

PAYMENT OF INSURANCE CLAIMS

2001 GENERAL SESSION

STATE OF UTAH

Sponsor: John L. Valentine

This act modifies the Insurance Code. The act modifies the definition of an insured. The act changes the application of the sections on timely payment of insurance claims and unfair claim settlement practices from claimants in privity of contract with the insured to those insured. The act creates a private cause of action for an insured for unfair claim settlement practices.

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

AMENDS:

31A-1-301, as last amended by Chapters 130 and 131, Laws of Utah 1999

31A-26-301, as enacted by Chapter 242, Laws of Utah 1985

31A-26-303, as last amended by Chapter 91, Laws of Utah 1987

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

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

31A-1-301. Definitions.

As used in this title, unless otherwise specified:

(1) "Administrator" is defined in Subsection (90).

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

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

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

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

28 (6) "Articles" or "articles of incorporation" means the original articles, special laws,
29 charters, amendments, restated articles, articles of merger or consolidation, trust instruments, and
30 other constitutive documents for trusts and other entities that are not corporations, and
31 amendments to any of these.

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

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

36 (9) "Board," "board of trustees," or "board of directors" means the group of persons with
37 responsibility over, or management of, a corporation, however designated.

38 (10) "Business of insurance" is defined in Subsection (53).

39 (11) "Business plan" means the information required to be supplied to the commissioner
40 under Subsections 31A-5-204(2)(i) and (j), including the information required when these
41 subsections are applicable by reference under:

- 42 (a) Section 31A-7-201;
- 43 (b) Section 31A-8-205; or
- 44 (c) Subsection 31A-9-205(2).

45 (12) "Bylaws" means the rules adopted for the regulation or management of a corporation's
46 affairs, however designated and includes comparable rules for trusts and other entities that are not
47 corporations.

48 (13) "Casualty insurance" means liability insurance as defined in Subsection (59).

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

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

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

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

57 (18) (a) "Commissioner" or "commissioner of insurance" means Utah's insurance
58 commissioner.

59 (b) When appropriate, the terms listed in Subsection (18)(a) apply to the equivalent
60 supervisory official of another jurisdiction.

61 (19) (a) "Control," "controlling," "controlled," or "under common control" means the direct
62 or indirect possession of the power to direct or cause the direction of the management and policies
63 of a person. This control may be:

- 64 (i) by contract;
- 65 (ii) by common management;
- 66 (iii) through the ownership of voting securities; or
- 67 (iv) by a means other than those described in Subsections (19)(a)(i) through (iii).

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

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

72 (d) There is a rebuttable presumption of control in a person who directly or indirectly
73 owns, controls, holds with the power to vote, or holds proxies to vote 10% or more of the voting
74 securities of another person.

75 (20) (a) "Corporation" means insurance corporation, except when referring to:

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

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

79 (B) Chapter 26, Insurance Adjusters; or

80 (ii) a noninsurer that is part of a holding company system under Chapter 16, Insurance
81 Holding Companies.

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

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

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

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

88 (23) "Credit life insurance" means insurance on the life of a debtor in connection with a
89 loan or other credit transaction.

90 (24) "Creditor" means a person, including an insured, having any claim, whether:

91 (a) matured;

92 (b) unmatured;

93 (c) liquidated;

94 (d) unliquidated;

95 (e) secured;

96 (f) unsecured;

97 (g) absolute;

98 (h) fixed; or

99 (i) contingent.

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

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

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

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

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

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

112 (28) "Department" means the Insurance Department.

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

114 (30) "Disability insurance" means insurance written to:

115 (a) indemnify for losses and expenses resulting from accident or sickness;

116 (b) provide payments to replace income lost from accident or sickness; and

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

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

120 (32) "Domiciliary state" means the state in which an insurer:

121 (a) is incorporated;

122 (b) is organized; or

123 (c) in the case of an alien insurer, enters into the United States.

124 (33) "Employee benefits" means one or more benefits or services provided employees or
125 their dependents.

126 (34) (a) "Employee welfare fund" means a fund:

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

128 (A) one or more employers;

129 (B) one or more labor organizations; or

130 (C) a combination of employers and labor organizations; and

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

134 (b) "Employee welfare fund" includes a plan funded or subsidized by user fees or tax
135 revenues.

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

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

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

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

144 (39) (a) "Form" means a policy, certificate, or application prepared for general use.

145 (b) "Form" does not include a document specially prepared for use in an individual case.

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

149 (41) (a) "Health care insurance" or "health insurance" means disability insurance providing
150 benefits solely of medical, surgical, hospital, or other ancillary services or payment of medical,
151 surgical, hospital, or other ancillary expenses incurred.

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

- 154 (i) replacement of income;
- 155 (ii) short-term accident;
- 156 (iii) fixed indemnity;
- 157 (iv) credit disability;
- 158 (v) supplements to liability;
- 159 (vi) workers' compensation;
- 160 (vii) automobile medical payment;
- 161 (viii) no-fault automobile;
- 162 (ix) equivalent self-insurance; or
- 163 (x) any type of disability insurance coverage that is a part of or attached to another type
164 of policy.

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

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

168 (44) "Independently procured insurance" means insurance procured under Section
169 31A-15-104.

170 (45) "Individual" means a natural person.

171 (46) "Inland marine insurance" includes insurance covering:

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

178 (47) "Insolvency" means that:

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

183 (48) (a) "Insurance" means:

184 (i) an arrangement, contract, or plan for the transfer of a risk or risks from one or more
185 persons to one or more other persons; or

186 (ii) an arrangement, contract, or plan for the distribution of a risk or risks among a group
187 of persons that includes the person seeking to distribute that person's risk.

188 (b) "Insurance" includes:

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

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

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

195 (49) "Insurance adjuster" means a person who directs the investigation, negotiation, or
196 settlement of a claim under an insurance policy other than life insurance or an annuity, on behalf
197 of an insurer, policyholder, or a claimant under an insurance policy.

198 (50) "Interinsurance exchange" is defined in Subsection (81).

199 (51) Except as provided in Subsection 31A-23-102(2), "insurance agent" or "agent" means
200 a person who represents insurers in soliciting, negotiating, or placing insurance.

201 (52) Except as provided in Subsection 31A-23-102(2), "insurance broker" or "broker"
202 means a person who:

203 (a) acts in procuring insurance on behalf of an applicant for insurance or an insured; and

204 (b) does not act on behalf of the insurer except by collecting premiums or performing other
205 ministerial acts.

206 (53) "Insurance business" or "business of insurance" includes:

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

209 (b) providing benefits to employees in the event of contingencies not within the control
210 of the employees, in which the employees are entitled to the benefits as a right, which benefits may
211 be provided either:

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

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

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

216 (d) providing the characteristic services of motor clubs as outlined in Subsection (65);

217 (e) providing other persons with insurance as defined in Subsection (48);

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

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

224 (h) doing, or proposing to do, any business in substance equivalent to Subsections (53)(a)
225 through (g) in a manner designed to evade the provisions of this title.

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

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

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

231 (c) is not compensated directly or indirectly by an insurer, agent, or broker for advice
232 given.

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

235 (56) (a) "Insured" means a person to whom or for whose benefit an insurer makes a
236 promise in an insurance policy and includes:

237 (i) policyholders;

238 (ii) subscribers;

239 (iii) members; ~~and~~

240 (iv) beneficiaries[-]; and

241 (v) a person named as a covered person in an insurance policy.

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

244 (57) (a) (i) "Insurer" means any person doing an insurance business as a principal

245 including:

246 (A) fraternal benefit societies;

247 (B) issuers of gift annuities other than those specified in Subsections 31A-22-1305(2) and
248 (3);

249 (C) motor clubs;

250 (D) employee welfare plans; and

251 (E) any person purporting or intending to do an insurance business as a principal on that
252 person's own account.

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

255 (b) "Admitted insurer" is defined in Subsection (94)(b).

256 (c) "Alien insurer" is defined in Subsection (4).

257 (d) "Authorized insurer" is defined in Subsection (94)(b).

258 (e) "Domestic insurer" is defined in Subsection (31).

259 (f) "Foreign insurer" is defined in Subsection (38).

260 (g) "Nonadmitted insurer" is defined in Subsection (94)(a).

261 (h) "Unauthorized insurer" is defined in Subsection (94)(a).

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

264 (b) "Legal expense insurance" includes arrangements that create reasonable expectations
265 of enforceable rights, but it does not include the provision of, or reimbursement for, legal services
266 incidental to other insurance coverages.

267 (59) (a) "Liability insurance" means insurance against liability:

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

270 (A) Subsection (62) for medical malpractice insurance;

271 (B) Subsection (77) for professional liability insurance; and

272 (C) Subsection (97) for workers' compensation insurance;

273 (ii) for medical, hospital, surgical, and funeral benefits to persons other than the insured
274 who are injured, irrespective of legal liability of the insured, when issued with or supplemental to
275 insurance against legal liability for the death, injury, or disability of human beings, exclusive of

276 the coverages under:

277 (A) Subsection (62) for medical malpractice insurance;

278 (B) Subsection (77) for professional liability insurance; and

279 (C) Subsection (97) for workers' compensation insurance;

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

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

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

287 (b) "Liability insurance" includes:

288 (i) vehicle liability insurance as defined in Subsection (95);

289 (ii) residential dwelling liability insurance as defined in Subsection (83); and

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

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

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

297 (b) The business of life insurance includes:

298 (i) granting annuity benefits;

299 (ii) granting endowment benefits;

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

301 (iv) granting additional benefits in the event of the total and permanent disability of the
302 insured; and

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

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

307 (63) "Member" means a person having membership rights in an insurance corporation.

308 (64) "Minimum capital" or "minimum required capital" means the capital that must be
309 constantly maintained by a stock insurance corporation as required by statute.

310 (65) "Motor club" means a person:

311 (a) licensed under:

312 (i) Chapter 5, Domestic Stock and Mutual Insurance Corporations;

313 (ii) Chapter 11, Motor Clubs; or

314 (iii) Chapter 14, Foreign Insurers; and

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

316 (i) legal services under Subsection 31A-11-102(1)(b);

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

318 (iii) trip reimbursement, towing services, emergency road services, stolen automobile
319 services, a combination of these services, or any other services given in Subsections
320 31A-11-102(1)(b) through (f).

321 (66) "Mutual" means mutual insurance corporation.

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

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

325 (a) ships or hulls of ships;

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

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

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

334 (69) "Order" means an order of the commissioner.

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

337 (71) "Person" includes an individual, partnership, corporation, incorporated or

338 unincorporated association, joint stock company, trust, reciprocal, syndicate, or any similar entity
339 or combination of entities acting in concert.

340 (72) (a) (i) "Policy" means any document, including attached endorsements and riders,
341 purporting to be an enforceable contract, which memorializes in writing some or all of the terms
342 of an insurance contract.

343 (ii) "Policy" includes a service contract issued by:

344 (A) a motor club under Chapter 11, Motor Clubs; and

345 (B) a corporation licensed under:

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

347 (II) Chapter 8, Health Maintenance Organizations and Limited Health Plans.

348 (iii) "Policy" does not include:

349 (A) a certificate under a group insurance contract; or

350 (B) a document that does not purport to have legal effect.

351 (b) "Group insurance policy" means a policy covering a group of persons that is issued to
352 a policyholder on behalf of the group, for the benefit of group members who are selected under
353 procedures defined in the policy or in agreements which are collateral to the policy. This type of
354 policy may include members of the policyholder's family or dependents.

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

358 (73) "Policyholder" means the person who controls a policy, binder, or oral contract by
359 ownership, premium payment, or otherwise.

360 (74) (a) "Premium" means the monetary consideration for an insurance policy, and
361 includes assessments, membership fees, required contributions, or monetary consideration,
362 however designated.

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

366 (75) "Principal officers" of a corporation means the officers designated under Subsection
367 31A-5-203(3).

368 (76) "Proceedings" includes actions and special statutory proceedings.

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

371 (78) "Property insurance" means insurance against loss or damage to real or personal
372 property of every kind and any interest in that property, from all hazards or causes, and against loss
373 consequential upon the loss or damage including vehicle comprehensive and vehicle physical
374 damage coverages, but excluding inland marine insurance and ocean marine insurance as defined
375 under Subsections (46) and (68).

376 (79) (a) "Public agency insurance mutual" means any entity formed by joint venture or
377 interlocal cooperation agreement by two or more political subdivisions or public agencies of the
378 state for the purpose of providing insurance coverage for the political subdivisions or public
379 agencies.

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

384 (80) (a) Except as provided in Subsection (80)(b), "rate service organization" means any
385 person who assists insurers in rate making or filing by:

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

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

- 390 (i) an employee of an insurer;
391 (ii) a single insurer or group of insurers under common control;
392 (iii) a joint underwriting group; or
393 (iv) a natural person serving as an actuarial or legal consultant.

394 (81) "Reciprocal" or "interinsurance exchange" means any unincorporated association of
395 persons:

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

399 (82) "Reinsurance" means an insurance transaction where an insurer, for consideration,

400 transfers any portion of the risk it has assumed to another insurer. In referring to reinsurance
401 transactions, this title sometimes refers to:

402 (a) the insurer transferring the risk as the "ceding insurer"; and

403 (b) the insurer assuming the risk as the:

404 (i) "assuming insurer"; or

405 (ii) "assuming reinsurer."

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

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

412 (85) (a) "Security" means any:

413 (i) note;

414 (ii) stock;

415 (iii) bond;

416 (iv) debenture;

417 (v) evidence of indebtedness;

418 (vi) certificate of interest or participation in any profit-sharing agreement;

419 (vii) collateral-trust certificate;

420 (viii) preorganization certificate or subscription;

421 (ix) transferable share;

422 (x) investment contract;

423 (xi) voting trust certificate;

424 (xii) certificate of deposit for a security;

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

427 (xiv) commodity contract or commodity option;

428 (xv) any certificate of interest or participation in, temporary or interim certificate for,

429 receipt for, guarantee of, or warrant or right to subscribe to or purchase any of the items listed in

430 Subsections (85)(a)(i) through (xiv); or

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

432 (b) "Security" does not include:

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

436 (ii) a burial certificate or burial contract.

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

439 (a) Except as provided in this Subsection (86), self-insurance does not include an
440 arrangement under which a number of persons spread their risks among themselves.

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

444 (c) Self-insurance does include an arrangement by which a person with a managed
445 program of self-insurance and risk management undertakes to indemnify its affiliates, subsidiaries,
446 directors, officers, or employees for liability or risk which is related to the relationship or
447 employment.

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

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

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

454 (88) Subject to Subsection (48)(b), "surety insurance" includes:

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

457 (b) bail bond insurance; and

458 (c) fidelity insurance.

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

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

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

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

466 (c) "Excess surplus" means:

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

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

472 (B) that amount of an insurer's total adjusted capital, as defined in Subsection (92), that
473 exceeds the product of 3.0 and the authorized control level RBC as defined in Subsection
474 31A-17-601(7)(a); and

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

478 (90) "Third party administrator" or "administrator" means any person who collects charges
479 or premiums from, or who, for consideration, adjusts or settles claims of residents of the state in
480 connection with insurance coverage, annuities, or service insurance coverage, except:

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

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

484 (c) an employer on behalf of the employer's employees or the employees of one or more
485 of the subsidiary or affiliated corporations of the employer;

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

488 (e) a person licensed or exempt from licensing under Chapter 23 or 26 whose activities are
489 limited to those authorized under the license the person holds or for which the person is exempt.

490 (91) "Title insurance" means the insuring, guaranteeing, or indemnifying of owners of real
491 or personal property or the holders of liens or encumbrances on that property, or others interested
492 in the property against loss or damage suffered by reason of liens or encumbrances upon, defects

493 in, or the unmarketability of the title to the property, or invalidity or unenforceability of any liens
494 or encumbrances on the property.

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

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

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

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

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

507 (94) (a) "Unauthorized insurer," "unadmitted insurer," or "nonadmitted insurer" means an
508 insurer:

509 (i) not holding a valid certificate of authority to do an insurance business in this state; or
510 (ii) transacting business not authorized by a valid certificate.

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

512 (i) holding a valid certificate of authority to do an insurance business in this state; and
513 (ii) transacting business as authorized by a valid certificate.

514 (95) "Vehicle liability insurance" means insurance against liability resulting from or
515 incident to ownership, maintenance, or use of any land vehicle or aircraft, exclusive of vehicle
516 comprehensive and vehicle physical damage coverages under Subsection (78).

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

519 (97) "Workers' compensation insurance" means:

520 (a) insurance for indemnification of employers against liability for compensation based
521 on:

522 (i) compensable accidental injuries; and

523 (ii) occupational disease disability;

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

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

528 Section 2. Section 31A-26-301 is amended to read:

529 **31A-26-301. Timely payment of claims.**

530 (1) Unless otherwise provided by law, an insurer shall timely pay every valid insurance
531 claim made by an insured. By rule the commissioner may prescribe the kinds of notice and proof
532 of loss that will establish validity, the manner in which an insurer may make a bona fide denial of
533 a claim, the periods of time within which payment is required to be made to be timely, and the
534 reasonable interest rates to be charged upon late claim payments.

535 (2) Notwithstanding Subsection (1), the payment of a claim is not overdue during any
536 period in which the insurer is unable to pay the claim because there is no recipient legally able to
537 give a valid release for the payment, or in which the insurer is unable to determine who is entitled
538 to receive the payment, provided that the insurer has promptly notified the claimant of the inability
539 and has offered in good faith to pay the claim promptly when the inability is removed.

540 (3) This section applies only to claims made by ~~[claimants in direct privity of contract with~~
541 ~~the insurer]~~ an insured as defined in Section 31A-1-301.

542 Section 3. Section 31A-26-303 is amended to read:

543 **31A-26-303. Unfair claim settlement practices.**

544 (1) No insurer or person representing an insurer may engage in any unfair claim settlement
545 practice under Subsections (2), (3), and (4).

546 (2) An insurer owes to an insured, as defined in Section 31A-1-301, the same duties and
547 responsibilities owed to persons in direct privity of contract with the insurer.

548 ~~[(2)]~~ (3) Each of the following acts is an unfair claim settlement practice:

549 (a) knowingly misrepresenting material facts or the contents of insurance policy provisions
550 at issue in connection with a claim under an insurance contract; however, this provision does not
551 include the failure to disclose information;

552 (b) attempting to use a policy application which was altered by the insurer without notice
553 to, or knowledge, or consent of, the insured as the basis for settling or refusing to settle a claim;
554 or

555 (c) failing to settle a claim promptly under one portion of the insurance policy coverage,
556 where liability and the amount of loss are reasonably clear, in order to influence settlements under
557 other portions of the insurance policy coverage, but this Subsection (2)(c) applies only to claims
558 made by ~~[persons in direct privity of contract with the insurer]~~ an insured as defined in Section
559 31A-1-301.

560 ~~[(3)]~~ (4) Each of the following is an unfair claim settlement practice if committed or
561 performed with such frequency as to indicate a general business practice by an insurer or persons
562 representing an insurer:

563 (a) failing to acknowledge and act promptly upon communications about claims under
564 insurance policies;

565 (b) failing to adopt and implement reasonable standards for the prompt investigation and
566 processing of claims under insurance policies;

567 (c) compelling insureds to institute litigation to recover amounts due under an insurance
568 policy by offering substantially less than the amounts ultimately recovered in actions brought by
569 those insureds when the amounts claimed were reasonably near to the amounts recovered;

570 (d) failing, after payment of a claim, to inform insureds or beneficiaries, upon request by
571 them, of the coverage under which payment was made;

572 (e) failing to promptly provide to the insured a reasonable explanation of the basis for
573 denial of a claim or for the offer of a compromise settlement;

574 (f) appealing from substantially all arbitration awards in favor of insureds for the purpose
575 of compelling them to accept settlements or compromises for less than the amount awarded in
576 arbitration;

577 (g) delaying the investigation or payment of claims by requiring an insured, claimant, or
578 the physician of either to submit a preliminary claim report and then requiring the subsequent
579 submission of formal proof of loss forms which contain substantially the same information; or

580 (h) not attempting in good faith to effectuate a prompt, fair, and equitable settlement of
581 claims in which liability is reasonably clear.

582 ~~[(4)]~~ (5) The commissioner may define by rule, acts or general business practices which
583 are unfair claim settlement practices, after a finding that those practices are misleading, deceptive,
584 unfairly discriminatory, overreaching, or an unreasonable restraint on competition.

585 ~~[(5) This section does not create any private cause of action.]~~

586 (6) This section creates a private cause of action for an insured as defined in Section
587 31A-1-301.

Legislative Review Note
as of 1-17-01 10:12 AM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel