also to Subsection 31A-22-802(1).]~~

182 ~~[(19)]~~ (22) "Credit insurance" means surety insurance under which mortgagees and other

183 creditors are indemnified against losses caused by the default of debtors.

184 ~~[(20)]~~ (23) "Credit life insurance" means insurance on the life of a debtor in connection
185 with a loan or other credit transaction. ~~[Refer also to Subsection 31A-22-802(2).]~~

186 ~~[(21)]~~ (24) "Creditor" means a person, including an insured, having any claim, whether:

187 (a) matured[-];

188 (b) unmatured[-];

189 (c) liquidated[-];

190 (d) unliquidated[-];

191 (e) secured[-];

192 (f) unsecured[-];

193 (g) absolute[-];

194 (h) fixed[-]; or

195 (i) contingent.

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

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

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

200 (b) A customer service representative may only operate within the scope of authority of
201 its agent, broker, or consultant employer.

202 ~~[(22)]~~ (26) "Deemer clause" means a provision under this title under which upon the
203 occurrence of a condition precedent, the commissioner is deemed to have taken a specific action.
204 If the statute so provides, the condition precedent may be the commissioner's failure to take a
205 specific action. ~~[Refer also to Section 31A-2-302.]~~

206 ~~[(23)]~~ (27) "Degree of relationship" means the number of steps between two persons
207 determined by counting the generations separating one person from a common ancestor and then
208 counting the generations to the other person.

209 ~~[(24)]~~ (28) "Department" means the Insurance Department.

210 ~~[(25)]~~ (29) "Director" means a member of the board of directors of a corporation.

211 ~~[(26)]~~ (30) "Disability insurance" means insurance written to:

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

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

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

216 [(27)] (31) "Domestic insurer" means an insurer organized under the laws of this state.

217 [(28)] (32) "Domiciliary state" means the state in which an insurer:

218 (a) is incorporated [or];

219 (b) is organized; or[-]

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

221 [(29)] (33) "Employee benefits" means one or more benefits or services provided
222 employees or their dependents.

223 [(30)] (34) (a) "Employee welfare fund" means a fund:

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

225 (A) one or more employers[-];

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

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

229 (ii) that provides employee benefits paid or contracted to be paid, other than income from
230 investments of the fund, by or on behalf of an employer doing business in this state or for the
231 benefit of any person employed in this state. [It]

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

234 [(31)] (35) "Excludes" is not exhaustive and does not mean that other things are not also
235 excluded. The items listed are representative examples for use in interpretation of this title.

236 [(31.5)] (36) "Fidelity insurance" means insurance guaranteeing the fidelity of persons
237 holding positions of public or private trust.

238 [(31.7)] (37) "First party insurance" means an insurance policy or contract in which the
239 insurer agrees to pay claims submitted to it by the insured for the insured's losses.

240 [(32)] (38) "Foreign insurer" means an insurer domiciled outside of this state, including
241 an alien insurer.

242 [(33)] (39) (a) "Form" means a policy, certificate, or application prepared for general use.
243 [It]

244 (b) "Form" does not include [one] a document specially prepared for use in an individual

245 case. [~~Refer also to "policy" in this section.~~]

246 [~~(34)~~] (40) "Franchise insurance" means individual insurance policies provided through
247 a mass marketing arrangement involving a defined class of persons related in some way other than
248 through the purchase of insurance.

249 [~~(35)~~] (41) (a) "Health care insurance" or "health insurance" means disability insurance
250 providing benefits solely of medical, surgical, hospital, or other ancillary services or payment of
251 medical, surgical, hospital, or other ancillary expenses incurred.

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

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

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

256 [~~(c)~~] (iii) fixed indemnity;

257 [~~(d)~~] (iv) credit disability;

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

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

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

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

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

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

265 [~~(35.5)~~] (42) "Indemnity" means the payment of an amount to offset all or part of an
266 insured loss.

267 [~~(36)~~] (43) "Independent adjuster" means an insurance adjuster required to be licensed
268 under Section 31A-26-201 who engages in insurance adjusting as a representative of insurers.

269 [~~Refer also to Section 31A-26-102.~~]

270 [~~(37)~~] (44) "Independently procured insurance" means insurance procured under Section
271 31A-15-104.

272 [~~(37.5)~~] (45) "Individual" means a natural person.

273 [~~(38)~~] (46) "Inland marine insurance" includes insurance covering:

274 (a) property in transit on or over land;

275 (b) property in transit over water by means other than boat or ship;

276 (c) bailee liability;

277 (d) fixed transportation property such as bridges, electric transmission systems, radio and
278 television transmission towers and tunnels; and

279 (e) personal and commercial property floaters.

280 ~~[(39)]~~ (47) "Insolvency" means that:

281 (a) an insurer is unable to pay its debts or meet its obligations as they mature;

282 (b) an insurer's total adjusted capital is less than the insurer's mandatory control level RBC
283 under Subsection 31A-17-601(7)(c); or

284 (c) an insurer is determined to be hazardous under this title.

285 ~~[(40)]~~ (48) (a) "Insurance" means [any]:

286 (i) an arrangement, contract, or plan for the transfer of a risk or risks from one or more
287 persons to one or more other persons~~[-];~~ or [any]

288 (ii) an arrangement, contract, or plan for the distribution of a risk or risks among a group
289 of persons that includes the person seeking to distribute ~~[his]~~ that person's risk.

290 (b) "Insurance" includes:

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

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

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

297 ~~[(41)]~~ (49) "Insurance adjuster" means a person who directs the investigation, negotiation,
298 or settlement of a claim under an insurance policy other than life insurance or an annuity, on behalf
299 of an insurer, policyholder, or a claimant under an insurance policy. ~~[Refer also to Section~~
300 ~~31A-26-102.]~~

301 ~~[(41.5)]~~ (50) "Interinsurance exchange" is defined in Subsection ~~[(69)]~~ (81).

302 ~~[(42)]~~ (51) Except as provided in Subsection 31A-23-102(2), "insurance agent" or
303 "agent" means a person who represents insurers in soliciting, negotiating, or placing insurance.
304 ~~[Refer to Subsection 31A-23-102 (2) for exceptions to this definition.]~~

305 ~~[(43)]~~ (52) Except as provided in Subsection 31A-23-102(2), "insurance broker" or
306 "broker" means a person who acts in procuring insurance on behalf of an applicant for insurance

307 or an insured~~[,]~~; and

308 (b) does not act on behalf of the insurer except by collecting premiums or performing other
309 ministerial acts. [Refer to Subsection 31A-23-102(2) for exceptions to this definition.]

310 [~~(44)~~] (53) "Insurance business" or "business of insurance" includes:

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

313 (b) providing benefits to employees in the event of contingencies not within the control
314 of the employees, in which the employees are entitled to the benefits as a right, which benefits may
315 be provided either;

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

317 (ii) through trusts, associations, or other entities;

318 (c) providing annuities, including those issued in return for gifts, except those provided
319 by persons specified in Subsections 31A-22-1305(2) and (3);

320 (d) providing the characteristic services of motor clubs as outlined in Subsection [~~(56)~~]
321 (65);

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

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

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

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

331 [~~(45)~~] (54) Except as provided in Subsection 31A-23-102(2), "insurance consultant" or
332 "consultant" means a person who:

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

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

336 (c) is not compensated directly or indirectly by an insurer, agent, or broker for advice
337 given. [Refer to Subsection 31A-23-102 (2) for exceptions to this definition.]

338 [(46)] (55) "Insurance holding company system" means a group of two or more affiliated
339 persons, at least one of whom is an insurer.

340 [(47)] (56)(a) "Insured" means a person to whom or for whose benefit an insurer makes
341 a promise in an insurance policy [~~The term~~] and includes:

342 (i) policyholders[;];

343 (ii) subscribers[;];

344 (iii) members[;]; and

345 (iv) beneficiaries. [This]

346 (b) The definition in Subsection (56)(a) applies only to [the provisions of] this title and
347 does not define the meaning of this word as used in insurance policies or certificates.

348 [(48)] (57) (a) (i) "Insurer" means any person doing an insurance business as a principal[;]
349 including:

350 (A) fraternal benefit societies[;];

351 (B) issuers of gift annuities other than those specified in Subsections 31A-22-1305(2) and
352 (3)[;];

353 (C) motor clubs[;];

354 (D) employee welfare plans[;]; and

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

357 (ii) "Insurer" does not include a governmental entity, as defined in Section 63-30-2, to the
358 extent it is engaged in the activities described in Section 31A-12-107.

359 (b) "Admitted insurer" is defined in Subsection [(80)] (94)(b).

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

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

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

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

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

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

366 [(49)] (58) (a) Except as provided in Section 31A-1-103, "legal expense insurance" means
367 insurance written to indemnify or pay for specified legal expenses. [It]

368 (b) "Legal expense insurance" includes arrangements that create reasonable expectations

369 of enforceable rights, but it does not include the provision of, or reimbursement for, legal services
370 incidental to other insurance coverages. [Refer to Section 31A-1-103 for a list of exemptions.]

371 [~~(50)~~] (59) (a) "Liability insurance" means insurance against liability:

372 (i) for death, injury, or disability of any human being, or for damage to property, exclusive
373 of the coverages under:

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

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

376 (C) Subsection [~~(83)~~] (97) for workers' compensation insurance;

377 (ii) for medical, hospital, surgical, and funeral benefits to persons other than the insured
378 who are injured, irrespective of legal liability of the insured, when issued with or supplemental to
379 insurance against legal liability for the death, injury, or disability of human beings, exclusive of
380 the coverages under:

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

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

383 (C) Subsection [~~(83)~~] (97) for workers' compensation insurance;

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

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

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

391 (b) "Liability insurance" includes:

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

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

395 (iii) making inspection of, and issuing certificates of inspection upon, elevators, boilers,
396 machinery, and apparatus of any kind when done in connection with insurance on them.

397 [~~(51)~~] (60) "License" means the authorization issued by the insurance commissioner under
398 this title to engage in some activity that is part of or related to the insurance business. It includes
399 certificates of authority issued to insurers.

400 [(52)] (61)(a) "Life insurance" means insurance on human lives and insurances pertaining
401 to or connected with human life.

402 (b) The business of life insurance includes:

403 (i) granting annuity benefits[;];

404 (ii) granting endowment benefits[;];

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

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

408 (v) providing optional methods of settlement of proceeds.

409 [(53)] (62) "Medical malpractice insurance" means insurance against legal liability
410 incident to the practice and provision of medical services other than the practice and provision of
411 dental services.

412 [(54)] (63) "Member" means a person having membership rights in an insurance
413 corporation. [Refer also to "insured" in Subsection (47).]

414 [(55)] (64) "Minimum capital" or "minimum required capital" means the capital that must
415 be constantly maintained by a stock insurance corporation as required by statute. [Refer also to
416 "permanent surplus" under Subsection (76)(a) and Sections 31A-5-211, 31A-8-209, and
417 31A-9-209.]

418 [(56)] (65) "Motor club" means a person:

419 (a) licensed under:

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

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

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

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

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

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

426 (iii) trip reimbursement, towing services, emergency road services, stolen automobile
427 services, a combination of these services, or any other services given in Subsections
428 31A-11-102(1)(b) through (f) [~~for a stated period of time~~].

429 [(57)] (66) "Mutual" means mutual insurance corporation.

430 [(57.5)] (67) "Nonparticipating" means a plan of insurance under which the insured is not

431 entitled to receive dividends representing shares of the surplus of the insurer.

432 [(58)] (68) "Ocean marine insurance" means insurance against loss of or damage to:

433 (a) ships or hulls of ships;

434 (b) goods, freight, cargoes, merchandise, effects, disbursements, profits, moneys,
435 securities, choses in action, evidences of debt, valuable papers, bottomry, respondentia interests,
436 or other cargoes in or awaiting transit over the oceans or inland waterways;

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

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

442 [(59)] (69) "Order" means an order of the commissioner.

443 [(59.5)] (70) "Participating" means a plan of insurance under which the insured is entitled
444 to receive dividends representing shares of the surplus of the insurer.

445 [(60)] (71) "Person" includes an individual, partnership, corporation, incorporated or
446 unincorporated association, joint stock company, trust, reciprocal, syndicate, or any similar entity
447 or combination of entities acting in concert.

448 [(61)] (72) (a) (i) "Policy" means any document, including attached endorsements and
449 riders, purporting to be an enforceable contract, which memorializes in writing some or all of the
450 terms of an insurance contract. [Service contracts]

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

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

453 (B) a corporation licensed under:

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

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

456 A].

457 (iii) "Policy" does not include:

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

459 (B) a document [which] that does not purport to have legal effect [is not a policy].

460 (b) "Group insurance policy" means a policy covering a group of persons that is issued to
461 a policyholder on behalf of the group, for the benefit of group members who are selected under

462 procedures defined in the policy or in agreements which are collateral to the policy. This type of
463 policy may ~~[-but is not required to,]~~ include members of the policyholder's family or dependents.

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

467 ~~[(62)]~~ (73) "Policyholder" means the person who controls a policy, binder, or oral contract
468 by ownership, premium payment, or otherwise. ~~[Refer also to "insured" in Subsection (47).]~~

469 ~~[(63)]~~ (74) (a) "Premium" means the monetary consideration for an insurance policy, and
470 includes assessments, membership fees, required contributions, or monetary consideration,
471 however designated.

472 (b) Consideration paid to third party administrators for their services is not "premium,"
473 though amounts paid by third party administrators to insurers for insurance on the risks
474 administered by the third party administrators are "premium."

475 ~~[(64)]~~ (75) "Principal officers" of a corporation means the officers designated under
476 Subsection 31A-5-203(3).

477 ~~[(65)]~~ (76) "Proceedings" includes actions and special statutory proceedings.

478 ~~[(66)]~~ (77) "Professional liability insurance" means insurance against legal liability
479 incident to the practice of a profession and provision of any professional services.

480 ~~[(67)]~~ (78) "Property insurance" means insurance against loss or damage to real or personal
481 property of every kind and any interest in that property, from all hazards or causes, and against loss
482 consequential upon the loss or damage including vehicle comprehensive and vehicle physical
483 damage coverages, but excluding inland marine insurance and ocean marine insurance as defined
484 under Subsections ~~[(38)]~~ (46) and ~~[(58)]~~ (68).

485 ~~[(67.5)]~~ (79) (a) "Public agency insurance mutual" means any entity formed by joint
486 venture or interlocal cooperation agreement by two or more political subdivisions or public
487 agencies of the state for the purpose of providing insurance coverage for the political subdivisions
488 or public agencies.

489 (b) Any public agency insurance mutual created under this title and Title 11, Chapter 13,
490 Interlocal Cooperation Act, is considered to be a governmental entity and political subdivision of
491 the state with all of the rights, privileges, and immunities of a governmental entity or political
492 subdivision of the state.

493 ~~[(68)]~~ (80) (a) Except as provided in Subsection ~~[(68)]~~ (80)(b), "rate service organization"
494 means any person who assists insurers in rate making or filing by:

495 (i) collecting, compiling, and furnishing loss or expense statistics;
496 (ii) recommending, making, or filing rates or supplementary rate information; or
497 (iii) advising about rate questions, except as an attorney giving legal advice. ~~[Refer also~~
498 ~~to Subsection 31A-19-102(2).]~~

499 (b) "Rate service organization" does not mean:

500 (i) an employee of an insurer~~[-];~~
501 (ii) a single insurer or group of insurers under common control~~[-];~~
502 (iii) a joint underwriting group~~[-];~~ or
503 (iv) a natural person serving as an actuarial or legal consultant.

504 ~~[(69)]~~ (81) "Reciprocal" or "interinsurance exchange" means any unincorporated
505 association of persons:

506 (a) operating through an attorney-in-fact common to all of them; and
507 (b) exchanging insurance contracts with one another that provide insurance coverage on
508 each other.

509 ~~[(70)]~~ (82) "Reinsurance" means an insurance transaction where an insurer, for
510 consideration, transfers any portion of the risk it has assumed to another insurer. In referring to
511 reinsurance transactions, this title sometimes refers to:

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

516 ~~[(70.3)]~~ (83) "Residential dwelling liability insurance" means insurance against liability
517 resulting from or incident to the ownership, maintenance, or use of a residential dwelling that is
518 a detached single family residence or multifamily residence up to four units.

519 ~~[(71)]~~ (84) "Retrocession" means reinsurance with another insurer of a liability assumed
520 under a reinsurance contract. A reinsurer "retrocedes" when it reinsures with another insurer part
521 of a liability assumed under a reinsurance contract.

522 ~~[(72)]~~ (85) (a) "Security" means any:

523 (i) note;

- 524 (ii) stock;
- 525 (iii) bond;
- 526 (iv) debenture;
- 527 (v) evidence of indebtedness;
- 528 (vi) certificate of interest or participation in any profit-sharing agreement;
- 529 (vii) collateral-trust certificate;
- 530 (viii) preorganization certificate or subscription;
- 531 (ix) transferable share;
- 532 (x) investment contract;
- 533 (xi) voting trust certificate;
- 534 (xii) certificate of deposit for a security;
- 535 (xiii) certificate of interest of participation in an oil, gas, or mining title or lease or in
- 536 payments out of production under such a title or lease;
- 537 (xiv) commodity contract or commodity option;
- 538 (xv) any certificate of interest or participation in, temporary or interim certificate for,
- 539 receipt for, guarantee of, or warrant or right to subscribe to or purchase any of the items listed in
- 540 Subsections [~~(72)~~] (85)(a)(i) through (xiv); or
- 541 (xvi) any other interest or instrument commonly known as a security.
- 542 (b) "Security" does not include:
- 543 (i) any insurance or endowment policy or annuity contract under which an insurance
- 544 company promises to pay money in a specific lump sum or periodically for life or some other
- 545 specified period; or
- 546 (ii) a burial certificate or burial contract.
- 547 [~~(73)~~] (86) "Self-insurance" means any arrangement under which a person provides for
- 548 spreading its own risks by a systematic plan.
- 549 (a) Except as provided in this [subsection] Subsection (86), self-insurance does not include
- 550 an arrangement under which a number of persons spread their risks among themselves.
- 551 (b) Self-insurance does include an arrangement by which a governmental entity, as defined
- 552 in Section 63-30-2, undertakes to indemnify its employees for liability arising out of the
- 553 employees' employment.
- 554 (c) Self-insurance does include an arrangement by which a person with a managed

555 program of self-insurance and risk management undertakes to indemnify its affiliates, subsidiaries,
556 directors, officers, or employees for liability or risk which is related to the relationship or
557 employment.

558 (d) Self-insurance does not include any arrangement with independent contractors.

559 [~~(74)~~] (87) (a) "Subsidiary" of a person means an affiliate controlled by that person either
560 directly or indirectly through one or more affiliates or intermediaries.

561 (b) "Wholly owned subsidiary" of a person is a subsidiary of which all of the voting shares
562 are owned by that person either alone or with its affiliates, except for the minimum number of
563 shares the law of the subsidiary's domicile requires to be owned by directors or others.

564 [~~(75)~~] (88) Subject to Subsection [~~(40)~~] (48)(b), "surety insurance" includes:

565 (a) a guarantee against loss or damage resulting from failure of principals to pay or
566 perform their obligations to a creditor or other obligee;

567 (b) bail bond insurance; and

568 (c) fidelity insurance.

569 [~~(76)~~] (89) (a) "Surplus" means the excess of assets over the sum of paid-in capital and
570 liabilities.

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

573 (ii) Sections 31A-5-211, 31A-7-201, 31A-8-209, 31A-9-209, and 31A-14-209 require that
574 mutuals doing business in this state maintain specified minimum levels of permanent surplus.

575 (iii) Except for assessable mutuals, the minimum permanent surplus requirement is
576 essentially the same as the minimum required capital requirement that applies to stock insurers.

577 [Refer also to Subsection (55) on "minimum capital."]

578 (c) "Excess surplus" means:

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

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

584 (B) that amount of an insurer's total adjusted capital, as defined in Subsection [~~(78.5)~~] (92),
585 that exceeds the product of 3.0 and the authorized control level RBC as defined in Subsection

586 31A-17-601(7)(a); and

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

590 ~~[(77)]~~ (90) "Third party administrator" or "administrator" means any person who collects
591 charges or premiums from, or who, for consideration, adjusts or settles claims of residents of the
592 state in connection with ~~[life or disability]~~ insurance coverage, annuities, or service insurance
593 coverage, except:

594 (a) a union on behalf of its members;

595 (b) a person exempt as a trust under Section 514 of the federal Employee Retirement
596 Income Security Act of 1974;

597 (c) an employer on behalf of ~~[his]~~ the employer's employees or the employees of one or
598 more of the subsidiary or affiliated corporations of the employer;

599 (d) an insurer licensed under Chapter 5, 7, 8, 9, or 14, but only with respect to insurance
600 issued by the insurer; or

601 (e) a person licensed or exempt from licensing under Chapter 23 or 26 whose activities are
602 limited to those authorized under the license the person holds or for which the person is exempt.
603 ~~[Refer also to Section 31A-25-101.]~~

604 ~~[(78)]~~ (91) "Title insurance" means the insuring, guaranteeing, or indemnifying of owners
605 of real or personal property or the holders of liens or encumbrances on that property, or others
606 interested in the property against loss or damage suffered by reason of liens or encumbrances upon,
607 defects in, or the unmarketability of the title to the property, or invalidity or unenforceability of any
608 liens or encumbrances on the property.

609 ~~[(78.5)]~~ (92) "Total adjusted capital" means the sum of an insurer's statutory capital and
610 surplus as determined in accordance with:

611 (a) the statutory accounting applicable to the annual financial statements required to be
612 filed under Section 31A-4-113; and

613 (b) any other items provided by the RBC instructions, as RBC instructions is defined in
614 Subsection 31A-17-601(6).

615 ~~[(79)]~~ (93) (a) "Trustee" means "director" when referring to the board of directors of a
616 corporation.

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

621 [(80)] (94) (a) "Unauthorized insurer," "unadmitted insurer," or "nonadmitted insurer"
622 means an insurer:

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

625 (ii) transacting business not authorized by a valid certificate.

626 (b) "Admitted insurer" or "authorized insurer" means an insurer:

627 (i) holding a valid certificate of authority to do an insurance business in this state; and

628 (ii) transacting business as authorized by a valid certificate.

629 [(81)] (95) "Vehicle liability insurance" means insurance against liability resulting from
630 or incident to ownership, maintenance, or use of any land vehicle or aircraft, exclusive of vehicle
631 comprehensive and vehicle physical damage coverages under Subsection [(67)] (78).

632 [(82)] (96) "Voting security" means a security with voting rights, and includes any security
633 convertible into a security with a voting right associated with it.

634 [(83)] (97) "Workers' compensation insurance" means:

635 (a) insurance for indemnification of employers against liability for compensation based
636 on:

637 (i) [~~based upon~~] compensable accidental injuries; and

638 (ii) [~~based on~~] occupational disease disability;

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

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

643 Section 4. Section 31A-2-308 is amended to read:

644 **31A-2-308. Enforcement penalties and procedures.**

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

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

651 (ii) The commissioner may order any other person who violates an insurance statute or rule
652 to forfeit to the state not more than \$5,000 for each violation.

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

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

659 (d) The commissioner may accept or compromise any forfeiture under this [subsection]
660 Subsection (1) until after a complaint is filed under Subsection (2). After the filing of the
661 complaint, only the attorney general may compromise the forfeiture.

662 (2) [~~Whenever~~] When a person fails to comply with an order issued under Subsection
663 31A-2-201(4), including a forfeiture order, the commissioner may file an action in any court of
664 competent jurisdiction or obtain a court order or judgment:

665 (a) enforcing the commissioner's order;

666 (b) (i) directing compliance with the commissioner's order and restraining further violation
667 of the order[;]; and

668 (ii) subjecting the person ordered to the procedures and sanctions available to the court for
669 punishing contempt if the failure to comply continues; or

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

672 (3) The Utah Rules of Civil Procedure govern actions brought under Subsection (2), except
673 that the commissioner may file a complaint seeking a court-ordered forfeiture under Subsection
674 (2)(c) no sooner than two weeks after giving written notice of [his] the commissioner's intention
675 to proceed under Subsection (2)(c). The commissioner's order issued under Subsection
676 31A-2-201(4) may contain a notice of intention to seek a court-ordered forfeiture if the
677 commissioner's order is disobeyed.

678 (4) If, after a court order is issued under Subsection (2), the person fails to comply with

679 the commissioner's order or judgment[;]:

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

681 (b) the court may, after a hearing following at least five days written notice to the parties
682 subject to the order or judgment, amend the order or judgment to add the forfeiture or forfeitures,
683 as prescribed in Subsection (2)(c), until the person complies.

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

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

687 (c) The attorney general's budget shall be credited to the extent the Insurance Department
688 reimburses the attorney general's office for its collection expenses under this section.

689 (6) (a) Forfeitures and judgments under this section bear interest at the rate [then] charged
690 by the United States Internal Revenue Service for past due taxes[~~-Interest accrues from the later~~
691 ~~of the] on the:~~

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

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

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

696 (7) [No] A forfeiture may not be imposed under Subsection (2)(c) if[;]:

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

699 (b) the violation of the order occurred during the order's suspension.

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

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

703 (i) intentionally violates[;]:

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

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

706 (ii) intentionally permits [any] a person over whom [he] that person has authority to
707 violate[;]:

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

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

710 (iii) intentionally aids any person in violating ~~[any]~~;
711 (A) ~~an~~ insurance statute or rule of this state; or ~~[any effective]~~
712 (B) ~~an~~ order issued under Subsection 31A-2-201(4) ~~[is guilty of a class B misdemeanor]~~.
713 (b) Unless a specific criminal penalty is provided elsewhere in this title, the person may
714 be fined not more than:
715 (i) \$10,000 if a corporation; or ~~[not more than]~~
716 (ii) \$5,000 if a person other than a corporation.
717 (c) If the person is an individual, the person may, in addition, be imprisoned for up to one
718 year.
719 (d) As used in this ~~[subsection]~~ Subsection (9), "intentionally" has the same meaning as
720 under Subsection 76-2-103(1).
721 (10) ~~[When]~~ (a) After a hearing, the commissioner may, in whole or in part, revoke,
722 suspend, place on probation, limit, or refuse to renew the licensee's license or certificate of
723 authority:
724 (i) when a licensee of the ~~[Insurance Department]~~ department, other than a domestic
725 insurer~~[-]~~;
726 (A) persistently or substantially violates the insurance law; or
727 (B) violates an order of the commissioner under Subsection 31A-2-201(4)~~[-]~~;
728 (ii) if there are grounds for delinquency proceedings against the licensee under Section
729 31A-27-301 or Section 31A-27-307~~[-]~~; or
730 (iii) if the licensee's methods and practices in the conduct of ~~[his]~~ the licensee's business
731 endanger, or ~~[his]~~ the licensee's financial resources are inadequate to safeguard, the legitimate
732 interests of ~~[his]~~ the licensee's customers and the public~~[- the commissioner may, after a hearing,~~
733 ~~in whole or in part, revoke, suspend, place on probation, limit, or refuse to renew the licensee's~~
734 ~~license or certificate of authority]~~.
735 (b) Additional license termination or probation provisions for licensees other than insurers
736 are set forth in Sections 31A-19-303, 31A-19-304, 31A-23-216, 31A-23-217, 31A-25-208,
737 31A-25-209, 31A-26-213, 31A-26-214, 31A-35-501, and 31A-35-503.
738 (11) The enforcement penalties and procedures set forth in this section are not exclusive,
739 but are cumulative of other rights and remedies the commissioner has pursuant to applicable law.
740 Section 5. Section **31A-3-401** is amended to read:

741 **31A-3-401. Retaliation against insurers of foreign state or country.**

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

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

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

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

760 **31A-4-106. Provision of health care.**

761 (1) As used in this section, "health care provider" has the same definition as in Section
762 78-14-3.

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

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

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

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

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

774 (ii) does not engage in health care insurance as defined under ~~[Subsection]~~ Section
775 31A-1-301~~[(35)]~~;

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

780 (d) a person licensed under Chapter 23 who:

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

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

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

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

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

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

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

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

795 **31A-5-102. Scope and purposes.**

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

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

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

806 (d) If ~~[there are conflicting provisions, Title 31A]~~ Title 16, Chapter 6, or Title 16, Chapter
807 10a, conflict with this title, this title governs.

808 (2) The purposes of this chapter include:

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

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

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

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

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

816 **31A-5-218. Subsidiaries.**

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

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

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

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

825 (i) acting as an insurance agent or broker;

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

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

830 (iv) providing investment advice and services;

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

833 (vi) providing services related to insurance operations, including accounting, actuarial,

834 pension administration, appraisal, auditing, claims adjusting, collection, data processing,
835 communications, loss prevention, premium financing, safety engineering, and underwriting
836 services;

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

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

840 (ix) engaging in the business of any institution subject to the jurisdiction of the Department
841 of Financial Institutions under [~~the Financial Institutions Act of 1981 and any successor to that act~~]
842 Title 7, Financial Institutions;

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

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

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

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

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

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

855 **31A-16-103. Acquisition of control of or merger with domestic insurer -- Required**
856 **filings -- Content of statement -- Alternative filing materials -- Approval by commissioner**
857 **-- Violations -- Jurisdiction, consent to service of process.**

858 (1) (a) [~~Unless~~] A person may not take the actions described in Subsections (1)(b) or (c)
859 unless, at the time any offer, request, or invitation is made or any such agreement is entered into,
860 or prior to the acquisition of securities if no offer or agreement is involved[~~;~~];

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

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

865 ~~(iii)~~ the commissioner ~~[has approved]~~ approves the offer, request, invitation, agreement
866 or acquisition[?].

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

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

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

878 (ii) The controlling person described in Subsection (1)(d)(i) shall file with the
879 commissioner a preacquisition notification containing the information required in Subsection (2)
880 30 calendar days ~~[prior to]~~ before the proposed effective date of the acquisition.

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

884 (iv) This section applies to all domestic insurers and other entities licensed under Chapters
885 5, 7, 8, 9, and 11.

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

888 (A) is in writing; and

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

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

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

895 (a) the name and address of the "acquiring party," which means each person by whom or

896 on whose behalf the merger or other acquisition of control referred to in Subsection (1) is to be
897 effected; and

898 (i) if the person is an individual~~[, his]~~;

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

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

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

902 and

903 (ii) ~~[(A)]~~ if the person is not an individual~~[,];~~

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

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

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

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

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

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

918 (ii) the identity of persons furnishing the consideration~~[,];~~

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

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

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

928 (i) liquidate the insurer~~[-to]~~;

929 (ii) sell its assets~~[-]~~;

930 (iii) merge or consolidate the insurer with any person~~[-]~~; or ~~[to]~~

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

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

935 (ii) the terms of the offer, request, invitation, agreement, or acquisition referred to in
936 Subsection (1)~~[-]~~; and

937 (iii) a statement as to the method by which the fairness of the proposal was arrived at~~[-~~

938 ~~The commissioner may require a statement of the adjusted book value assigned by the acquiring~~

939 ~~party to each security in arriving at the terms of the offer, with "adjusted book value" meaning each~~

940 ~~security's proportional interest in the capital and surplus of the insurer with adjustments which~~

941 ~~reflect market conditions, business in force, and other intangible assets or liabilities of the~~

942 ~~insurer.]~~;

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

944 (i) is beneficially owned; or

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

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

949 (i) the transfer of any of the securities~~[-]~~;

950 (ii) joint ventures~~[-]~~;

951 (iii) loan or option arrangements~~[-]~~;

952 (iv) puts or calls~~[-]~~;

953 (v) guarantees of loans~~[-]~~;

954 (vi) guarantees against loss or guarantees of profits~~[-]~~;

955 (vii) division of losses or profits~~[-]~~; or

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

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

960 (i) the dates of purchase[-];

961 (ii) the names of the purchasers[-]; and

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

963 (i) a description of any recommendations to purchase by any acquiring party any security
964 referred to in Subsection (1) made during the 12 calendar months preceding the filing of the
965 statement or any recommendations made by anyone based upon interviews or at the suggestion of
966 the acquiring party[-];

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

970 (ii) if distributed, copies of additional soliciting material relating to the [same:]
971 transactions described in Subsection (2)(j)(i);

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

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

978 (l) any additional information the commissioner requires by rule, which [he] the
979 commissioner determines to be:

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

981 (ii) in the public interest.

982 (3) The department may request:

983 (a) (i) criminal background information maintained pursuant to Title 53, Chapter 10, Part
984 2, from the Bureau of Criminal Identification; and

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

987 (b) Information obtained by the department from the review of criminal history records
988 received under Subsection (4)(a)(i) shall be used by the department for the purpose of:

989 (i) verifying the information in Subsection 31A-16-103(2)(a)(i);
990 (ii) determining the integrity of persons who would control the operation of an insurer; and
991 (iii) preventing persons who violate 18 U.S.C. Sections 1033 and 1034 from engaging in
992 the business of insurance in the state.

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

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

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

999 (iii) charge the person required to file the statement referred to in Subsection (1) a fee
1000 equal to the aggregate of Subsections (3)(c)(i) and (ii).

1001 (4) (a) If the source of the consideration under Subsection (2)(b)(i) is a loan made in the
1002 lender's ordinary course of business, the identity of the lender shall remain confidential, if the
1003 person filing the statement so requests.

1004 (b) Under Subsection (2)(e), the commissioner may require a statement of the adjusted
1005 book value assigned by the acquiring party to each security in arriving at the terms of the offer,
1006 with "adjusted book value" meaning each security's proportional interest in the capital and surplus
1007 of the insurer with adjustments that:

1008 (i) reflect market conditions;

1009 (ii) business in force; and

1010 (iii) other intangible assets or liabilities of the insurer.

1011 (c) The description required by Subsection (2)(g) shall identify the persons with whom the
1012 contracts, arrangements, or understandings have been entered into.

1013 [~~(3)~~] (5) (a) If the person required to file the statement referred to in Subsection (1) is a
1014 partnership, limited partnership, syndicate, or other group, the commissioner may require that all
1015 the information called for by [~~Subsection~~] Subsections (2), (3), or (4) shall be given with respect
1016 to each:

1017 (i) partner of the partnership or limited partnership[~~;~~each];

1018 (ii) member of the syndicate or group[~~;~~]; and [each]

1019 (iii) person who controls the partner or member.

1020 (b) If any partner, member, or person referred to in Subsection (5)(a) is a corporation, or
1021 if the person required to file the statement referred to in Subsection (1) is a corporation, the
1022 commissioner may require that the information called for by Subsection (2) shall be given with
1023 respect to:

1024 (i) the corporation[;];

1025 (ii) each officer and director of the corporation[;]; and

1026 (iii) each person who is directly or indirectly the beneficial owner of more than 10% of the
1027 outstanding voting securities of the corporation.

1028 [~~(4)~~] (6) If any material change occurs in the facts set forth in the statement filed with the
1029 commissioner and sent to the insurer pursuant to Subsection (2), an amendment setting forth the
1030 change, together with copies of all documents and other material relevant to the change, shall be
1031 filed with the commissioner and sent to the insurer within two business days after the filing person
1032 learns of such change.

1033 [~~(5)~~] (7) If any offer, request, invitation, agreement, or acquisition referred to in Subsection
1034 (1) is proposed to be made by means of a registration statement under the Securities Act of 1933,
1035 or under circumstances requiring the disclosure of similar information under the Securities
1036 Exchange Act of 1934, or under a state law requiring similar registration or disclosure, a person
1037 required to file the statement referred to in Subsection (1) may [~~utilize~~] use copies of any
1038 registration or disclosure documents in furnishing the information called for by the statement.

1039 [~~(6)~~] (8) (a) The commissioner shall approve any merger or other acquisition of control
1040 referred to in Subsection (1) unless, after a public hearing on the merger or acquisition, [~~he~~] the
1041 commissioner finds that:

1042 [~~(a)~~] (i) after the change of control, the domestic insurer referred to in Subsection (1)
1043 would not be able to satisfy the requirements for the issuance of a license to write the line or lines
1044 of insurance for which it is presently licensed;

1045 [~~(b)~~] (ii) the effect of the merger or other acquisition of control would substantially lessen
1046 competition in insurance in this state or tend to create a monopoly in insurance;

1047 [~~(c)~~] (iii) the financial condition of any acquiring party might:

1048 (A) jeopardize the financial stability of the insurer[;]; or

1049 (B) prejudice the interest of:

1050 (I) its policyholders[;]; or [~~the interest of~~]

1051 (II) any remaining securityholders who are unaffiliated with the acquiring party;
1052 [~~(d)~~] (iv) the terms of the offer, request, invitation, agreement, or acquisition referred to
1053 in Subsection (1) are unfair and unreasonable to the securityholders of the insurer[~~], but this~~
1054 offering price for each security may not be considered unfair if the adjusted book values under
1055 Subsection (2)(e) are disclosed to the securityholders and determined by the commissioner to be
1056 reasonable];

1057 [~~(e)~~] (v) the plans or proposals which the acquiring party has to liquidate the insurer, sell
1058 its assets, or consolidate or merge it with any person, or to make any other material change in its
1059 business or corporate structure or management, are;

1060 (A) unfair and unreasonable to policyholders of the insurer; and [~~are~~]
1061 (B) not in the public interest; or

1062 [~~(f)~~] (vi) the competence, experience, and integrity of those persons who would control
1063 the operation of the insurer are such that it would not be in the interest of the policyholders of the
1064 insurer and the public to permit the merger or other acquisition of control.

1065 (b) For purposes of Subsection (8)(a)(iv), the offering price for each security may not be
1066 considered unfair if the adjusted book values under Subsection (2)(e):

1067 (i) are disclosed to the securityholders; and
1068 (ii) determined by the commissioner to be reasonable.

1069 [~~(7)~~] (9) (a) The public hearing referred to in Subsection [~~(6)~~] (8) shall be held within 30
1070 days after the statement required by Subsection (1) is filed.

1071 (b) (i) At least 20 days notice of the hearing shall be given by the commissioner to the
1072 person filing the statement.

1073 (ii) Affected parties may waive the notice required by this [~~subsection~~] Subsection (9)(a).

1074 (iii) Not less than seven days notice of the public hearing shall be given by the person
1075 filing the statement to:

1076 (A) the insurer; and [~~to~~]
1077 (B) any [~~other persons~~] person designated by the commissioner.

1078 (c) The commissioner shall make a determination within 30 days after the conclusion of
1079 the hearing.

1080 (d) At the hearing, the person filing the statement, the insurer, any person to whom notice
1081 of hearing was sent, and any other person whose interest may be affected by the hearing [~~shall have~~

1082 the right to] may:

1083 (i) present evidence[;];

1084 (ii) examine and cross-examine witnesses[;]; and

1085 (iii) offer oral and written arguments[; they may also].

1086 (e) (i) A person or insurer described in Subsection (9)(d) may conduct discovery
1087 proceedings in the same manner as is presently allowed in the district courts of this state.

1088 (ii) All discovery proceedings shall be concluded not later than three days [~~prior to~~] before
1089 the commencement of the public hearing.

1090 [~~(8)~~] (10) At the acquiring person's expense and consent, the commissioner may retain any
1091 attorneys, actuaries, accountants, and other experts not otherwise a part of the commissioner's staff,
1092 which are reasonably necessary to assist the commissioner in reviewing the proposed acquisition
1093 of control.

1094 [~~(9)~~] (11) (a) (i) If a domestic insurer proposes to merge into another insurer, any
1095 securityholder electing to exercise a right of dissent may file with the insurer a written request for
1096 payment of the adjusted book value given in the statement required by Subsection (1) and
1097 approved under Subsection [~~(6)~~] (8), in return for the surrender of [~~his~~] the security holder's
1098 securities.

1099 (ii) The request described in Subsection (11)(a)(i) shall be filed not later than ten days after
1100 the [~~securityholder's~~] day of the securityholders' meeting where the corporate action is approved.

1101 (b) The dissenting securityholder is entitled to and the insurer is required to pay to the
1102 dissenting securityholder the specified value within 60 days of receipt of the dissenting security
1103 holder's security.

1104 (c) Persons electing under this [~~subsection~~] Subsection (11) to receive cash for their
1105 securities waive the dissenting shareholder and appraisal rights otherwise applicable under Title
1106 16, Chapter 10a, Part 13, Dissenters' Rights.

1107 [~~(b)~~] (d) (i) This Subsection [~~(9)(a)~~](11) provides an elective procedure for dissenting
1108 securityholders to resolve their objections to the plan of merger.

1109 (ii) This section does not restrict the rights of dissenting securityholders under Title 16,
1110 Chapter 10a, Utah Revised Business Corporation Act, unless this election is made under this
1111 Subsection [~~(9)(a)~~] (11).

1112 [~~(10)~~] (12) (a) All statements, amendments, or other material filed under Subsection (1),

1113 and all notices of public hearings held under Subsection [(6)] (8), shall be mailed by the insurer
1114 to its securityholders within five business days after the insurer has received the statements,
1115 amendments, other material, or notices.

1116 (b) Mailing expenses shall be paid by the person making the filing. As security for the
1117 payment of these expenses, that person shall file with the commissioner an acceptable bond or
1118 other deposit in an amount determined by the commissioner.

1119 [(H)] (13) This section does not apply to any offer, request, invitation, agreement, or
1120 acquisition [which] that the commissioner by order exempts from the requirements of this section
1121 as:

1122 (a) not having been made or entered into for the purpose of, and not having the effect of,
1123 changing or influencing the control of a domestic insurer; or

1124 (b) as otherwise not comprehended within the purposes of this section.

1125 [(12)] (14) The following are violations of this section:

1126 (a) the failure to file any statement, amendment, or other material required to be filed
1127 pursuant to Subsections (1) [~~through (3)~~], (2), and (5); or

1128 (b) the effectuation, or any attempt to effectuate, an acquisition of control of or merger
1129 with a domestic insurer unless the commissioner has given [his] the commissioner's approval to
1130 the acquisition or merger.

1131 [(13)] (15) (a) The courts of this state are vested with jurisdiction over:

1132 (i) [~~every~~] a person who:

1133 (A) files a statement with the commissioner under this section[.]; and [~~who~~]

1134 (B) is not resident, domiciled, or authorized to do business in this state; and

1135 (ii) overall actions involving persons described in Subsection (15)(a)(i) arising out of
1136 [~~violations~~] a violation of this section.

1137 (b) [~~Each~~] A person described in Subsection (15)(a) is considered to have performed acts
1138 equivalent to and constituting an appointment of the commissioner by that person, to be [his] that
1139 person's lawful attorney upon whom may be served all lawful process in any action, suit, or
1140 proceeding arising out of [~~violations~~] a violation of this section.

1141 (c) [~~Copies~~] A copy of [all] a lawful process described in Subsection (13)(b) shall be:

1142 (i) served on the commissioner; and

1143 (ii) transmitted by registered or certified mail by the commissioner to the person at [his]

1144 that person's last-known address.

1145 Section 10. Section **31A-16-111** is amended to read:

1146 **31A-16-111. Required sale of improperly acquired stock -- Penalties.**

1147 (1) If the commissioner finds that the acquiring person has not substantially complied with
1148 the requirements of this chapter in acquiring control of a domestic insurer, [~~he~~] the commissioner
1149 may require the acquiring person to sell [~~his~~] the acquiring person's stock of the domestic insurer
1150 in the manner specified in Subsection (2).

1151 (2) (a) The commissioner shall effect the sale required by Subsection (1) in the manner
1152 which, under the particular circumstances, appears most likely to result in the payment of the full
1153 market value for the stock by persons who have the collective competence, experience, financial
1154 resources, and integrity to obtain approval under Subsection 31A-16-103[~~(6)~~](8).

1155 (b) Sales made under this section are subject to approval by the Third Judicial District
1156 Court for Salt Lake County, which court has the authority to effect the terms of the sale.

1157 (3) The proceeds from sales made under this section shall be distributed first to the person
1158 required by this section to sell the stock, but only up to the amount originally paid by the person
1159 for the securities. Additional sale proceeds shall be paid to the General Fund.

1160 (4) The person required to sell and persons related to or affiliated with the seller may not
1161 purchase the stock at the sale conducted under this section.

1162 (5) (a) Every director or officer of an insurance holding company system who knowingly
1163 violates, participates in, or assents to, or who knowingly permits any of the officers or agents of
1164 the insurer to engage in transactions or make investments [~~which~~] that have not been properly
1165 reported or submitted pursuant to Subsections 31A-16-105 (1) and (2), or 31A-16-106 (1)(b), or
1166 which otherwise violate this chapter, shall pay, in their individual capacity, a civil penalty of not
1167 more than \$20,000 per violation, upon a finding by the commissioner of a violation, after notice
1168 and hearing before the commissioner.

1169 (b) In determining the amount of the civil penalty under Subsection (5)(a), the
1170 commissioner shall take into account:

1171 (i) the appropriateness of the penalty with respect to the gravity of the violation[~~;~~];

1172 (ii) the history of previous violations[~~;~~]; and

1173 (iii) any other matters [~~which~~] that justice requires.

1174 (6) (a) [~~Whenever~~] When it appears to the commissioner that any insurer or any director,

1175 officer, employee, or agent of the insurer, has committed a willful violation of this chapter, the
1176 commissioner may cause criminal proceedings to be instituted in the district court for the county
1177 in this state in which the principal office of the insurer is located, or if the insurer has no principal
1178 office in this state, then in the Third District Court for Salt Lake County against the insurer or the
1179 responsible director, officer, employee, or agent of the insurer. [~~Any~~]

1180 (b) An insurer [which] that willfully violates this chapter may be fined not more than
1181 \$20,000. Any individual who willfully violates this chapter is guilty of a third degree felony, and
1182 upon conviction may be:

1183 (i) fined in [his] that person's individual capacity not more than \$5,000 [~~or be~~];

1184 (ii) imprisoned[;]; or [~~may be~~]

1185 (iii) both fined and imprisoned.

1186 (7) This section does not limit the other sanctions applicable to violations of this title under
1187 Section 31A-2-308.

1188 Section 11. Section **31A-17-201** is amended to read:

1189 **31A-17-201. Qualified assets.**

1190 (1) Except as provided under Subsections (3) and (4), only the qualified assets listed in
1191 Subsection (2) may be used in determining the financial condition of an insurer, except to the
1192 extent an insurer has shown to the commissioner that the insurer has excess surplus, as defined in
1193 [~~Subsection~~] Section 31A-1-301[(76)(c)].

1194 (2) For purposes of Subsection (1), "qualified assets" means:

1195 (a) investments, securities, properties, and loans acquired or held in accordance with
1196 Sections 31A-18-105 and 31A-18-106, and the income due and accrued on these;

1197 (b) the net amount of uncollected and deferred premiums for a life insurer [~~which] that~~
1198 carries the full annual mean tabular reserve liability;

1199 (c) premiums in the course of collection, other than for life insurance, not more than 90
1200 days past due, less commissions payable on the premiums, with the 90-day limitation being
1201 inapplicable to premiums payable directly or indirectly by the United States government or any of
1202 its instrumentalities;

1203 (d) installment premiums, other than life insurance premiums, in accordance with:

1204 (i) the rules adopted by the commissioner[;]; or[;]

1205 (ii) in the absence of [these] rules adopted by the commissioner, [~~in accordance with~~]

1206 practices formulated or adopted by the National Association of Insurance Commissioners;

1207 (e) notes and similar written obligations that are:

1208 (i) not past due~~[-]~~;

1209 (ii) taken for premiums other than life insurance premiums~~[-]~~;

1210 (iii) on policies permitted to be issued on that basis~~[-]~~; and

1211 (iv) to the extent of the unearned premium reserves carried on the policies;

1212 (f) amounts recoverable or receivable from reinsurers under a reinsurance contract that
1213 qualifies for reserve credit under Section 31A-17-404;

1214 (g) electronic and mechanical machines constituting a data processing and accounting
1215 system, the cost of which is depreciated in full over a period of five years or less;

1216 (h) tangible components of the health care delivery systems of insurers licensed under
1217 Chapter 7, with the cost of these assets having a finite useful life being depreciated in full over
1218 periods provided by rule;

1219 (i) cash or currency; and

1220 (j) other assets authorized by rule.

1221 (3) (a) Subject to Subsection (5) and even if they could not otherwise be counted under this
1222 chapter, assets acquired in the bona fide enforcement of creditors' rights may be counted for the
1223 purposes of Subsection (1) and Sections 31A-18-105 and 31A-18-106~~[-]~~;

1224 (i) for five years after their acquisition if they are real property~~[-]~~; and

1225 (ii) for one year if they are not real property~~[-, even if they could not otherwise be counted~~
1226 ~~under this chapter]~~.

1227 (b) (i) The commissioner may allow reasonable extensions of ~~[these]~~ the periods described
1228 in Subsection (3)(a), if disposal of the assets within the periods given is not possible without
1229 substantial loss. ~~[These extensions]~~

1230 (ii) Extensions under Subsection (3)(b)(i) may not, as to any particular asset, exceed a total
1231 of five years.

1232 (4) Subject to Subsection (5), and even though under this chapter the assets could not
1233 otherwise be counted, assets acquired in connection with mergers, consolidations, or bulk
1234 reinsurance, or as a dividend or distribution of assets, may be counted for the same purposes, in
1235 the same manner, and for the same periods as assets acquired under Subsection (3)~~[-, even though~~
1236 ~~under this chapter the assets could not otherwise be counted]~~.

1237 (5) Assets described under Subsection (3) or (4) may not be counted for the purposes of
1238 Subsection (1), except to the extent they are counted as assets in determining insurer solvency
1239 under the laws of the state of domicile of the creditor or acquired insurer.

1240 Section 12. Section **31A-17-202** is amended to read:

1241 **31A-17-202. Status of assets that are not "qualified assets."**

1242 (1) (a) Except as provided in Subsection (1)(b), if an insurer owns assets that are not
1243 qualified assets under Section 31A-17-201, the assets shall be disregarded in determining and
1244 reporting the financial condition of the insurer.

1245 (b) An insurer may invest its funds in investments that are permitted under Section
1246 31A-18-105 but in excess of the limits under Sections 31A-18-103 and 31A-18-106 or other assets
1247 approved by the commissioner and these assets may be recognized and reported in the financial
1248 condition of the insurer to the extent the insurer has excess surplus, as defined under [Subsection]
1249 Section 31A-1-301[(76)(c)].

1250 (2) Insurers bear the burden of establishing the extent to which they have excess surplus.

1251 Section 13. Section **31A-17-609** is amended to read:

1252 **31A-17-609. Alternate adjusted capital.**

1253 (1) Except as provided in Section 31A-17-602, insurers licensed under Chapters 5, 7, 9,
1254 and 14 shall maintain total adjusted capital as defined in [Subsection] Section 31A-1-301[(78.5)]
1255 in an amount equal to the greater of:

1256 (a) 175% of the minimum required capital, or of the minimum permanent surplus in the
1257 case of nonassessable mutuals, required by Section 31A-5-211, 31A-7-201, 31A-9-209, or
1258 31A-14-205; or

1259 (b) the net total of:

1260 (i) 10% of net insurance premiums earned during the year; plus

1261 (ii) 5% of the admitted value of common stocks and real estate; plus

1262 (iii) 2% of the admitted value of all other invested assets, exclusive of cash deposits,
1263 short-term investments, policy loans, and premium notes; less

1264 (iv) the amount of any asset valuation reserve being maintained by the insurer, but not to
1265 exceed the sum of Subsections (1)(b)(ii) and (iii).

1266 (2) As used in Subsection (1)(b), "premiums earned" means premiums and other
1267 consideration earned for insurance in the 12-month period ending on the date the calculation is

1268 made.

1269 (3) The commissioner may consider an insurer to be financially hazardous under
1270 Subsection 31A-27-307(3), if the insurer does not have qualified assets in an aggregate value
1271 exceeding the sum of the insurer's liabilities and the total adjusted capital required by Subsection
1272 (1).

1273 (4) The commissioner shall consider an insurer to be financially hazardous under
1274 Subsection 31A-27-307(3) if the insurer does not have qualified assets in an aggregate value
1275 exceeding the sum of the insurer's liabilities and 70% of the total adjusted capital required by
1276 Subsection (1).

1277 Section 14. Section **31A-18-106** is amended to read:

1278 **31A-18-106. Investment limitations generally applicable.**

1279 (1) The [following] investment limitations listed in Subsections (1)(a) through (l) apply
1280 to each insurer[;].

1281 (a) [~~For~~] (i) Except as provided in Subsection (1)(a)(ii), for investments authorized under
1282 Subsection 31A-18-105(1) that are not amortizable under applicable valuation rules, the limitation
1283 is 5% of assets[; ~~except that this~~].

1284 (ii) The limitation of Subsection (1)(a)(i) and the limitation of Subsection (2) do not apply
1285 to demand deposits and certificates of deposit in solvent banks and savings and loan institutions
1286 to the extent they are insured by a federal deposit insurance agency.

1287 (b) For investments authorized under Subsection 31A-18-105(2), the limitation is 10% of
1288 assets.

1289 (c) For investments authorized under Subsection 31A-18-105(3), the limitation is 50% of
1290 assets.

1291 (d) For investments authorized under Subsection 31A-18-105(4), that are considered to
1292 be investments in kinds of securities or evidences of debt pledged, those investments are subject
1293 to the class limitations applicable to the pledged securities or evidences of debt.

1294 (e) For investments authorized under Subsection 31A-18-105(5), the limitation is 35% of
1295 assets.

1296 (f) For investments authorized under Subsection 31A-18-105(6), the limitation is:

1297 (i) 20% of assets for life insurers; and

1298 (ii) 50% of assets for nonlife insurers.

1299 (g) For investments authorized under Subsection 31A-18-105(7), the limitation is 5% of
1300 assets, except as to insurers organized and operating under Chapter 7, in which case the limitation
1301 is 25% of assets.

1302 (h) For investments authorized under Subsection 31A-18-105(8), the limitation is 20% of
1303 assets inclusive of home office and branch office properties, except as to insurers organized and
1304 operating under Chapter 7, in which case the limitation is 35% of assets, inclusive of home office
1305 and branch office properties.

1306 (i) For investments authorized under Subsection 31A-18-105(10), the limitation is 1% of
1307 assets.

1308 (j) For investments authorized under Subsection 31A-18-105(11), the limitation is the
1309 greater of that permitted or required for compliance with Section 31A-18-103[~~whichever is~~
1310 ~~greater~~].

1311 (k) [~~For investments~~] Except as provided in Subsection (1)(l), an insurer's investments in
1312 subsidiaries is limited to 50% of the insurer's total adjusted capital. Investments by an insurer in
1313 its subsidiaries[;] includes:

1314 (i) the insurer's loans, advances, and contributions to its subsidiaries[;]; and

1315 (ii) the insurer's holding of bonds, notes, and stocks of its subsidiaries are included.

1316 [~~"Subsidiary" is defined in Subsection 31A-1-301(74). Except as provided in Subsection (1)(l),~~
1317 ~~no insurer's investments in subsidiaries may, for the purposes stated in Chapter 17, Part 6,~~
1318 ~~Risk-Based Capital, exceed the sum of 50% of the company action level RBC and 100% of the~~
1319 ~~insurer's excess surplus.]~~

1320 (l) Under a plan of merger approved by the commissioner, the commissioner may allow
1321 an insurer [~~to count for purposes of Chapter 17, Part 6, Risk-Based Capital;~~] any portion of its
1322 assets invested in an insurance subsidiary. The approved plan of merger shall require the acquiring
1323 insurer to conform its accounting for investments in subsidiaries to Subsection (1)(k) within a
1324 specified period[~~. This period~~] that may not exceed five years.

1325 (2) [~~For purposes of Chapter 17, Part 6, Risk-Based Capital, all of the following~~] The
1326 limits on investments listed in Subsections (2)(a) through (e) apply to each insurer[;].

1327 (a) For all investments in a single entity, its affiliates, and subsidiaries, the limitation is
1328 10% of assets[~~. The~~], except that the limit imposed by this [subsection] Subsection (2)(a) does not
1329 apply to:

- 1330 (i) investments in the government of the United States or its agencies;
1331 (ii) investments guaranteed by the government of the United States; or
1332 (iii) investments in the insurer's insurance subsidiaries.

1333 (b) ~~[The investments]~~ Investments authorized by Subsection 31A-18-105(3) shall comply
1334 with the ~~[following]~~ requirements~~[-]~~ listed in this Subsection (2)(b).

1335 (i) (A) ~~[The]~~ Except as provided in Subsections (2)(b)(i), the amount of any loan secured
1336 by a mortgage or deed of trust may not exceed 80% of the value of the real estate interest
1337 mortgaged, unless the excess over 80%:

1338 (I) is insured or guaranteed by the United States, any state of the United States, ~~[or]~~ any
1339 instrumentality, agency, or political subdivision of the United States, any of its states, or a
1340 combination of any of these~~[-]~~; ~~or [the excess over 80% is]~~

1341 (II) insured by an insurer approved by the commissioner and qualified to insure that type
1342 of risk in this state.

1343 (B) Mortgage loans representing purchase money mortgages acquired from the sale of real
1344 estate are not subject to ~~[this]~~ the limitation of Subsection (2)(b)(i)(A).

1345 (ii) Subject to Subsection (2)(b)(v), loans or evidences of debt secured by real estate may
1346 only be secured by unencumbered real property, or an unencumbered interest in real property that
1347 is located in the United States.

1348 (iii) Evidence of debt secured by first mortgages or deeds of trust upon leasehold estates
1349 shall require that:

1350 (A) the leasehold estate exceed the maturity of the loan by not less than 10% of the lease
1351 term~~[-that]~~;

1352 (B) the real estate not be otherwise encumbered~~[-]~~; and ~~[that]~~

1353 (C) the mortgagee is entitled to be subrogated to all rights under the leasehold.

1354 (iv) Subject to Subsection (2)(b)(v)~~[-]~~;

1355 (A) participation in any mortgage loan must:

1356 (I) be senior to other participants; and

1357 (II) give the holder substantially the rights of a first mortgagee~~[-]~~; or

1358 (B) the interest of the insurer in the evidence of indebtedness must be of equal priority, to
1359 the extent of the interest, with other interests in the real property.

1360 (v) A fee simple or leasehold real estate or any interest in either of them is not considered

1361 to be encumbered within the meaning of this chapter by reason of any prior mortgage or trust deed
1362 held or assumed by the insurer as a lien on the property, if:

1363 (A) the total of the mortgages or trust deeds held does not exceed 70% of the value of the
1364 property; and [if]

1365 (B) the security created by the prior mortgage or trust deed is a first lien.

1366 (c) Loans permitted under Subsection 31A-18-105(4) may not exceed 75% of the market
1367 value of the collateral pledged, except that loans upon the pledge of United States government
1368 bonds may be equal to the market values of the pledge.

1369 (d) For an equity interest in a single real estate property authorized under Subsection
1370 31A-18-105(8), the limitation is 5% of assets.

1371 (e) Investments authorized under Subsection 31A-18-105(10) shall be in connection with
1372 potential changes in the value of specifically identified:

1373 (i) assets which the insurer owns; or [in specifically identified]

1374 (ii) liabilities which the insurer has incurred.

1375 (3) [~~For the purposes of Chapter 17, Part 6, Risk-Based Capital, the following~~] The
1376 restrictions on investments listed in Subsections (3)(a) and (b) apply[:] to each insurer.

1377 (a) Except for financial futures contracts and real property acquired and occupied by the
1378 insurer for home and branch office purposes, [~~no securities~~] a security or other [~~investments are~~]
1379 investment is not eligible for purchase or acquisition under this chapter unless [~~they are~~] it is:

1380 (i) interest bearing or income paying[;]; and [~~are~~]

1381 (ii) not then in default.

1382 (b) A security is not eligible for purchase at a price above its market value.

1383 (4) Computation of percentage limitations under this section:

1384 (a) is based only upon the insurer's total qualified invested assets described in Section
1385 31A-18-105 and this section, as these assets are valued under Section 31A-17-401[;]; and
1386 [~~exclude~~]

1387 (b) excludes investments permitted under Section 31A-18-108 and Subsections
1388 31A-17-203(2) and (3).

1389 (5) An insurer may not make an investment that, because the investment does not conform
1390 to Section 31A-18-105 and this section, has the result of rendering the insurer, under Chapter 17,
1391 Part [6] VI, Risk-Based Capital, subject to proceedings under Chapter 27.

1392 (6) A pattern of persistent deviation from the investment diversification standards set forth
1393 in Section 31A-18-105 and this section may be grounds for a finding that the person or persons
1394 with authority to make the insurer's investment decisions are "incompetent" as used in Subsection
1395 31A-5-410(3).

1396 (7) Section 77r-1 of the Secondary Mortgage Market Enhancement Act of 1984 does not
1397 apply to the purchase, holding, investment, or valuation limitations of assets of insurance
1398 companies subject to this chapter.

1399 Section 15. Section **31A-18-108** is amended to read:

1400 **31A-18-108. Investment of excess surplus.**

1401 (1) If an insurer has excess surplus, as defined under [Subsection] Section
1402 31A-1-301[(76)(c)], then to the extent of its excess surplus, the insurer may invest in a manner
1403 inconsistent with the limitations of Section 31A-18-106 or in other assets approved by the
1404 commissioner.

1405 (2) This section does not empower any insurer to make investments that are:

1406 (a) illegal; or [that are]

1407 (b) prohibited under Section 31A-4-107.

1408 (3) Each insurer has the burden of establishing the extent of its excess surplus.

1409 Section 16. Section **31A-23-102** is amended to read:

1410 **31A-23-102. Definitions.**

1411 As used in this chapter:

1412 (1) Except as provided in Subsection (2):

1413 (a) "Escrow" is a license category that allows a person to conduct escrows, settlements,
1414 or closings on behalf of a title insurance agency or a title insurer.

1415 (b) "Limited license" means a license that is issued for a specific product of insurance and
1416 limits an individual or agency to transact only for those products.

1417 (c) "Search" is a license category that allows a person to issue title insurance commitments
1418 or policies on behalf of a title insurer.

1419 (d) "Title marketing representative" means a person who:

1420 (i) represents a title insurer in soliciting, requesting, or negotiating the placing of:

1421 (A) title insurance; or

1422 (B) escrow, settlement, or closing services; and

1423 (ii) does not have a search or escrow license.

1424 (2) The following persons are not acting as agents, brokers, title marketing representatives,
1425 or consultants when acting in the following capacities:

1426 (a) any regular salaried officer, employee, or other representative of an insurer or licensee
1427 under this chapter who devotes substantially all of the officer's, employee's, or representative's
1428 working time to activities other than those described in Subsection (1) and Subsections
1429 31A-1-301[(42)] (51), [(43)] (52), and [(45)] (54) including the clerical employees of persons
1430 required to be licensed under this chapter;

1431 (b) a regular salaried officer or employee of a person seeking to purchase insurance, who
1432 receives no compensation that is directly dependent upon the amount of insurance coverage
1433 purchased;

1434 (c) a person who gives incidental advice in the normal course of a business or professional
1435 activity, other than insurance consulting, if neither that person nor that person's employer receives
1436 direct or indirect compensation on account of any insurance transaction that results from that
1437 advice;

1438 (d) a person who, without special compensation, performs incidental services for another
1439 at the other's request, without providing advice or technical or professional services of a kind
1440 normally provided by an agent, broker, or consultant;

1441 (e) (i) a holder of a group insurance policy, or any other person involved in mass
1442 marketing, but only:

1443 (A) with respect to administrative activities in connection with that type of policy,
1444 including the collection of premiums; and

1445 (B) if the person receives no compensation for the activities described in Subsection
1446 (2)(e)(i) beyond reasonable expenses including a fair payment for the use of capital; and

1447 (f) a person who gives advice or assistance without direct or indirect compensation or any
1448 expectation of direct or indirect compensation.

1449 (3) "Actuary" means a person who is a member in good standing of the American
1450 Academy of Actuaries.

1451 (4) "Agency" means a person other than an individual, and includes a sole proprietorship
1452 by which a natural person does business under an assumed name.

1453 (5) "Broker" means an insurance broker or any other person, firm, association, or

1454 corporation that for any compensation, commission, or other thing of value acts or aids in any
1455 manner in soliciting, negotiating, or procuring the making of any insurance contract on behalf of
1456 an insured other than itself.

1457 (6) "Bail bond agent" means any individual:

1458 (a) appointed by an authorized bail bond surety insurer or appointed by a licensed bail
1459 bond surety company to execute or countersign undertakings of bail in connection with judicial
1460 proceedings; and

1461 (b) who receives or is promised money or other things of value for this service.

1462 (7) "Captive insurer" means:

1463 (a) an insurance company owned by another organization whose exclusive purpose is to
1464 insure risks of the parent organization and affiliated companies; or

1465 (b) in the case of groups and associations, an insurance organization owned by the insureds
1466 whose exclusive purpose is to insure risks of member organizations, group members, and their
1467 affiliates.

1468 (8) "Controlled insurer" means a licensed insurer that is either directly or indirectly
1469 controlled by a broker.

1470 (9) "Controlling broker" means a broker who either directly or indirectly controls an
1471 insurer.

1472 (10) "Controlling person" means any person, firm, association, or corporation that directly
1473 or indirectly has the power to direct or cause to be directed, the management, control, or activities
1474 of a reinsurance intermediary.

1475 (11) "Insurer" is as defined in Subsection 31A-1-301(48), except the following persons or
1476 similar persons are not insurers for purposes of Part 6 of this chapter:

1477 (a) all risk retention groups as defined in:

1478 (i) the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499;

1479 (ii) the Risk Retention Act, 15 U.S.C. Sec. 3901 et seq.; and

1480 (iii) Title 31A, Chapter 15, Part [2] II, Risk Retention Groups Act;

1481 (b) all residual market pools and joint underwriting authorities or associations; and

1482 (c) all captive insurers.

1483 (12) (a) "Managing general agent" means any person, firm, association, or corporation that:

1484 (i) manages all or part of the insurance business of an insurer, including the management

1485 of a separate division, department, or underwriting office;

1486 (ii) acts as an agent for the insurer whether it is known as a managing general agent,
1487 manager, or other similar term;

1488 (iii) with or without the authority, either separately or together with affiliates, directly or
1489 indirectly produces and underwrites an amount of gross direct written premium equal to, or more
1490 than 5% of, the policyholder surplus as reported in the last annual statement of the insurer in any
1491 one quarter or year; and

1492 (iv) either adjusts or pays claims in excess of an amount determined by the commissioner,
1493 or that negotiates reinsurance on behalf of the insurer.

1494 (b) Notwithstanding Subsection (12)(a), the following persons may not be considered as
1495 managing general agent for the purposes of this chapter:

1496 (i) an employee of the insurer;

1497 (ii) a U.S. manager of the United States branch of an alien insurer;

1498 (iii) an underwriting manager that, pursuant to contract:

1499 (A) manages all the insurance operations of the insurer;

1500 (B) is under common control with the insurer;

1501 (C) is subject to Title 31A, Chapter 16, Insurance Holding Companies; and

1502 (D) is not compensated based on the volume of premiums written; and

1503 (iv) the attorney-in-fact authorized by and acting for the subscribers of a reciprocal insurer
1504 or inter-insurance exchange under powers of attorney.

1505 (13) "Producer" is a person who arranges for insurance coverages between insureds and
1506 insurers.

1507 (14) "Qualified U.S. financial institution" means an institution that:

1508 (a) is organized or, in the case of a U.S. office of a foreign banking organization licensed,
1509 under the laws of the United States or any state;

1510 (b) is regulated, supervised, and examined by U.S. federal or state authorities having
1511 regulatory authority over banks and trust companies; and

1512 (c) has been determined by either the commissioner, or the Securities Valuation Office of
1513 the National Association of Insurance Commissioners, to meet the standards of financial condition
1514 and standing that are considered necessary and appropriate to regulate the quality of financial
1515 institutions whose letters of credit will be acceptable to the commissioner.

1516 (15) "Reinsurance intermediary" means a reinsurance intermediary-broker or a reinsurance
1517 intermediary-manager as these terms are defined in Subsections (16) and (17).

1518 (16) "Reinsurance intermediary-broker" means a person other than an officer or employee
1519 of the ceding insurer, firm, association, or corporation who solicits, negotiates, or places
1520 reinsurance cessions or retrocessions on behalf of a ceding insurer without the authority or power
1521 to bind reinsurance on behalf of the insurer.

1522 (17) (a) "Reinsurance intermediary-manager" means a person, firm, association, or
1523 corporation who:

1524 (i) has authority to bind or who manages all or part of the assumed reinsurance business
1525 of a reinsurer, including the management of a separate division, department, or underwriting
1526 office; and

1527 (ii) acts as an agent for the reinsurer whether the person, firm, association, or corporation
1528 is known as a reinsurance intermediary-manager, manager, or other similar term.

1529 (b) Notwithstanding Subsection (17)(a), the following persons may not be considered
1530 reinsurance intermediary-managers for the purpose of this chapter with respect to the reinsurer:

1531 (i) an employee of the reinsurer;

1532 (ii) a U.S. manager of the United States branch of an alien reinsurer;

1533 (iii) an underwriting manager that, pursuant to contract:

1534 (A) manages all the reinsurance operations of the reinsurer;

1535 (B) is under common control with the reinsurer;

1536 (C) is subject to Title 31A, Chapter 16, Insurance Holding Companies; and

1537 (D) is not compensated based on the volume of premiums written; and

1538 (iv) the manager of a group, association, pool, or organization of insurers that:

1539 (A) engage in joint underwriting or joint reinsurance; and

1540 (B) are subject to examination by the insurance commissioner of the state in which the
1541 manager's principal business office is located.

1542 (18) "Reinsurer" means any person, firm, association, or corporation duly licensed in this
1543 state as an insurer with the authority to assume reinsurance.

1544 (19) "Surplus lines broker" means a person licensed under Subsection 31A-23-204(5) to
1545 place insurance with unauthorized insurers in accordance with Section 31A-15-103.

1546 (20) "Underwrite" means the authority to accept or reject risk on behalf of the insurer.

1547 Section 17. Section 31A-23-203 is amended to read:

1548 **31A-23-203. General requirements for license issuance and renewal.**

1549 (1) The commissioner shall issue or renew a license to act as an agent, broker, or
1550 consultant to any person who, as to the license classification applied for under Section
1551 31A-23-204~~[-has]~~:

1552 ~~[(1)]~~ (a) ~~has~~ satisfied the character requirements under Section 31A-23-205;

1553 ~~[(2)]~~ (b) ~~has~~ satisfied any applicable continuing education requirements under Section
1554 31A-23-206;

1555 ~~[(3)]~~ (c) ~~has~~ satisfied any applicable examination requirements under Section 31A-23-207;

1556 ~~[(4)]~~ (d) ~~has~~ satisfied any applicable training period requirements under Section
1557 31A-23-208;

1558 ~~[(5)]~~ (e) ~~if a nonresident[-]~~:

1559 (i) ~~has~~ complied with Section 31A-23-209; and

1560 (ii) holds an active similar license in that person's state of residence;

1561 ~~[(6)]~~ (f) as to applicants for licenses to act as title insurance agents, ~~has~~ satisfied the
1562 requirements of Section 31A-23-211; and

1563 ~~[(7)]~~ (g) ~~has~~ paid the applicable fees under Section 31A-3-103.

1564 (2) (a) The department may request:

1565 (i) criminal background information maintained pursuant to Title 53, Chapter 10, Part 2,
1566 from the Bureau of Criminal Identification; and

1567 (ii) complete Federal Bureau of Investigation criminal background checks through the
1568 national criminal history system.

1569 (b) Information obtained by the department from the review of criminal history records
1570 received under Subsection (2)(a) shall be used by the department for the purposes of:

1571 (i) determining if a person satisfies the character requirements under Section 31A-23-205
1572 for issuance or renewal of a license;

1573 (ii) determining if a person has failed to maintain the character requirements under Section
1574 31A-23-205; and

1575 (iii) preventing persons who violate the federal Violent Crime Control and Law
1576 Enforcement Act of 1994, 18 U.S.C. Sections 1033 and 1034 from engaging in the business of
1577 insurance in the state.

- 1578 (c) If the department requests the criminal background information, the department shall:
1579 (i) pay to the Department of Public Safety the costs incurred by the Department of Public
1580 Safety in providing the department criminal background information under Subsection (2)(a)(i);
1581 (ii) pay to the Federal Bureau of Investigation the costs incurred by the Federal Bureau of
1582 Investigation in providing the department criminal background information under
1583 Subsection(2)(a)(ii); and
1584 (iii) charge the person applying for a license or for renewal of a license a fee equal to the
1585 aggregate of Subsections (2)(c)(i) and (ii).

1586 Section 18. Section **31A-23-204** is amended to read:

1587 **31A-23-204. License classifications.**

1588 Licenses issued under this chapter shall be issued under the classifications described under
1589 Subsections (1) through (6). These classifications are intended to describe the matters to be
1590 considered under any education, examination, and training required of license applicants under
1591 Sections 31A-23-206 through 31A-23-208.

1592 (1) Agent and broker license classifications include:

1593 (a) life insurance, including nonvariable annuities;

1594 (b) variable annuities;

1595 (c) disability insurance, including contracts issued to policyholders under Chapter 7 or 8;

1596 (d) property/liability insurance, which includes:

1597 (i) property insurance;

1598 (ii) liability insurance;

1599 (iii) surety and other bonds; and

1600 (iv) policies containing any combination of these coverages; [and]

1601 (e) title insurance under one of the following categories:

1602 (i) search, including authority to act as a title marketing representative;

1603 (ii) escrow, including authority to act as a title marketing representative;

1604 (iii) search and escrow, including authority to act as a title marketing representative; and

1605 (iv) title marketing representative only; and

1606 (f) workers compensation insurance.

1607 (2) Limited license product classification includes:

1608 (a) credit life and credit disability insurance;

- 1609 (b) travel;
1610 (c) motor club;
1611 (d) car rental related;
1612 (e) credit involuntary unemployment insurance and credit property insurance; ~~[and]~~
1613 (f) bail bond agent; and
1614 (g) customer service representative.

1615 (3) Consultant license classification includes:

- 1616 (a) life insurance, including nonvariable annuities;
1617 (b) variable annuities;
1618 (c) disability insurance, including contracts issued to policyholders under Chapter 7 or 8;

1619 ~~[and]~~

1620 (d) property/liability insurance, which includes:

- 1621 (i) property insurance;
1622 (ii) liability insurance;
1623 (iii) surety and other bonds; and
1624 (iv) policies containing any combination of these coverages; and
1625 (e) workers compensation insurance.

1626 (4) A holder of licenses under Subsections (1)(a) and (1)(c) has all qualifications necessary
1627 to act as a holder of a license under Subsection (2)(a).

1628 (5) (a) Upon satisfying the additional applicable requirements, a holder of a brokers license
1629 may obtain a license to act as a surplus lines broker. ~~[This type of license]~~

1630 (b) A license to act as a surplus lines broker gives the holder the authority to arrange
1631 insurance contracts with unauthorized insurers under Section 31A-15-103, but only as to the types
1632 of insurance under Subsection (1) for which ~~[he]~~ the broker holds a brokers license.

1633 (6) The commissioner may by rule recognize other agent, broker, limited license, or
1634 consultant license classifications as to kinds of insurance not listed under Subsections (1), (2), and
1635 (3).

1636 Section 19. Section **31A-23-206** is amended to read:

1637 **31A-23-206. Continuing education requirements -- Regulatory authority.**

1638 (1) The commissioner shall by rule prescribe the continuing education requirements for
1639 each class of agent's license under Subsection 31A-23-204(1), except that ~~[no]~~ the commissioner

1640 may not impose a continuing education requirement [may be imposed upon holders of licenses]
1641 on a holder of a license under:

1642 (a) Subsection 31A-23-204(2); or [other]

1643 (b) a license [classifications] classification other than under Subsection 31A-23-204(2) that
1644 is recognized by the commissioner by rule as provided in Subsection 31A-23-204(6).

1645 (2) (a) [Educational requirements may not be stated] The commissioner may not state a
1646 continuing education requirement in terms of formal education. [These requirements]

1647 (b) The commissioner may [be stated] state a continuing education requirement in terms
1648 of classroom hours, or their equivalent, of insurance-related instruction received[,-for which
1649 insurance-related].

1650 (c) Insurance-related formal education may be a substitute, in whole or in part, for
1651 classroom hours, or their equivalent, required under Subsection (2)(b).

1652 (3) (a) [No more than 12 classroom hours, or their equivalent, of continuing education may
1653 be required for a two-year period regardless of the number of lines for which an agent or broker
1654 may be licensed. Licensees who;] The commissioner shall impose continuing education
1655 requirements in accordance with a two-year licensing period in which the licensee meets the
1656 requirements of this Subsection (3).

1657 (b) Except as provided in Subsection (3)(c), for a two-year licensing period described in
1658 Subsection (3)(a) the commissioner shall require that the licensee for each line of authority held
1659 by the licensee:

1660 (i) receive six hours of continuing education; or

1661 (ii) pass a line of authority continuing education examination.

1662 (c) Notwithstanding Subsection (3)(b):

1663 (i) the commissioner may not require continuing education for more than four lines of
1664 authority held by the licensee;

1665 (ii) the commissioner shall require:

1666 (A) a minimum of:

1667 (I) 12 hours of continuing education;

1668 (II) passage of two line of authority continuing education examinations; or

1669 (III) a combination of Subsections (3)(c)(ii)(A)(I) and (II);

1670 (B) that the minimum continuing education requirement of Subsection (3)(c)(ii)(A)

1671 include:

1672 (I) at least six hours or one line of authority continuing education examination for each line
1673 of authority held by the licensee not to exceed four lines of authority held by the licensee; and

1674 (II) three hours of ethics training, which may be taken in place of three hours of the hours
1675 required for a line of authority.

1676 (d) (i) If a licensee completes the licensee's continuing education requirement without
1677 taking a line of authority continuing education exam, the licensee shall complete at least 1/2 of the
1678 required hours through classroom hours of insurance-related instruction.

1679 (ii) The hours not completed through classroom hours in accordance with Subsection
1680 (3)(d)(i) may be obtained through:

1681 (A) home study;

1682 (B) video tape;

1683 (C) experience credit; or

1684 (D) other method provided by rule.

1685 (e) (i) A licensee may obtain continuing education hours at anytime during the two-year
1686 licensing period.

1687 (ii) The licensee may not take a line of authority continuing education examination more
1688 than 90 calendar days before the date on which the licensee's license is renewed.

1689 (f) The commissioner shall make rules for the content and procedures for line of authority
1690 continuing education examinations.

1691 (g) (i) Beginning May 3, 1999, a licensee is exempt from continuing education
1692 requirements under this section if:

1693 (A) as of April 1, 1990, [have] the licensee has completed 20 years of licensure in good
1694 standing [shall be exempt from the requirement of continuing education.];

1695 (B) the licensee requests an exemption from the department; and

1696 (C) the department approves the exemption.

1697 (ii) If the department approves the exemption under Subsection (3)(g)(i), the licensee is
1698 not required to apply again for the exemption.

1699 ~~[(b) The rules shall provide for home study, video tapes, and experience credits in addition~~
1700 ~~to other provisions. However, not less than half of the required hours shall be met through actual~~
1701 ~~class attendance.]~~

1702 (h) A licensee with a variable annuity line of authority is exempt from the requirement for
1703 continuing education for that line of authority so long as the:

1704 (i) Securities and Exchange Commission requires continuing education for licensees
1705 having a securities license; and

1706 (ii) the licensee complies with the Securities and Exchange Commission's continuing
1707 education requirements for securities licensees.

1708 (i) The commissioner shall, by rule:

1709 (i) publish a list of insurance professional designations whose continuing education
1710 requirements can be used to meet the requirements for continuing education under Subsection
1711 (3)(c); and

1712 ~~[(c) The rules shall]~~ (ii) authorize professional agent associations to:

1713 (A) offer qualified programs for all classes of licenses on a geographically accessible basis;
1714 and [to]

1715 (B) collect reasonable fees for funding and administration of the continuing education
1716 program, subject to the review and approval of the commissioner.

1717 (j) (i) The fees permitted under Subsection (3)(i)(ii) that are charged to fund and administer
1718 the program shall reasonably relate to the costs of administering the program.

1719 (ii) Nothing in this section prohibits a provider of continuing education programs or
1720 courses from charging fees for attendance at courses offered for continuing education credit.

1721 ~~[(d)]~~ (iii) The fees permitted under Subsection (3)(i)(ii) that are charged for attendance at
1722 a professional agent association program may be less for an association member, based on the
1723 member's affiliation expense, but shall preserve the right of a nonmember to attend without
1724 affiliation.

1725 (4) The commissioner shall designate courses, including those presented by insurers,
1726 which satisfy the requirements of this section.

1727 (5) The requirements of this section apply only to applicants who are natural persons.

1728 (6) The commissioner may waive the requirements of this section as to any person who
1729 has been an active insurance agent or broker in another state for two years immediately prior to
1730 applying for a license in this state, but only if the applicant's state of residence has imposed upon
1731 the applicant education requirements which are substantially as rigorous as those of this state.

1732 Section 20. Section **31A-23-211.7** is enacted to read:

1733 **31A-23-211.7. Special requirements for variable annuity line of authority.**

1734 (1) Before applying for a variable annuity line of authority, an agent, broker, or consultant
1735 shall be licensed under Section 61-1-3 as a:

1736 (a) broker-dealer; or

1737 (b) agent.

1738 (2) An agent's, broker's, or consultant's variable annuity line of authority is revoked on the
1739 day on which an agent's, broker's or consultant's license under Section 61-1-3 is no longer valid.

1740 Section 21. Section **31A-23-212** is amended to read:

1741 **31A-23-212. Form and contents of license.**

1742 (1) Licenses issued under this chapter shall be in the form the commissioner prescribes and
1743 shall set forth:

1744 (a) the name, address, and telephone number of the licensee;

1745 (b) the license classifications under Section 31A-23-204;

1746 (c) the date of license issuance; and

1747 (d) any other information the commissioner considers necessary.

1748 (2) (a) An agency [acting as an agent, broker, surplus lines broker, or consultant] shall be
1749 licensed as an agency[; and the] if the agency acts as:

1750 (i) an agent;

1751 (ii) a broker;

1752 (iii) a surplus lines broker;

1753 (iv) a managing general agent; or

1754 (v) a consultant.

1755 (b) The agency license required under Subsections (2) shall set forth the names of all
1756 natural persons licensed under this chapter who are authorized to act in those capacities for the
1757 agency in this state.

1758 (3) So far as is practicable, the commissioner shall issue a single license to each agent,
1759 broker, or consultant for a single fee. [~~The fee for the less expensive license is subsumed within~~
1760 ~~the most expensive license.~~]

1761 Section 22. Section **31A-23-215** is amended to read:

1762 **31A-23-215. Agency licensees -- Reports -- Suspension, revocation, or limitation of**
1763 **license.**

1764 (1) (a) Every two years each agency licensed as an agent, managing general agent, broker,
1765 or consultant shall report to the commissioner all natural ~~[person agents, brokers, or consultants]~~
1766 persons acting in ~~[those]~~ the following capacities for the ~~[organization]~~ agency:

1767 (i) agent;

1768 (ii) broker;

1769 (iii) surplus lines broker;

1770 (iv) managing general agent; or

1771 (v) consultant.

1772 (b) The report required by Subsection (1)(a) shall be made:

1773 (i) on a date specified by rule; and

1774 (ii) in a form the commissioner establishes by rule.

1775 (2) An agency licensed under this chapter shall report to the commissioner promptly, in the
1776 detail and form prescribed by rule, every change in the list of natural ~~[person agents, managing~~
1777 ~~general agents, brokers, or consultants authorized to act in those capacities for the agency]~~ persons
1778 required under Subsection (1).

1779 (3) (a) An agency licensed under this chapter shall report to the commissioner the cause
1780 of termination of a designated licensee's appointment.

1781 (b) The information provided the commissioner under Subsections (3)(a) shall remain
1782 confidential.

1783 ~~[(b)]~~ (c) An agency is immune from civil action, civil penalty, or damages if the agency
1784 complies in good faith with Subsection (3)(a) in reporting to the commissioner the cause of
1785 termination of licensees' appointments.

1786 ~~[(c)]~~ (d) Notwithstanding any other provision in this section, an agency is not immune
1787 from any action or resulting penalty imposed on the reporting agency as a result of proceedings
1788 brought by or on behalf of the department if the action is based on evidence other than the report
1789 submitted in compliance with this Subsection (3).

1790 (4) An agency licensed under this chapter may act in the capacities for which it is licensed
1791 only through natural persons who are licensed under this chapter to act in the same manner.

1792 (5) An agency licensed under this chapter shall designate and report promptly to the
1793 commissioner the name of at least one natural person who has authority to act on behalf of the
1794 agency in all matters pertaining to compliance with this title and orders of the commissioner.

1795 (6) For purposes of this section, if a license is held by an agency, both the agency itself and
1796 any natural person named on the license are considered to be the holders of the license.

1797 (7) If a natural person named on the agency license commits any act or fails to perform any
1798 duty that is a ground for suspending, revoking, or limiting the natural person's license, the
1799 commissioner may suspend, revoke, or limit the license of:

1800 (a) that natural person;

1801 (b) the agency, if the agency:

1802 (i) is reckless or negligent in its supervision of the natural person; or

1803 (ii) knowingly participated in the act or failure to act that is the ground for suspending,
1804 revoking, or limiting the license; or

1805 (c) (i) ~~[both]~~ the natural person; and

1806 (ii) the agency if the agency meets the requirements of Subsection (7)(b).

1807 Section 23. Section **31A-23-405** is amended to read:

1808 **31A-23-405. Services performed for unauthorized insurers.**

1809 ~~[No]~~ (1) A person licensed under Chapter 23 may not perform any act that assists any
1810 person not authorized as an insurer to act as an insurer.

1811 (2) It is a violation of this section to assist any person purporting to be exempt from state
1812 insurance regulation under Section 514 of the Employee Retirement Income Security Act of 1974,
1813 unless that person has rebutted the presumption of jurisdiction under Section 31A-1-105.

1814 (3) It is not a violation of this section:

1815 (a) to assist persons engaged in self insurance as defined under ~~[Subsection]~~ Section
1816 31A-1-301 ~~[(73)];~~; or

1817 (b) for a surplus lines broker to engage in the placement of insurance under Section
1818 31A-15-103.

1819 Section 24. Section **31A-26-204** is amended to read:

1820 **31A-26-204. License classifications.**

1821 Licenses issued under this chapter shall be issued under the classifications described under
1822 Subsections (1), (2), and (3). These classifications are intended to describe the matters to be
1823 considered under any prerequisite education and examination required of license applicants under
1824 Sections 31A-26-206 and 31A-26-207.

1825 (1) Independent adjuster license classifications include:

- 1826 (a) disability insurance, including related service insurance under Chapter 7 or 8;
- 1827 (b) property and liability insurance, which includes:
- 1828 (i) property insurance;
- 1829 (ii) liability insurance;
- 1830 (iii) surety bonds; and
- 1831 (iv) policies containing combinations or variations of these coverages;
- 1832 (c) service insurance;
- 1833 (d) title insurance; [and]
- 1834 (e) credit insurance; and
- 1835 (f) workers compensation insurance.

- 1836 (2) Public adjuster license classifications include:
- 1837 (a) disability insurance, including related service insurance under Chapter 7 or 8;
- 1838 (b) property and liability insurance, which includes:
- 1839 (i) property insurance;
- 1840 (ii) liability insurance;
- 1841 (iii) surety bonds; and
- 1842 (iv) policies containing combinations or variations of these coverages;
- 1843 (c) service insurance;
- 1844 (d) title insurance; [and]
- 1845 (e) credit insurance; and
- 1846 (f) workers compensation insurance.

1847 (3) The commissioner may by rule recognize other independent adjuster or public adjuster
1848 license classifications as to other kinds of insurance not listed under Subsection (1). The
1849 commissioner may also by rule create license classifications which grant only part of the authority
1850 arising under another license class.

1851 Section 25. Section **31A-26-206** is amended to read:

1852 **31A-26-206. Continuing education requirements.**

1853 (1) The commissioner shall by rule prescribe continuing education requirements for each
1854 class of license under Section 31A-26-204.

1855 [~~(2) (a) No more than 12 classroom hours, or their equivalent, of continuing education may~~
1856 ~~be required for a two-year period.~~]

1857 ~~[(b) The rules shall provide for home study, video tapes, and experience credits in addition~~
1858 ~~to other provisions. However, not less than half of the required hours shall be met through actual~~
1859 ~~class attendance.]~~

1860 ~~[(c) (i) The rules shall]~~

1861 (2) (a) The commissioner shall impose continuing education requirements in accordance
1862 with a two-year licensing period in which the licensee meets the requirements of this Subsection
1863 (2).

1864 (b) Except as provided in Subsection (2)(c), for a two-year licensing period described in
1865 Subsection (2)(a) the commissioner shall require that the licensee for each line of authority held
1866 by the licensee:

1867 (i) receive six hours of continuing education; or

1868 (ii) pass a line of authority continuing education examination.

1869 (c) Notwithstanding Subsection (2)(b):

1870 (i) the commissioner may not require continuing education for more than four lines of
1871 authority held by the licensee;

1872 (ii) the commissioner shall require:

1873 (A) a minimum of:

1874 (I) 12 hours of continuing education;

1875 (II) passage of two line of authority continuing education examinations; or

1876 (III) a combination of Subsection (2)(c)(ii)(A)(I) and (II);

1877 (B) that the minimum continuing education requirement of Subsection (2)(c)(ii)(A)
1878 include:

1879 (I) at least six hours or one line of authority continuing education examination for each line
1880 of authority held by the licensee not to exceed four lines of authority held by the licensee; and

1881 (II) three hours of ethics training, which may be taken in place of three hours of the hours
1882 required for a line of authority.

1883 (d) (i) If a licensee completes the licensee's continuing education requirement without
1884 taking a line of authority continuing education exam, the licensee shall complete at least 1/2 of the
1885 required hours through classroom hours of insurance-related instruction.

1886 (ii) The hours not completed through classroom hours in accordance with Subsection
1887 (2)(d)(i) may be obtained through:

- 1888 (A) home study;
1889 (B) video tape;
1890 (C) experience credit; or
1891 (D) other method provided by rule.
- 1892 (e) (i) A licensee may obtain continuing education hours at anytime during the two-year
1893 licensing period.
- 1894 (ii) The licensee may not take a line of authority continuing education examination more
1895 than 90 calendar days before the date on which the licensee's license is renewed.
- 1896 (f) The commissioner shall make rules for the content and procedures for line of authority
1897 continuing education examinations.
- 1898 (g) (i) Beginning May 3, 1999, a licensee is exempt from the continuing education
1899 requirements of this section if:
- 1900 (A) as of April 1, 1990, the licensee has completed 20 years of licensure in good standing;
1901 (B) the licensee requests an exemption from the department; and
1902 (C) the department approves the exemption.
- 1903 (ii) If the department approves the exemption under Subsection (2)(g)(i), the licensee is
1904 not required to apply again for the exemption.
- 1905 (h) A licensee with a variable annuity line of authority is exempt from the requirement for
1906 continuing education for that line of authority so long as:
- 1907 (i) the Securities and Exchange Commission requires continuing education for licensees
1908 having a securities license; and
- 1909 (ii) the licensee complies with the Securities and Exchange Commission's continuing
1910 education requirements for securities licensees.
- 1911 (i) The commissioner shall by rule:
- 1912 (i) publish a list of insurance professional designations whose continuing education
1913 requirements can be used to meet the requirements for continuing education under Subsection
1914 (2)(c); and
- 1915 (ii) authorize professional adjuster associations to:
- 1916 (A) offer qualified programs for all classes of licenses on a geographically accessible basis;
1917 and [to]
- 1918 (B) collect reasonable fees for funding and administration of the continuing education

1919 programs, subject to the review and approval of the commissioner.

1920 [(ii)] (j) (i) The fees permitted under Subsection (2)(i) that are charged to fund and
1921 administer a program shall reasonably relate to the costs of administering the program.

1922 [(iii)] (ii) Nothing in this section shall prohibit a provider of continuing education
1923 programs or courses from charging fees for attendance at courses offered for continuing education
1924 credit.

1925 [(iv)] (iii) The fees permitted under Subsection (2)(i)(ii) that are charged for attendance
1926 at an association program may be less for an association member, based on the member's affiliation
1927 expense, but shall preserve the right of a nonmember to attend without affiliation.

1928 (3) The requirements of this section apply only to licensees who are natural persons.

1929 (4) The requirements of this section do not apply to members of the Utah State Bar.

1930 (5) The commissioner shall designate courses that satisfy the requirements of this section,
1931 including those presented by insurers.

1932 Section 26. Section **31A-27-102** is amended to read:

1933 **31A-27-102. Definitions.**

1934 (1) As used in this chapter:

1935 (a) "Alien insurer domiciled in Utah" means an insurer domiciled outside the United States
1936 whose entry into the United States is through Utah.

1937 (b) "Ancillary state" means any state other than an insurer's state of domicile.

1938 (c) "Contingent claims" means a claim or demand upon which:

1939 (i) a right of action has accrued at the date of the order of liquidation; and [upon which]

1940 (ii) liability has not been determined.

1941 (d) "Date of liquidation" means the date of the filing of a petition for liquidation that
1942 results in an order for liquidation.

1943 (e) "Delinquency proceeding" means any:

1944 (i) proceeding commenced against an insurer for the purpose of liquidating, rehabilitating,
1945 reorganizing, or conserving the insurer[;]; and [any]

1946 (ii) summary proceeding under Sections 31A-27-201 through 31A-27-203.

1947 (f) "Domestic insurer" includes, for purposes of this chapter, foreign insurers commercially
1948 domiciled in this state under Section 31A-14-206.

1949 (g) (i) "Estate" or "property of the estate" means:

1950 (A) all legal or equitable interests of an insurer that are the subject of a rehabilitation,
1951 liquidation, conservation, or other proceeding under this chapter in property as of the date of filing
1952 of the petition for rehabilitation, liquidation, or conservation;

1953 (B) any interest in property recoverable by the receiver under the provisions of this title;

1954 (C) any interest in property acquired after the date of filing of the petition; and

1955 (D) all proceeds, products, rents, and profits from this property.

1956 (ii) [It] "Estate" or "property of the estate" includes property in which the insurer holds
1957 only legal title, but no equitable interest, only to the extent of the insolvent insurer's interest.

1958 (h) "Fair consideration" is given for property or an obligation:

1959 (i) when in exchange for the property or obligation, as a fair equivalent for it, and in good
1960 faith[.];

1961 (A) property is conveyed[.];

1962 (B) services are rendered[.];

1963 (C) an obligation is incurred[.]; or

1964 (D) an antecedent debt is satisfied; or

1965 (ii) when the property or obligation is received in good faith to secure a present advance
1966 or an antecedent debt in amount not disproportionately small compared to the value of the property
1967 or obligation obtained.

1968 (i) (i) "General assets" means all property not encumbered by a security agreement for the
1969 security or benefit of specified persons or classes of persons. [It]

1970 (ii) "General assets" does not include separate account assets under Section 31A-5-217.

1971 (iii) For encumbered property "general assets" includes all that property or its proceeds
1972 which is in excess of the amount necessary to discharge the sums secured by the property.

1973 (iv) Assets held in trust or on deposit for the security or benefit of all policyholders, or all
1974 policyholders and creditors, in more than a single state, are general assets.

1975 (j) "Guaranty association" means:

1976 (i) the applicable association under Chapter 28; or

1977 (ii) the similar association under the laws of another state.

1978 (k) "Immature claim" means a claim or demand upon which payment is due, except for the
1979 passage of time.

1980 (l) "Insolvency" has the same meaning as in [Subsection] Section 31A-1-301[(39)].

1981 (m) "Insurer" means any person who is doing, has done, purports to do, or is licensed to
1982 do an insurance business on its own account and is or has been subject to the authority of, or to
1983 liquidation, rehabilitation, reorganization, or supervision by, a commissioner. A separate account
1984 created under Section 31A-5-217 is an "insurer" for purposes of Chapter 27.

1985 (n) "Preferred claim" means any claim [~~which~~] that the law gives priority of payment from
1986 the general assets of the insurer.

1987 (o) "Receiver" means receiver, liquidator, rehabilitator, or conservator, as the context
1988 requires.

1989 (p) "Reciprocal state" means any state other than this state:

1990 (i) in which in substance Subsection 31A-27-310(1), Subsections 31A-27-403(1) and (3),
1991 Sections 31A-27-404 and 31A-27-406 through 31A-27-409 are in force[~~, and~~];

1992 (ii) which has laws requiring the commissioner to be the receiver of a delinquent insurer[~~;~~];
1993 and

1994 (iii) which has laws for the avoidance of fraudulent conveyances and preferential transfers
1995 by the receiver of a delinquent insurer.

1996 (q) "Secured claim" means any claim secured by mortgage, trust deed, security agreement,
1997 pledge, deposit as security, escrow or otherwise, but not including special deposit claims. The
1998 term also includes claims that have become liens upon specific assets through judicial processes.

1999 (r) "Separate account assets" means those assets allocated to separate accounts under
2000 Section 31A-5-217.

2001 (s) "Special deposit claim" means any claim secured by a deposit in trust made pursuant
2002 to this title for the security or benefit of one or more limited classes of persons.

2003 (t) "Transfer" means every mode, direct or indirect, absolute or conditional, voluntarily
2004 or involuntarily, by or without judicial proceedings, of disposing of or parting with property or
2005 with an interest in property. The retention of a security interest in or title to property delivered to
2006 a debtor is considered a transfer by the debtor.

2007 (u) "Unliquidated claim" means a claim or demand upon which:

2008 (i) a right of action has accrued at the date of the order of liquidation; and

2009 (ii) liability has been established but the amount of which has not been determined.

2010 (2) If the subject of a rehabilitation or liquidation proceeding under this chapter is an
2011 insurer engaged in a surety business, then as used in this chapter:

2012 (a) "Policy" includes a bond issued by a surety.

2013 (b) "Policyholder" includes a principal on a bond.

2014 (c) "Beneficiary" includes an obligee of a bond.

2015 (d) "Insured" includes both the principal and obligee of a bond.

2016 Section 27. Section **31A-27-104** is amended to read:

2017 **31A-27-104. Injunctions and orders.**

2018 (1) Any receiver appointed in a proceeding under this chapter may, at any time, apply for
2019 and any court of general jurisdiction in this state may grant, under the relevant provisions of the
2020 Utah Rules of Civil Procedure, any restraining orders, temporary and permanent injunctions, and
2021 other orders as are necessary and proper to prevent:

2022 (a) the transaction of further business;

2023 (b) the transfer of property;

2024 (c) interference with the receiver or with the proceedings, including those against:

2025 (i) the insurer; and [~~those against~~]

2026 (ii) insureds the insurer is obligated to defend;

2027 (d) waste of the insurer's assets;

2028 (e) dissipation and transfer of bank accounts;

2029 (f) the institution or further prosecution of any actions or proceedings, including those
2030 against:

2031 (i) the insurer; and [~~those against~~]

2032 (ii) insureds the insurer is obligated to defend;

2033 (g) the obtaining of preferences, judgments, attachments, garnishments, or liens against
2034 the insurer or its assets;

2035 (h) the levying of execution against the insurer or its assets;

2036 (i) the making of any sale or deed for nonpayment of taxes or assessments that would
2037 lessen the value of the assets of the insurer;

2038 (j) the withholding from the receiver of books, accounts, documents, or other records
2039 relating to the business of the insurer; [~~or~~]

2040 (k) any other threatened or contemplated action that might:

2041 (i) lessen the value of the insurer's assets; or

2042 (ii) prejudice the rights of policyholders, creditors or shareholders, or the administration

2043 of the proceeding; or

2044 (1) institution of a proceeding against the receiver as defined in and subject to Section
2045 31A-27-110.

2046 (2) The receiver may apply to any court outside of this state for the relief described in
2047 Subsection (1).

2048 Section 28. Section **31A-27-110** is enacted to read:

2049 **31A-27-110. Immunity and indemnification of the receiver.**

2050 (1) For the purposes of this section:

2051 (a) "Legal action subject to this section" means a suit or liability:

2052 (i) against the receiver either:

2053 (A) personally; or

2054 (B) in the receiver's official capacity; and

2055 (ii) alleging a claim for damage to or loss of property or personal injury or other civil
2056 liability caused by or resulting from any alleged act, error, or omission of the receiver arising out
2057 of or by reason of the receiver's duties or employment.

2058 (b) "Person retained to assist" means:

2059 (i) a present or former special deputy or assistant special deputy appointed by a receiver;
2060 and

2061 (ii) a person that the receiver, special deputy, or assistant special deputy employs or retains
2062 to assist in a delinquency proceeding under this chapter.

2063 (c) "Receiver" means a person responsible for the conduct of a delinquency proceeding
2064 under this chapter including:

2065 (i) a former or present receiver;

2066 (ii) a supervisor;

2067 (iii) a rehabilitator;

2068 (iv) a deputy rehabilitator;

2069 (v) a liquidator;

2070 (vi) a deputy liquidator; or

2071 (vii) a person retained to assist a person described in Subsection (1)(c)(i) through (vi) in
2072 the performance of that person's duties.

2073 (2) (a) Except as provided in Subsection (2)(b), a receiver has judicial immunity and is

2074 immune from a legal action subject to this section.

2075 (b) A receiver is not immune from suit or liability for any damage, loss, injury, or liability
2076 caused by the intentional or willful and wanton misconduct of the receiver.

2077 (3) (a) Except as provided in Subsection (3)(b), if a legal action subject to this section is
2078 commenced against the receiver, the receiver shall be indemnified from the assets of the insurer
2079 for any:

2080 (i) expense;

2081 (ii) attorneys' fees;

2082 (iii) judgment;

2083 (iv) settlement;

2084 (v) decree; or

2085 (vi) amount due and owing or paid in satisfaction of or incurred in the defense of the legal
2086 action.

2087 (b) Notwithstanding Subsection (3)(a), a receiver is not indemnified from the assets of the
2088 insurer if a court determines on a final adjudication on the merits that the alleged act, error, or
2089 omission of the receiver giving rise to the claim:

2090 (i) did not arise out of or by reason of the receiver's duties or employment; or

2091 (ii) was caused by the intentional or willful and wanton misconduct of the receiver.

2092 (4) (a) Attorneys' fees and any expenses incurred in defending a legal action for which
2093 immunity or indemnity is available under this section shall be paid from the assets of the insurer
2094 as they are incurred in advance of the final disposition of the legal action once the receiver of the
2095 insurer's estate receives an undertaking by or on behalf of the receiver to repay the attorneys' fees
2096 and expenses if a court determines on a final adjudication on the merits that the receiver is not
2097 entitled to immunity or indemnity under this section.

2098 (b) Any indemnification paid or to be paid from the insurer's assets pursuant to this section
2099 shall be an administrative expense of the insurer.

2100 (c) (i) If there is actual or threatened legal action against a receiver for which immunity
2101 or indemnity may be available under this section, the receiver may take the actions described in
2102 Subsection (4)(c)(ii) as security for the payment of indemnity until such time as all:

2103 (A) applicable statutes of limitation have run;

2104 (B) actual or threatened actions against the receiver have been completely and finally

2105 resolved; and

2106 (C) obligations of the insurer and the receiver under this section shall have been satisfied.

2107 (ii) In accordance with Subsection (4)(c)(i), the receiver may at the receiver's discretion:

2108 (A) segregate and reserve from the assets of the insurer a reasonable amount of funds that

2109 in the judgment of the receiver is needed to provide immunity or indemnity; or

2110 (B) obtain a surety bond or make other arrangements that enable the receiver to fully

2111 secure the payment of all obligations under this section.

2112 (5) (a) Except as provided in Subsection (5)(b), if a legal action against a receiver for

2113 which indemnity may be available under this section is settled prior to final adjudication on the

2114 merits, the estate shall:

2115 (i) pay the settlement amount on behalf of the receiver; or

2116 (ii) indemnify the receiver for the settlement amount.

2117 (b) An estate is not required to pay the amounts under Subsection (5)(a) if the receiver

2118 determines that the claim:

2119 (i) did not arise out of or by reason of the receiver's duties or employment; or

2120 (ii) was caused by the intentional or willful and wanton misconduct of the receiver.

2121 (6) (a) In a legal action in which the receiver is a defendant, the portion of a settlement

2122 relating to the alleged act, error, or omission of the receiver is subject to the approval of the court

2123 before which the delinquency proceeding is pending.

2124 (b) The court shall not approve that portion of the settlement if it determines:

2125 (i) that the claim did not arise out of or by reason of the receiver's duties or employment;

2126 or

2127 (ii) that the claim was caused by the intentional or willful and wanton misconduct of the

2128 receiver.

2129 (7) (a) Subsection (2) applies to any suit based in whole or in part on any alleged act, error,

2130 or omission that takes place on or after May 3, 1999.

2131 (b) A legal action may not be filed or maintained against the receiver based in whole or

2132 in part on any alleged act, error, or omission which took place prior to May 3, 1999, unless on or

2133 before November 3, 1999:

2134 (i) suit is filed; and

2135 (ii) valid service of process is obtained.

2136 (c) Subsections (3) through (6) apply to any suit that is pending on or filed after May 3,
2137 1999, without regard to when the alleged act, error, or omission took place.

2138 (8) This section:

2139 (a) does not apply to an action brought by or on behalf of the receiver; and

2140 (b) may not be interpreted or applied to deprive the receiver of any immunity, indemnity,
2141 benefits of law, rights, or any defense otherwise available to the receiver.

2142 Section 29. Section **31A-27-307** is amended to read:

2143 **31A-27-307. Grounds for liquidation.**

2144 The commissioner may apply by verified petition to the Third District Court for Salt Lake
2145 County or to the district court of the county in which the principal office of the insurer is located,
2146 for an order directing the commissioner to liquidate a domestic insurer or an alien insurer
2147 domiciled in this state on any of the following grounds:

2148 (1) any ground on which the commissioner may apply for an order of rehabilitation under
2149 Section 31A-27-301, whenever the commissioner believes that attempts to rehabilitate the insurer
2150 would;

2151 (a) substantially increase the risk of loss to:

2152 (i) its creditors[;];

2153 (ii) its policyholders[;]; or

2154 (iii) the public[;]; or [would]

2155 (b) be futile, or that rehabilitation would serve no useful purpose;

2156 (2) that the insurer is insolvent or is about to become insolvent as defined in [Subsection]
2157 Section 31A-1-301[(39)];

2158 (3) that the insurer is in the condition that the further transaction of business would be
2159 hazardous, financially or otherwise, to its policyholders, its creditors, or the public, including the
2160 occurrence of an authorized control level event as defined in Section 31A-17-605;

2161 (4) that the insurer:

2162 (a) during the previous 12 months:

2163 (i) has not transacted the business of insurance [during the previous 12 months or];

2164 (ii) has transacted only a token insurance business [during that period,] although
2165 authorized to do so throughout that period[;]; or [that]

2166 (b) more than 12 months after incorporation [it], has failed to become authorized to do an

2167 insurance business;

2168 (5) that during the previous 12 months, the insurer has systematically attempted to
2169 compromise with its creditors or renegotiate previously agreed settlements on the ground that it
2170 is financially unable to pay its claims in full;

2171 (6) that the insurer has commenced, or within the previous year has attempted to
2172 commence, voluntary liquidation otherwise than under this title;

2173 (7) that the insurer has concealed records or assets from the commissioner or improperly
2174 removed them from the jurisdiction;

2175 (8) that the insurer does not satisfy the requirements that would be applicable if it were
2176 seeking initial authorization to do an insurance business in this state, except for:

2177 (a) requirements that are intended to apply only at the time the initial authorization to do
2178 business is obtained and not after that time; and

2179 (b) requirements that are expressly made inapplicable by the laws establishing the
2180 requirements;

2181 (9) that the holders of 2/3 of the shares entitled to vote, or 2/3 of the members or
2182 policyholders entitled to vote in an insurer controlled by its members or policyholders, have
2183 consented to the petition; or

2184 (10) the conditions of Subsection 31A-1-106(7) are present.

2185 Section 30. Section **31A-27-310** is amended to read:

2186 **31A-27-310. Liquidation orders.**

2187 (1) (a) An order to liquidate the business of a domestic insurer shall:

2188 (i) appoint the commissioner and each of [his] the commissioner's successors in office as
2189 liquidator; and [~~shall~~]

2190 (ii) direct the liquidator to immediately take possession of the assets of the insurer and to
2191 administer them under the orders of the court.

2192 (b) Except as qualified by Section 31A-27-309, the liquidator is vested by operation of law
2193 with the title to all of the property, contracts, and rights of action and all of the books and records
2194 of the insurer ordered liquidated, wherever located, as of the date of the filing of the petition for
2195 liquidation.

2196 (c) The liquidator may recover and reduce them to possession, except that ancillary
2197 receivers in reciprocal states have, as to assets located in their respective states, the rights and

2198 powers prescribed in Subsection 31A-27-404(3) for ancillary receivers appointed in Utah as to
2199 assets located in Utah.

2200 (d) The filing or recording of the order of liquidation with [any] a county recorder in Utah
2201 or equivalent agency outside of Utah imparts the same notice as a deed, bill of sale, or other
2202 evidence of title properly filed or recorded with that county recorder in Utah or equivalent agency
2203 outside of Utah.

2204 (2) Upon issuance of the order of liquidation, the rights and liabilities of the named insurer
2205 and of its creditors, policyholders, shareholders, members, and all other persons interested in its
2206 estate are fixed as of the date of filing the petition for liquidation, except as provided in Sections
2207 31A-27-311 and 31A-27-330.

2208 (3) An order to liquidate the business of an alien insurer domiciled in Utah shall be in the
2209 same terms and has the same legal effect as an order to liquidate a domestic insurer, except that
2210 the assets and the business in the United States shall be the only assets and business included under
2211 the order.

2212 (4) (a) At the time of petitioning for an order of liquidation, or at any time [~~thereafter,~~]
2213 after the petition the commissioner may petition the court to declare the insurer insolvent[~~and~~
2214 after].

2215 (b) After the notice and hearing on a petition under Subsection (4)(a) that the court
2216 considers proper, the court may make the declaration.

2217 Section 31. Section **31A-27-323** is amended to read:

2218 **31A-27-323. Setoffs.**

2219 (1) Mutual debts or mutual credits between the insurer and another person in connection
2220 with any action or proceeding under this chapter shall be set off and only the balance shall be
2221 allowed or paid, except as provided in Subsection (2).

2222 (2) A setoff may not be allowed in favor of any person under any of the following
2223 conditions if:

2224 (a) [~~if~~] the obligation of the insurer to the person;

2225 (i) is illusory; or

2226 (ii) would not at the date of the filing of a petition for liquidation entitle the person to share
2227 as a claimant in the assets of the insurer;

2228 (b) [~~if~~] the obligation of the insurer was purchased by or transferred to the person asserting

2229 it within 120 days prior to the petition for liquidation or with a view to its being used as a set off;
2230 or

2231 (c) [if] the obligation of the person is:

2232 (i) to pay an assessment levied against the members or subscribers of the insurer~~[- or is]~~;

2233 (ii) to pay a balance upon a subscription to the capital stock of the insurer~~[-]~~; or [is]

2234 (iii) in any other way in the nature of a capital contribution.

2235 (3) [~~Subsections~~] Subsection (2)~~[(b) and (2)(c)]~~ may not be construed to deny a reinsurer

2236 its right to set off amounts due from the direct insurer against reinsurance proceeds to be paid to

2237 the direct insurer or its rehabilitator or liquidator.

2238 Section 32. Section **31A-27-328** is amended to read:

2239 **31A-27-328. Filing of claims.**

2240 (1) Proof of all claims shall be filed with the liquidator in the form required by Section

2241 31A-27-329 on or before the last day for filing specified in the notice required under Section

2242 31A-27-315, except that:

2243 (a) proof of claims under Subsections 31A-27-335~~(2)(a) and (2)(g)~~ through (2)(i) need not

2244 be filed at all; and

2245 (b) proof of claims for unearned premiums and claims for cash surrender values or other

2246 investment values in life insurance and annuities need not be filed unless the liquidator expressly

2247 requires it.

2248 (2) (a) The liquidator may permit a claimant making a late filing to share in distributions,

2249 whether past or future, as if the claim were not late, to the extent that the payment will not

2250 prejudice the orderly administration of the liquidation, if one of the following exists:

2251 [~~(a) The~~] (i) (A) the existence of a claim was not known to the claimant [~~who~~]; and

2252 (B) the claim was filed as promptly as reasonably possible after learning of it; [~~or the~~

2253 claimant shall receive, at each distribution, the same percentage of the amount allowed on the late

2254 claim as is then being paid to other claimants of the same priority plus the same percentage of the

2255 amount allowed on the late claim as is then being paid to claimants of any lower priority. ~~This~~

2256 ~~shall continue until the late claim has been paid in full.]~~

2257 [~~(b) The~~] (ii) the claim was:

2258 (A) for unearned premiums or for cash surrender values or other investment values in life

2259 insurance or annuities which was not required to be filed~~[- was]~~;

2260 (B) omitted from the liquidator's recommendations to the court under Section
2261 31A-27-336[-]; and [was]
2262 (C) filed as promptly as reasonably possible after the claimant learned of the omission[-];
2263 [(e)-A] (iii) a transfer to a creditor was;
2264 (A) avoided under Section 31A-27-319, Section 31A-27-320, or Section 31A-27-321; or
2265 [was]
2266 (B) voluntarily surrendered under Subsection (5)[-];
2267 [(d)-Valuation] (iv) valuation under Section 31A-27-334 of security held by a secured
2268 creditor shows a deficiency, which is filed within 30 days after the valuation[-];
2269 [(e)-The] (v) the claim was;
2270 (A) contingent and became absolute[-]; and [was]
2271 (B) filed within 30 days after it became absolute[-]; or
2272 [(f)-The] (vi) the claim was late for some other good cause.
2273 (b) Until the late claim has been paid in full, a claimant described in Subsection (2)(a)(i)
2274 shall receive at each distribution:
2275 (i) the same percentage of the amount allowed on the late claim as is then being paid to
2276 other claimants of the same priority; plus
2277 (ii) the same percentage of the amount allowed on the late claim as is then being paid to
2278 claimants of any lower priority.
2279 (3) (a) The liquidator shall consider any claim filed late [which] that is not covered by
2280 Subsection (2), and permit it to receive distributions, other than the first distribution, which are
2281 subsequently declared on any claims of the same or lower priority, if the payment does not
2282 prejudice the orderly administration of the liquidation. [The]
2283 (b) Until the late claim has been paid in full, a late-filing claimant permitted to receive
2284 distributions under Subsection (3)(a) shall receive[-] at each distribution[-];
2285 (i) the same percentage of the amount allowed on the late claim as is then being paid to
2286 other claimants of the same priority; plus
2287 (ii) the same percentage of the amount allowed on the late claim as is then being paid to
2288 claimants of any lower priority. [This shall continue until the late claim has been paid in full.]
2289 (4) Claims by guaranty associations under Chapter 28 shall be filed periodically by the
2290 associations pursuant to rules adopted by the commissioner. These claims shall share in all

2291 subsequently declared distributions as if they were not late.

2292 (5) ~~(a) [No claims]~~ A claim of a creditor who has received or acquired a preference, lien,
2293 conveyance, transfer, assignment, or encumbrance, which is voidable under this chapter, may not
2294 be allowed unless the creditor surrenders the preference, lien, conveyance, transfer, assignment,
2295 or encumbrance.

2296 (b) If the avoidance is effected by a proceeding in which a final judgment has been entered,
2297 the claim may not be allowed unless the money is paid or the property is delivered to the liquidator
2298 within 30 days from the date of the entering of the final judgment, except that the court having
2299 jurisdiction over the liquidation may allow further time if there is an appeal or other continuation
2300 of the proceeding.

2301 (6) A claim allowable under Subsection (5) by reason of the avoidance, whether voluntary
2302 or involuntary, of a preference, lien, conveyance, transfer, assignment, or encumbrance may be
2303 filed as an excused late filing under Subsection (2) if it is filed within:

2304 (a) 30 days from the date of the avoidance; or ~~[within]~~

2305 (b) the further time allowed by the court under Subsection (5).

2306 Section 33. Section **31A-27-332** is amended to read:

2307 **31A-27-332. Disputed claims.**

2308 (1) (a) When a claim is disallowed in whole or in part by the liquidator, written notice of
2309 the determination and of the right to object shall be given promptly to the claimant or the
2310 claimant's attorney of record, if any, by first-class mail at the addresses shown in the proof of
2311 claim.

2312 (b) (i) Within 60 days from the mailing of the notice required by Subsection (1)(a), the
2313 claimant may file objections with the court.

2314 (ii) If objections are not filed within ~~[that]~~ the period provided in Subsection (1)(b)(i), the
2315 claimant may not further object to the determination.

2316 (2) (a) Whenever objections are filed with the court and the liquidator does not alter ~~[his]~~
2317 the liquidator's ruling, the liquidator shall ask the court for a hearing as soon as practicable.

2318 (b) The court shall issue an order setting a date as early as possible~~[, but no sooner than~~
2319 ~~20 days after the order]~~.

2320 (c) At the request of the liquidator, the court may establish procedures for the objections
2321 hearing.

- 2322 (d) The liquidator shall give notice of the hearing by first-class mail to:
- 2323 (i) the claimant or [his] the claimant's attorney; and [to]
- 2324 (ii) any other persons directly affected[~~-, not less than ten nor more than 30 days before the~~
- 2325 ~~date of the hearing~~].
- 2326 (e) A hearing shall be heard without a jury.
- 2327 (f) The matter may be heard by:
- 2328 (i) the court; or [by]
- 2329 (ii) a court-appointed referee [who].
- 2330 (g) If a referee is appointed under Subsection (2)(f), the referee shall:
- 2331 (i) review and be limited to the evidence upon which the liquidator made the determination
- 2332 of the claims; and
- 2333 (ii) submit to the court findings of fact together with [his] recommendations.
- 2334 (h) Consistent with Subsection 31A-27-336(2), the court may approve, disapprove, or
- 2335 modify the liquidator's determination of or referee's recommendations on a claim.
- 2336 (3) A court order issued after a hearing and pursuant to this section may be appealed as a
- 2337 final order for purposes of Rule 54 of the Utah Rules of Civil Procedure.
- 2338 Section 34. Section **31A-27-335** is amended to read:
- 2339 **31A-27-335. Priority of distribution.**
- 2340 (1) (a) Every claim in each class of claims from the insurer's estate shall be paid in full or
- 2341 adequate funds retained for the payment before the members of the next class receive any payment.
- 2342 (b) Once the funds are retained by the liquidator and approved by the court, the insurer's
- 2343 estate shall have no further liability to members of that class except to the extent of the retained
- 2344 funds and any other undistributed funds.
- 2345 [~~(b)~~] (c) Subclasses may not be established within any class.
- 2346 [~~(c) No~~] (d) A claim by a shareholder, policyholder, or other creditor [shall] may not be
- 2347 permitted to circumvent the priority classes through the use of equitable remedies.
- 2348 (2) The classes and order of distribution are as [~~follows:~~] described in Subsections (2)(a)
- 2349 through (i).
- 2350 (a) Class one is the costs and expenses of administration expressly approved by the
- 2351 liquidator, including:
- 2352 (i) the actual and necessary costs of preserving or recovering the assets of the insurer;

2353 (ii) compensation for all authorized services rendered in the supervision, rehabilitation,
2354 or liquidation;

2355 (iii) any necessary filing fees;

2356 (iv) the fees and mileage payable to witnesses; and

2357 (v) reasonable attorney's fees and other professional services rendered in the supervision,
2358 rehabilitation, or liquidation.

2359 (b) (i) Class two is the administrative expenses of guaranty associations.

2360 (ii) For purposes of this section, "administrative expenses of a guaranty association" means
2361 the reasonable expenses incurred by a guaranty association:

2362 (A) when the expenses are not payments or expenses that are required to be incurred as
2363 direct policy benefits in fulfillment of the terms of the insurance contract or policy[;]; and

2364 (B) that are of the type and nature that, but for the activities of the guaranty association,
2365 otherwise would have been incurred by the liquidator, including:

2366 [(A)] (I) evaluations of policy coverage;

2367 [(B)] (II) activities involved in the adjustment and settlement of claims under policies,
2368 including those of in-house or outside adjusters; and

2369 [(C)] (III) the reasonable expenses incurred in connection with the arrangements for
2370 ongoing coverage through transfer to other insurers, policy exchanges, or maintaining policies in
2371 force.

2372 (iii) The liquidator may in the liquidator's sole discretion approve as an administrative
2373 expense of a guaranty association any other reasonable expenses of the guaranty association if the
2374 liquidator finds:

2375 (A) the expenses are not expenses required to be paid or incurred as direct policy benefits
2376 by the terms of the policy; and

2377 (B) the expenses were incurred in furtherance of activities that provided material economic
2378 benefit to the estate as a whole, irrespective of whether the activities resulted in additional benefits
2379 to covered claimants.

2380 (iv) The court shall approve the expenses approved by the liquidator under Subsection
2381 (2)(b)[(iv)](iii) unless the court finds the liquidator abused the liquidator's discretion in approving
2382 the expenses.

2383 (c) (i) Class three is all claims under policies for losses incurred including:

- 2384 (A) claims of the federal, state, or local government;
- 2385 (B) third party claims;
- 2386 (C) claims for unearned premiums; and
- 2387 (D) claims of a guaranty association, other than those included in class two, including
- 2388 claims for payment of covered claims or covered obligations of the insurer.
- 2389 (ii) All claims under life and health insurance and annuity policies shall be treated as loss
- 2390 claims.
- 2391 (iii) That portion of any loss for which indemnification is provided by other benefits or
- 2392 advantages recovered or recoverable by the claimant are not included in this class, other than
- 2393 benefits or advantages recovered or recoverable in discharge of familial obligations of support, by
- 2394 way of succession at death, as proceeds of life insurance, or as gratuities. ~~Not~~ A payment made
- 2395 by an employer to the employer's employee may not be treated as a gratuity.
- 2396 (iv) Notwithstanding Subsections (2)(c)(i), (ii), and (iii), the following claims shall be
- 2397 excluded from class three priority:
- 2398 (A) obligations of the insolvent insurer arising out of reinsurance contracts;
- 2399 (B) obligations incurred after:
- 2400 (I) the expiration date of the insurance policy;
- 2401 (II) the policy has been replaced by the insured ~~[or]~~;
- 2402 (III) the policy has been canceled at the insured's request; or
- 2403 ~~[(H)]~~ (IV) the policy has been canceled as provided in the chapter;
- 2404 (C) obligations to insurers, insurance pools, or underwriting associations and their claims
- 2405 for contribution, indemnity, or subrogation, equitable or otherwise;
- 2406 (D) any claim that is in excess of any applicable limits provided in the insurance policy
- 2407 issued by the insolvent insurer;
- 2408 (E) any amount accrued as punitive or exemplary damages unless expressly covered under
- 2409 the terms of the policy; and
- 2410 (F) tort claims of any kind against the insurer, and claims against the insurer for bad faith
- 2411 or wrongful settlement practices.
- 2412 (v) Notwithstanding Subsection (2)(c)(iv)(B), unearned premium claims on policies, other
- 2413 than reinsurance agreements, may not be excluded.
- 2414 (d) Class four is claims of the federal government other than those claims included under

2415 class three.

2416 (e) (i) Class five is debts due employees for services, benefits, contractual or otherwise
2417 due, arising out of reasonable compensation to employees for services performed;

2418 (A) to the extent that they;

2419 (I) do not exceed two months of monetary compensation; and

2420 (II) represent payment for services performed within six months before the filing of the
2421 petition for liquidation; or[-]

2422 (B) if rehabilitation preceded liquidation, within one year before the filing of the petition
2423 for rehabilitation.

2424 (ii) Principal officers and directors are not entitled to the benefit of class five priority
2425 except as otherwise approved by the liquidator and the court.

2426 (iii) Class five priority shall be in lieu of any other similar priority that may be authorized
2427 by law as to wages or compensation of employees.

2428 (f) (i) Class six is claims of;

2429 (A) any person, including claims of state or local governments, except those specifically
2430 classified elsewhere in this section[-]; or [~~claims of~~]

2431 (B) attorneys for fees and expenses owed them by a person for services rendered in
2432 opposing a formal delinquency proceeding.

2433 (ii) To prove the claim for attorneys' fees and expenses, the claimant shall show that;

2434 (A) the insurer that is the subject of the delinquency proceeding incurred the fees and
2435 expenses based on its best knowledge, information, and belief, formed after reasonable inquiry
2436 indicating opposition was;

2437 (I) in the best interests of the person[-was];

2438 (II) well grounded in fact[-]; and [~~was~~]

2439 (III) warranted by existing law or a good faith argument for the extension, modification,
2440 or reversal of existing law[-]; and [~~that~~]

2441 (B) opposition was not pursued for any improper purpose, such as to;

2442 (I) harass [~~or to~~];

2443 (II) cause unnecessary delay; or

2444 (III) cause needless increase in the cost of litigation.

2445 (g) (i) Class seven is claims of any state or local government for a penalty or forfeiture,

2446 but only to the extent of the pecuniary loss sustained from the act, transaction, or proceeding out
2447 of which the penalty or forfeiture arose, including the reasonable and actual costs incurred from
2448 the act, transaction, or proceeding.

2449 (ii) The remainder of the claims shall be postponed to class eight claims.

2450 (h) Class eight is:

2451 (i) surplus or contribution notes or similar obligations;

2452 (ii) premium refunds on assessable policies;

2453 (iii) interest on claims of classes one through seven; and

2454 (iv) any other claims specifically subordinated to this class.

2455 (i) Class nine is claims of shareholders or other owners, including policyholders of a
2456 mutual insurance corporation within the limits of Subsection 31A-27-337(4)(b) except as they may
2457 be qualified in class three or four.

2458 (3) (a) If the liquidator determines that the assets of the estate will be sufficient to pay all
2459 class one claims in full, class two claims shall be paid currently, only after the liquidator secures
2460 from each of the guaranty associations receiving disbursements under this section an agreement
2461 to return to the liquidator the disbursements, together with investment income actually earned on
2462 the disbursements, as may be required to pay class one claims.

2463 (b) A guaranty association entering into an agreement under Subsection (3)(a) may not be
2464 required to post a bond.

2465 (4) As to a nonprofit corporation organized and operating under Chapter 7 with assets not
2466 fully liquidated under Subsections (1) and (2), the remaining assets shall be distributed under
2467 Subsections 16-6-70(2), (3), (4), and (5).

2468 (5) (a) If any claimant of this state, another state, or foreign country [~~shall be~~] is entitled
2469 to or [~~shall receive~~] receives a distribution upon the claimant's claim out of a statutory deposit or
2470 the proceeds of any bond or other asset located in another state or foreign country, unless the
2471 deposit or proceeds shall have been delivered to the domiciliary liquidator, the claimant is not
2472 entitled to any further distribution from the liquidator until and unless all other claimants of the
2473 same class, irrespective of residence or place of the acts or contracts upon which their claims are
2474 based, shall have received an equal distribution upon their claims.

2475 (b) After the equalization under Subsection (5)(a), the claimants of the same class are
2476 entitled to share in the further distributions by the liquidator, along with and like all other creditors

2477 of the same class, wherever the claimants reside.

2478 (6) Upon the declaration of a distribution, the liquidator shall apply the amount of the
2479 distribution against any indebtedness owed to the insurer by the person entitled to the distribution.
2480 There shall be no claim allowed for and deductible charged by a guaranty association or entity
2481 performing a similar function.

2482 (7) This section applies retrospectively to any proceeding under this chapter initiated after
2483 January 1, 1992.

2484 Section 35. Section **31A-30-104** is amended to read:

2485 **31A-30-104. Applicability and scope.**

2486 (1) This chapter applies to any:

2487 (a) health benefit plan that provides coverage to:

2488 (i) individuals[;];

2489 (ii) small employer groups[;]; or

2490 (iii) both Subsections (1)(a)(i) and (ii); or

2491 (b) conversion policy for purposes of Section 31A-30-106.5.

2492 (2) (a) Except as provided in Subsection (2)(b), for the purposes of this chapter, carriers
2493 that are affiliated companies or that are eligible to file a consolidated tax return shall be treated as
2494 one carrier and any restrictions or limitations imposed by this chapter shall apply as if all health
2495 benefit plans delivered or issued for delivery to covered insureds in this state by [such] the
2496 affiliated carriers were issued by one carrier.

2497 (b) An affiliated carrier that is a health maintenance organization having a certificate of
2498 authority under this title may be considered to be a separate carrier for the purposes of this chapter.

2499 (c) Unless otherwise authorized by the commissioner, a covered carrier may not enter into
2500 one or more ceding arrangements with respect to health benefit plans delivered or issued for
2501 delivery to covered insureds in this state if such arrangements would result in less than 50% of the
2502 insurance obligation or risk for such health benefit plans being retained by the ceding carrier.

2503 (d) The provisions of Section 31A-22-1201 apply if a covered carrier cedes or assumes all
2504 of the insurance obligation or risk with respect to one or more health benefit plans delivered or
2505 issued for delivery to covered insureds in this state.

2506 (3) (a) A Taft Hartley trust created in accordance with Section 302(c)(5) of the Federal
2507 Labor Management Relations Act, or a carrier with the written authorization of such a trust, may

2508 make a written request to the commissioner for a waiver from the application of any of the
2509 provisions of Subsection 31A-30-106(1) with respect to a health benefit plan provided to the trust.

2510 (b) The commissioner may grant such a waiver if the commissioner finds that application
2511 with respect to the trust would:

2512 (i) have a substantial adverse effect on the participants and beneficiaries of the trust; and

2513 (ii) require significant modifications to one or more collective bargaining arrangements
2514 under which the trust is established or maintained.

2515 (c) A waiver granted under this [subsection] Subsection (3) may not apply to an individual
2516 if the person participates in such a trust as an associate member of any employee organization.

2517 (4) A carrier who offers individual and small employer health benefit plans may use the
2518 small employer index rates to establish the rate limitations for individual policies, even if some
2519 individual policies are rated below the small employer base rate.

2520 (5) Sections 31A-30-106, 31A-30-106.5, 31A-30-106.7, 31A-30-107, 31A-30-108, and
2521 31A-30-111 apply to:

2522 (a) any insurer engaging in the business of insurance related to the risk of a small employer
2523 for medical, surgical, hospital, or ancillary health care expenses of its employees provided as an
2524 employee benefit; and

2525 (b) any contract of an insurer, other than a workers compensation policy, related to the risk
2526 of a small employer for medical, surgical, hospital, or ancillary health care expenses of its
2527 employees provided as an employee benefit.

2528 (6) The commissioner may make rules requiring that the marketing practices be consistent
2529 with this chapter for:

2530 (a) an insurer and its agent;

2531 (b) an insurance broker; and

2532 (c) an insurance consultant.

2533 Section 36. Section **31A-32a-101** is enacted to read:

2534 **CHAPTER 32a. MEDICAL CARE SAVINGS ACCOUNT ACT**

2535 **31A-32a-101. Title and scope.**

2536 (1) This chapter is known as the "Medical Care Savings Account Act."

2537 (2) (a) This chapter applies only to medical care savings accounts established for the
2538 purpose of seeking a tax deduction under Section 59-10-114.

2539 (b) This chapter does not apply to medical care savings accounts that will not be subject
2540 to tax deductions under Section 59-10-114.

2541 Section 37. Section **31A-32a-102** is enacted to read:

2542 **31A-32a-102. Definitions.**

2543 As used in this chapter:

2544 (1) "Account administrator" means any of the following:

2545 (a) a depository institution as defined in Section 7-1-103;

2546 (b) a trust company as defined in Section 7-1-103;

2547 (c) an insurance company authorized to do business in this state under this title;

2548 (d) a third party administrator licensed under Section 31A-25-203; and

2549 (e) an employer if the employer has a self-insured health plan under ERISA.

2550 (2) "Account holder" means the resident individual who establishes a medical care savings
2551 account or for whose benefit a medical care savings account is established.

2552 (3) "Deductible" means the total deductible for an employee and all the dependents of that
2553 employee for a calendar year.

2554 (4) "Dependent" means the same as "dependent" under Section 31A-30-103.

2555 (5) "Eligible medical expense" means an expense paid by the taxpayer for:

2556 (a) medical care described in Section 213(d), Internal Revenue Code;

2557 (b) the purchase of a health coverage policy, certificate, or contract, including a qualified
2558 higher deductible health plan; or

2559 (c) premiums on long-term care insurance policies as defined in Section 31A-22-1402.

2560 (6) "Employee" means the individual for whose benefit or for the benefit of whose
2561 dependents a medical care savings account is established. Employee includes a self-employed
2562 individual.

2563 (7) "ERISA" means the Employee Retirement Income Security Act of 1974, Public Law
2564 93-406, 88 Stat. 829.

2565 (8) "Higher deductible" means a deductible of not less than \$1,000.

2566 (9) "Medical care savings account" or "account" means a trust account established at a
2567 depository institution in this state pursuant to a medical care savings account program to pay the
2568 eligible medical expenses of:

2569 (a) an employee or account holder; and

- 2570 (b) the dependents of the employee or account holder.
- 2571 (10) "Medical care savings account program" or "program" means one of the following
- 2572 programs:
- 2573 (a) a program established by an employer in which the employer:
- 2574 (i) purchases a qualified higher deductible health plan for the benefit of an employee and
- 2575 the employee's dependents; and
- 2576 (ii) contributes on behalf of an employee into a medical care savings account; or
- 2577 (b) a program established by an account holder in which the account holder:
- 2578 (i) purchases a qualified higher deductible health plan for the benefit of the account holder
- 2579 and the account holder's dependents; and
- 2580 (ii) contributes an amount to the medical care savings account.
- 2581 (11) "Qualified higher deductible health plan" means a health coverage policy, certificate,
- 2582 or contract that:
- 2583 (a) provides for payments for covered benefits that exceed the higher deductible; and
- 2584 (b) is purchased by:
- 2585 (i) an employer for the benefit of an employee for whom the employer makes deposits into
- 2586 a medical care savings account; or
- 2587 (ii) an account holder.
- 2588 Section 38. Section **31A-32a-103** is enacted to read:
- 2589 **31A-32a-103. Establishing medical care savings accounts.**
- 2590 (1) For tax years beginning 1995, both of the following apply:
- 2591 (a) an employer, except as otherwise provided by contract or a collective bargaining
- 2592 agreement, may offer a medical care savings account program to the employer's employees; and
- 2593 (b) a resident individual may establish a medical care savings account program for the
- 2594 individual or for the individual's dependents.
- 2595 (2) A contribution into an account made by an employer on behalf of an employee, or
- 2596 made by an individual account holder may not exceed the greater of:
- 2597 (a) (i) \$2,000 in any tax year; or
- 2598 (ii) an amount of money equal to the sum of all eligible medical expenses paid by the
- 2599 employee or account holder in that tax year on behalf of the employee, account holder, or the
- 2600 employee's or account holder's dependents.

2601 (b) For purposes of Subsection (2)(a)(ii), eligible medical expenses as defined in
2602 Subsection 31A-32a-102(5)(a), are limited to expenses in that tax year which an insurance carrier
2603 has applied to the employee's or account holder's deductible.

2604 (3) An employer that offers a medical care savings account program shall, before making
2605 any contributions:

2606 (a) inform all employees in writing of the fact that these contributions may not be
2607 deductible under the federal tax laws; and

2608 (b) obtain from the employee a written election to participate in the medical care savings
2609 account program.

2610 (4) Except as provided in Sections 31A-32a-105 and 59-10-114, principal contributed to
2611 and interest earned on a medical care savings account and money reimbursed to an employee or
2612 account holder for eligible medical expenses are exempt from taxation.

2613 (5) (a) An employer may select a single account administrator for all of the employer's
2614 employee's medical care savings accounts.

2615 (b) If a single account administrator is not selected, an employer may contribute directly
2616 to the account holder's individual medical care savings account.

2617 Section 39. Section **31A-32a-104** is enacted to read:

2618 **31A-32a-104. Administration of medical care savings account.**

2619 (1) An account administrator shall administer the medical care savings account from which
2620 the payment of claims is made and has a fiduciary duty to the person for whose benefit the account
2621 administrator administers an account.

2622 (2) (a) Except as provided in Subsection 31A-32a-105(1), the account administrator shall
2623 use the funds held in a medical care savings account solely for the purpose of paying or
2624 reimbursing the employee or account holder for eligible medical expenses of the employee or
2625 account holder or of the employee's or account holder's dependents.

2626 (b) The commissioner shall adopt rules concerning the coordination of benefits between
2627 a medical care savings account and medical expenses payable from automobile insurance policies,
2628 workers compensation insurance policies, or other health care insurance policies or contracts.

2629 (3) The employee or account holder may submit documentation of eligible medical
2630 expenses paid by the employee or account holder in the tax year to the account administrator, and
2631 the account administrator shall reimburse the employee or account holder from the employee's or

2632 account holder's account for eligible medical expenses.

2633 (4) If an employer makes contributions to a medical care savings account program on a
2634 periodic installment basis, the employer may advance to an employee an amount necessary to
2635 cover eligible medical expenses incurred that exceed the amount in the employee's medical care
2636 savings account at the time the expense is incurred if the employee agrees to repay the advance.

2637 Section 40. Section **31A-32a-105** is enacted to read:

2638 **31A-32a-105. Withdrawals -- Termination -- Transfers.**

2639 (1) Subject to Subsection (3), if the employee or account holder withdraws money for any
2640 purpose other than a medical expense at any time in which the balance in the account is below
2641 \$4,000 all of the following apply:

2642 (a) the amount of the withdrawal is income for the purposes of Title 59, Chapter 10,
2643 Individual Income Tax Act; and

2644 (b) the administrator shall withhold from the amount of the withdrawal, and on behalf of
2645 the employee or account holder shall pay a penalty to the State Tax Commission equal to 10% of
2646 the amount of the withdrawal.

2647 (2) If an employee or account holder withdraws money from the employee's or account
2648 holder's medical care savings account for any purpose other than a medical expense, but the
2649 withdrawal occurs when the balance in the medical care savings account is over \$4,000, and the
2650 withdrawal will not result in the account balance dropping below \$4,000, the withdrawal:

2651 (a) is not subject to the penalties described in Subsection (1)(b); and

2652 (b) is subject to taxation as provided in Subsection (1)(a).

2653 (3) The amount of a disbursement of any assets of a medical care savings account pursuant
2654 to a filing for protection under Title 11 of the United States Code, 11 U.S.C. 101 to 1330 by an
2655 employee, account holder, or person for whose benefit the account was established:

2656 (a) is not considered a withdrawal for purposes of this section; and

2657 (b) is subject to taxation under Title 59, Chapter 10, Individual Income Tax Act.

2658 (4) (a) Upon the death of the employee or account holder, the account administrator shall
2659 distribute the principal and accumulated interest of the medical care savings account to the estate
2660 of the employee or account holder.

2661 (b) A distribution under this Subsection (4) is not subject to the penalties described in
2662 Subsection (1)(b).

2663 (5) (a) If an employee is no longer employed by an employer that participates in a medical
2664 care savings account program, and if the employee's account is administered by the employer's
2665 account administrator, the money in the medical care savings account may be used for the benefit
2666 of the employee or the employee's dependents in accordance with this chapter, and remains exempt
2667 from taxation if:

2668 (i) the employee, not more than 60 days after the employee's final day of employment:

2669 (A) transfers the account to a new account administrator; or

2670 (B) requests in writing to the former employer's account administrator that the account
2671 remain with that administrator; and

2672 (ii) the account administrator agrees to retain the account.

2673 (b) Not more than 30 days after the expiration of the 60 days, if an account administrator
2674 has not accepted the former employee's account, the employer shall mail a check to the former
2675 employee at the employee's last-known address equal to the amount in the account on that day.

2676 (c) The amount mailed to the employee is subject to taxation pursuant to Subsection (1)(a),
2677 but is not subject to the penalties under Subsection (1)(b).

2678 (d) If an employee becomes employed with a different employer that participates in a
2679 medical care savings account program, the employee may transfer the employee's medical care
2680 savings account to that new employer's account administrator.

2681 (e) If an account holder becomes an employee of an employer that participates in a medical
2682 care savings account program, the account holder may transfer the account holder's account to the
2683 employer's account administrator.

2684 Section 41. Section **31A-32a-106** is enacted to read:

2685 **31A-32a-106. Regulation of account administrators -- Administration of tax**
2686 **deductions.**

2687 (1) The department shall regulate account administrators and may adopt rules necessary
2688 to administer this chapter.

2689 (2) Before adopting rules to administer this chapter, the department shall report the
2690 proposed rules to the Utah Health Policy Commission.

2691 (3) The tax commission may adopt rules necessary to monitor and implement the tax
2692 deductions established by this chapter and Section 59-10-114.

2693 Section 42. Section **31A-32a-107** is enacted to read:

2694 **31A-32a-107. Penalties for noncompliance with tax requirements.**

2695 An account administrator who fails to comply with the statutes and rules governing the tax
2696 deduction established by this chapter and Section 59-10-114 is subject to:

2697 (1) the civil penalties provided in Section 59-1-401; and

2698 (2) interest at the rate and in the manner provided in Section 59-1-402.

2699 Section 43. Section **31A-35-201** is amended to read:

2700 **31A-35-201. Bail Bond Surety Oversight Board creation -- Membership.**

2701 (1) There is created a Bail Bond Surety Oversight Board within the [insurance]
2702 department, consisting of:

2703 (a) the following seven voting members [and one nonvoting member,] to be appointed by
2704 the [insurance] commissioner:

2705 [~~(a)~~] (i) one representative each from four licensed bail bond surety companies;

2706 [~~(b)~~] (ii) two members of the general public who do not have any financial interest in or
2707 professional affiliation with any bail bond surety company; and

2708 [~~(c)~~] (iii) one attorney in good standing licensed to practice law in Utah; and

2709 [~~(d) one~~] (b) a nonvoting member who is a staff member of the insurance department
2710 appointed by the commissioner.

2711 (2) (a) The appointments are for terms of four years. A board member may not serve more
2712 than two consecutive terms.

2713 (b) Except as required by Subsection (2)(c), the [current] members as of May 5, 1998, of
2714 the Bail Bond Surety Licensing Board created under Section 77-20-11 shall serve the remainder
2715 of their terms as members of the board. Upon expiration of their terms they are eligible for
2716 appointment to another term.

2717 (c) The insurance commissioner shall, at the time of initial appointments, adjust the length
2718 of terms to ensure that the terms of board members are staggered so approximately half of the
2719 board is appointed every two years.

2720 (3) [~~Board members serve~~] A board member serves until:

2721 (a) removed by the insurance commissioner;

2722 (b) [~~their~~] the member's resignation; or

2723 (c) the expiration of [~~their~~] the member's term and the appointment of a successor.

2724 (4) When a vacancy occurs in the membership for any reason, the replacement shall be

2725 appointed for the remainder of the unexpired term.

2726 (5) The board shall annually elect one of its members as chair.

2727 (6) Four members constitute a quorum for the transaction of business.

2728 (7) (a) Members do not receive compensation or benefits for their services, but may
2729 receive per diem and expenses incurred in the performance of official duties at the rates established
2730 by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

2731 (b) Members may decline to receive per diem and expenses for their services.

2732 (8) The commissioner, after a board hearing and recommendation, may remove any
2733 member of the board for misconduct, incompetency, or neglect of duty.

2734 (9) Members of the board are immune from suit with respect to all acts done and actions
2735 taken in good faith in carrying out the purposes of this chapter.

2736 Section 44. Section **31A-35-202** is amended to read:

2737 **31A-35-202. Board responsibilities.**

2738 The board shall:

2739 (1) meet;

2740 (a) at least quarterly~~[-]~~; and [~~also~~]

2741 (b) at the call of the chair;

2742 (2) make written recommendations to the [~~insurance~~] commissioner for rules governing
2743 the following aspects of the bail bond surety insurance business:

2744 (a) certification qualifications, applications, and fees;

2745 (b) bonding limits;

2746 (c) unprofessional conduct;

2747 (d) procedures for hearing and resolving allegations of unprofessional conduct; and

2748 (e) sanctions for unprofessional conduct;

2749 (3) screen bail bond surety company certificate applicants and applications;

2750 (4) recommend to the insurance commissioner action regarding the granting, renewing,
2751 suspending, revoking, and reinstating of bail bond surety company certificates; and

2752 (5) (a) conduct investigations of allegations of unprofessional conduct on the part of
2753 persons or sureties involved in the business of bail bond surety insurance; and

2754 (b) provide the results of the investigations to the insurance commissioner with
2755 recommendations for action and any appropriate sanctions~~[-and]~~.

2756 [~~(6) maintain and publish a current list of licensed bail bond surety companies;~~

2757 Section 45. Section **31A-35-301** is amended to read:

2758 **31A-35-301. The insurance commissioner's authority.**

2759 (1) The [insurance] commissioner shall:

2760 (a) make rules as necessary for the administration of this chapter;

2761 (b) with information as provided by the board, issue or deny certification under this
2762 chapter; ~~[and]~~

2763 (c) take action regarding a certificate, including suspension or revocation; and

2764 (d) maintain and publish a current list of licensed bail bond surety companies and agents.

2765 (2) The [insurance] commissioner may establish fees for the issuance, renewal, and
2766 reinstatement of bail bond surety company certificates of authority under Section 63-38-3.2.

2767 Section 46. Section **31A-35-701** is amended to read:

2768 **31A-35-701. Prohibited acts.**

2769 (1) A bail bond agent or bail bond surety may not:

2770 (a) solicit business in or about any place where persons in the custody of the state or any
2771 local law enforcement or correctional agency are confined, or in or about any court;

2772 (b) pay a fee or rebate or give or promise anything of value to any person in order to secure
2773 a settlement, compromise, remission, or reduction of the amount of any undertaking or bail bond;

2774 (c) pay a fee or rebate or give anything of value to an attorney in regard to any bail bond
2775 matter, except payment for legal services actually rendered for the bail bond agent or bail bond
2776 surety; ~~[or]~~

2777 (d) pay a fee or rebate or give or promise anything of value to the principal or anyone in
2778 his behalf; or

2779 (e) engage in any other act prohibited by the commissioner by rule.

2780 (2) The following persons may not act as bail bond agents and may not, directly or
2781 indirectly, receive any benefits from the execution of any bail bond:

2782 (a) ~~[any]~~ a person employed at any jail, correctional facility, or other facility used for the
2783 incarceration of persons;

2784 (b) a law enforcement ~~[officers]~~ officer;

2785 (c) ~~[judges]~~ a judge;

2786 (d) ~~[sheriffs]~~ a sheriff, deputy ~~[sheriffs]~~ sheriff, ~~[and constables]~~ or constable; and

2787 (e) ~~[trustees or prisoners]~~ a trustee or prisoner incarcerated in any jail, correctional facility,
2788 or other facility used for the incarceration of persons.

2789 (3) A bail bond agent may not sign or countersign in blank any bail bond, or give the
2790 power of attorney to, or otherwise authorize, anyone to countersign [his] in the bail bond agent's
2791 name to bonds.

2792 (4) A bail bond agent may not advertise or hold himself out to be a bail bond surety.

2793 (5) The following persons or members of their immediate families may not solicit business
2794 on behalf of a bail bond surety or bail bond agent:

2795 (a) a person employed at any jail, correctional facility, or other facility used for the
2796 incarceration of persons;

2797 (b) a law enforcement officer;

2798 (c) a judge;

2799 (d) a sheriff, deputy sheriff, or constable; and

2800 (e) a trustee or prisoner incarcerated in any jail, correctional facility, or other facility used
2801 for the incarceration of persons.

2802 Section 47. Section **49-5-301** is amended to read:

2803 **49-5-301. Contributions of members.**

2804 (1) The system shall be maintained on a financially and actuarially sound basis by means
2805 of contributions made by the state, the employing units, and the active members of the system. For
2806 purposes of determining contribution rates and benefits, the system is divided into two divisions
2807 according to social security coverage. Firefighters with on-the-job social security coverage are
2808 Division A, and firefighters without on-the-job social security coverage are Division B.

2809 (2) Any city, town, special district, or county may elect to pay all or part of its members'
2810 required contributions, in addition to the required employer contributions. Any amount contributed
2811 by a city, town, or county under this subsection shall vest to the member's credit as though the
2812 member had made the contribution. The member's required contribution shall be reduced by the
2813 amount that is paid by the employer.

2814 (3) All contributions are credited to the account of the individual and held in trust for the
2815 payment of benefits to the member or the member's beneficiaries. All member contributions are
2816 100% vested and nonforfeitable.

2817 (4) Each member is deemed to consent to monthly deductions. The payment of

2818 compensation less retirement payroll deductions is considered to be full payment of the salary of
2819 the employee.

2820 (5) The board shall report to the governor, the Legislature, and each employing unit under
2821 Division A or B the contribution rates and any adjustments necessary to maintain the system on
2822 a financially and actuarially sound basis, and the employer and employee shall pay the certified
2823 contribution rates.

2824 (6) In addition, there shall be paid to the Firefighters' Retirement Trust Fund:

2825 (a) 50% of the annual tax for each year that is levied, assessed, and collected under Title
2826 59, Chapter 9, Taxation of Admitted Insurers, upon property insurance premiums, as defined by
2827 [Subsection] Section 31A-1-301 [(67)], and as applied to fire and allied lines insurance collected
2828 by insurance companies within the state; and

2829 (b) 10% of all money assessed and collected under Title 59, Chapter 9, Taxation of
2830 Admitted Insurers, upon life insurance premiums within the state. Payments to the fund shall be
2831 made annually until the prior service liability is liquidated, after which the tax revenue provided
2832 in this subsection for the Firefighters' Retirement Trust Fund ceases.

2833 Section 48. Section **59-9-105** is amended to read:

2834 **59-9-105. Tax on certain insurers to pay for relative value study.**

2835 (1) Each insurer providing coverage for motor vehicle liability, uninsured motorist, and
2836 personal injury protection shall pay to the State Tax Commission on or before March 31 of each
2837 year, a tax of .01% on the total premiums received for these coverages during the preceding
2838 calendar year from policies covering motor vehicle risks in this state.

2839 (2) The taxable premium under this section shall be reduced by all premiums returned or
2840 credited to policyholders on direct business subject to tax in this state.

2841 (3) All money received by the state under this section shall be deposited in the General
2842 Fund as a dedicated credit for the purpose of providing funds to pay for any costs and expenses
2843 incurred by the Insurance Department;

2844 (a) in conducting, maintaining, and administering the relative value study referred to in
2845 Section 31A-22-307; and

2846 (b) to prepare, publish, and distribute publications relating to insurance and consumers of
2847 insurance as provided in Section 31A-2-208.

2848 Section 49. Section **59-10-114** is amended to read:

2849 **59-10-114. Additions to and subtractions from federal taxable income of an**
2850 **individual.**

2851 (1) There shall be added to federal taxable income of a resident or nonresident individual:

2852 (a) the amount of any income tax imposed by this or any predecessor Utah individual
2853 income tax law and the amount of any income tax imposed by the laws of another state, the District
2854 of Columbia, or a possession of the United States, to the extent deducted from federal adjusted
2855 gross income, as defined by Section 62, Internal Revenue Code, in determining federal taxable
2856 income;

2857 (b) a lump sum distribution allowable as a deduction under Section 402(e)(3), Internal
2858 Revenue Code, to the extent deductible under Section 62(a)(8), Internal Revenue Code, in
2859 determining federal adjusted gross income;

2860 (c) 25% of the personal exemptions, as defined and calculated in the Internal Revenue
2861 Code;

2862 (d) a withdrawal from a medical care savings account and any penalty imposed in the
2863 taxable year if:

2864 (i) the taxpayer did not deduct or include the amounts on his federal tax return pursuant
2865 to Section 220, Internal Revenue Code; and

2866 (ii) the withdrawal is subject to Subsections [~~31A-32-105~~] 31A-32a-105(1) and (2); and

2867 (e) the amount refunded to a participant under Title 53B, Chapter 8a, Higher Education
2868 Savings Incentive Program, in the year in which the amount is refunded.

2869 (2) There shall be subtracted from federal taxable income of a resident or nonresident
2870 individual:

2871 (a) the interest or dividends on obligations or securities of the United States and its
2872 possessions or of any authority, commission, or instrumentality of the United States, to the extent
2873 includable in gross income for federal income tax purposes but exempt from state income taxes
2874 under the laws of the United States, but the amount subtracted under this subsection shall be
2875 reduced by any interest on indebtedness incurred or continued to purchase or carry the obligations
2876 or securities described in this subsection, and by any expenses incurred in the production of
2877 interest or dividend income described in this subsection to the extent that such expenses, including
2878 amortizable bond premiums, are deductible in determining federal taxable income;

2879 (b) 1/2 of the net amount of any income tax paid or payable to the United States after all

2880 allowable credits, as reported on the United States individual income tax return of the taxpayer for
2881 the same taxable year;

2882 (c) the amount of adoption expenses which, for purposes of this subsection, means any
2883 actual medical and hospital expenses of the mother of the adopted child which are incident to the
2884 child's birth and any welfare agency, child placement service, legal, and other fees or costs relating
2885 to the adoption;

2886 (d) amounts received by taxpayers under age 65 as retirement income which, for purposes
2887 of this section, means pensions and annuities, paid from an annuity contract purchased by an
2888 employer under a plan which meets the requirements of Section 404 (a)(2), Internal Revenue Code,
2889 or purchased by an employee under a plan which meets the requirements of Section 408, Internal
2890 Revenue Code, or paid by the United States, a state, or political subdivision thereof, or the District
2891 of Columbia, to the employee involved or the surviving spouse;

2892 (e) for each taxpayer age 65 or over before the close of the taxable year, a \$7,500 personal
2893 retirement exemption;

2894 (f) 75% of the amount of the personal exemption, as defined and calculated in the Internal
2895 Revenue Code, for each dependent child with a disability and adult with a disability who is
2896 claimed as a dependent on a taxpayer's return;

2897 (g) any amount included in federal taxable income that was received pursuant to any
2898 federal law enacted in 1988 to provide reparation payments, as damages for human suffering, to
2899 United States citizens and resident aliens of Japanese ancestry who were interned during World
2900 War II;

2901 (h) subject to the limitations of Subsection (3)(e), 60% of the amounts paid by the taxpayer
2902 during the taxable year for health care insurance, as defined in Title 31A, Chapter 1, Insurance
2903 Code, for the taxpayer, the taxpayer's spouse, and the taxpayer's dependents to the extent the
2904 amounts paid for health insurance were not deductible under Sections 125, 162, or 213, Internal
2905 Revenue Code, in determining federal taxable income;

2906 (i) except as otherwise provided in this subsection, the amount of a contribution made in
2907 the tax year on behalf of the taxpayer to a medical care savings account and interest earned on a
2908 contribution to a medical care savings account established pursuant to Title 31A, Chapter ~~[32]~~ 32a,
2909 Medical Care Savings Account Act, to the extent the contribution is accepted by the account
2910 administrator as provided in the Medical Care Savings Account Act, and if the taxpayer did not

2911 deduct or include amounts on his federal tax return pursuant to Section 220, Internal Revenue
2912 Code. A contribution deductible under this subsection may not exceed either of the following:

2913 (i) the maximum contribution allowed under the Medical Care Savings Account Act for
2914 the tax year multiplied by two for taxpayers who file a joint return, if neither spouse is covered by
2915 health care insurance as defined in Section 31A-1-301 or self-funded plan that covers the other
2916 spouse, and each spouse has a medical care savings account; or

2917 (ii) the maximum contribution allowed under the Medical Care Savings Account Act for
2918 the tax year for taxpayers:

2919 (A) who do not file a joint return; or

2920 (B) who file a joint return, but do not qualify under Subsection (2)(i)(i); and

2921 (j) the amount included in federal taxable income that was derived from money paid by
2922 the taxpayer to the program fund and investment income earned on those payments under Title
2923 53B, Chapter 8a, Higher Education Savings Incentive Program.

2924 (3) (a) For purposes of Subsection (2)(d), the amount of retirement income subtracted for
2925 taxpayers under 65 shall be the lesser of the amount included in federal taxable income, or \$4,800,
2926 except that:

2927 (i) for married taxpayers filing joint returns, for each \$1 of adjusted gross income earned
2928 over \$32,000, the amount of the retirement income exemption that may be subtracted shall be
2929 reduced by 50 cents;

2930 (ii) for married taxpayers filing separate returns, for each \$1 of adjusted gross income
2931 earned over \$16,000, the amount of the retirement income exemption that may be subtracted shall
2932 be reduced by 50 cents; and

2933 (iii) for individual taxpayers, for each \$1 of adjusted gross income earned over \$25,000,
2934 the amount of the retirement income exemption that may be subtracted shall be reduced by 50
2935 cents.

2936 (b) For purposes of Subsection (2)(e), the amount of the personal retirement exemption
2937 shall be further reduced according to the following schedule:

2938 (i) for married taxpayers filing joint returns, for each \$1 of adjusted gross income earned
2939 over \$32,000, the amount of the personal retirement exemption shall be reduced by 50 cents;

2940 (ii) for married taxpayers filing separate returns, for each \$1 of adjusted gross income
2941 earned over \$16,000, the amount of the personal retirement exemption shall be reduced by 50

2942 cents; and

2943 (iii) for individual taxpayers, for each \$1 of adjusted gross income earned over \$25,000,
2944 the amount of the personal retirement exemption shall be reduced by 50 cents.

2945 (c) For purposes of Subsections (3)(a) and (b), adjusted gross income shall be calculated
2946 by adding to federal adjusted gross income any interest income not otherwise included in federal
2947 adjusted gross income.

2948 (d) For purposes of determining ownership of items of retirement income common law
2949 doctrine will be applied in all cases even though some items may have originated from service or
2950 investments in a community property state. Amounts received by the spouse of a living retiree
2951 because of the retiree's having been employed in a community property state are not deductible as
2952 retirement income of such spouse.

2953 (e) For purposes of Subsection (2)(h), a subtraction for an amount paid for health care
2954 insurance as defined in Title 31A, Chapter 1, Insurance Code, is not allowed:

2955 (i) for an amount that is reimbursed or funded in whole or in part by the federal
2956 government, the state, or an agency or instrumentality of the federal government or the state; and

2957 (ii) for a taxpayer who is eligible to participate in a health plan maintained and funded in
2958 whole or in part by the taxpayer's employer or the taxpayer's spouse's employer.

2959 Section 50. Section **63-55-231** is amended to read:

2960 **63-55-231. Repeal dates, Title 31A.**

2961 (1) Section 31A-2-208.5, Comparison tables, is repealed July 1, 2005.

2962 (2) Section 31A-22-315, Motor Vehicle Insurance Reporting, is repealed July 1, 2000.

2963 (3) Title 31A, Chapter 31, Insurance Fraud Act, is repealed July 1, 2007.

2964 [~~(4) Title 31A, Chapter 32, Medical Care Savings Account Act, is repealed beginning with
2965 the 1999 taxable year and shall be reviewed by July 1, 1998.]~~

2966 [~~(5) Title 31A, Chapter 34, Voluntary Health Insurance Purchasing Alliance Act, is
2967 repealed July 1, 1999.]~~

2968 Section 51. **Repealer.**

2969 This act repeals:

2970 Section **31A-23-306, Countersignature requirement.**

2971 Section **31A-25-101, Third party administrator defined.**

2972 Section 52. **Legislative intent -- Retrospective operation.**

2973 (1) (a) By enacting Title 31A, Chapter 32a, Medical Care Savings Account Act, in this act,
2974 the Legislature intends to correct the inadvertent repeal of Title 31A, Chapter 32, Medical Care
2975 Savings Account Act, repealed under Section 63-55-231 beginning with the 1999 taxable year.

2976 (b) Except as provided in Subsection (1)(d), Title 31A, Chapter 32a, is intended to only
2977 reinstate the law as it existed prior to the repeal with technical corrections and is not intended as
2978 a substantive change of law.

2979 (c) It is the intent of the Legislature that medical care saving accounts created before or
2980 after the repeal of the previous Chapter 32 operate as though Chapter 32a was continuously in
2981 effect as of the tax year beginning on or after January 1, 1995.

2982 (d) The enacted Title 31A, Chapter 32a, substantively changed the previous Chapter 32
2983 by including premiums on long-term care insurance policies as defined in Section 31A-22-1402
2984 within the definition of a eligible medical expense.

2985 (2) Title 31A, Chapter 32a, Medical Care Savings Account Act shall have retrospective
2986 operation to taxable years beginning on or after January 1, 1999.

Legislative Review Note

as of 1-28-99 10:50 AM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel