

1 **PUBLIC AGENCY INSURANCE MUTUAL**

2 **AMENDMENTS**

3 2002 GENERAL SESSION

4 STATE OF UTAH

5 **Sponsor: John W. Hickman**

6 **This act modifies the Insurance Code to generally exempt from the scope of the Insurance**
7 **Code public agency insurance mutuals and to make technical changes.**

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

9 AMENDS:

10 **31A-1-103**, as last amended by Chapter 116, Laws of Utah 2001

11 **31A-1-301**, as last amended by Chapter 116, Laws of Utah 2001

12 **31A-2-214**, as last amended by Chapter 116, Laws of Utah 2001

13 **31A-5-202**, as last amended by Chapter 12, Laws of Utah 1987, First Special Session

14 **31A-7-201**, as last amended by Chapter 300, Laws of Utah 2000

15 **31A-12-107**, as last amended by Chapter 13, Laws of Utah 1998

16 **31A-20-108**, as last amended by Chapter 5, Laws of Utah 1991

17 **31A-22-502**, as last amended by Chapter 91, Laws of Utah 1987

18 **31A-25-205**, as last amended by Chapter 116, Laws of Utah 2001

19 REPEALS:

20 **31A-5-214**, as last amended by Chapter 344, Laws of Utah 1995

21 **31A-5-215**, as last amended by Chapter 12, Laws of Utah 1987, First Special Session

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

23 Section 1. Section **31A-1-103** is amended to read:

24 **31A-1-103. Scope and applicability of title.**

25 (1) This title does not apply to:

26 (a) a retainer [~~contracts~~] contract made by [~~attorneys-at-law~~] an attorney at law:

27 (i) with an individual [~~clients-with~~] client; and



28 (ii) under which fees are based on estimates of the nature and amount of services to be
29 provided to the specific client~~[-and similar contracts];~~

30 (b) a contract similar to a contract described in Subsection (1)(a) made with a group of
31 clients involved in the same or closely related legal matters;

32 ~~[(b) arrangements]~~ (c) an arrangement for providing benefits that do not exceed a limited
33 amount of consultations, advice on simple legal matters, either alone or in combination with
34 referral services, or the promise of fee discounts for handling other legal matters;

35 ~~[(c)]~~ (d) limited legal assistance on an informal basis involving neither an express
36 contractual obligation nor reasonable expectations, in the context of an employment, membership,
37 educational, or similar relationship; or

38 ~~[(d)]~~ (e) legal assistance by employee organizations to their members in matters relating
39 to employment.

40 (2) (a) This title restricts otherwise legitimate business activity.

41 (b) What this title does not prohibit is permitted unless contrary to other provisions of Utah
42 law.

43 (3) Except as otherwise expressly provided, this title does not apply to:

44 (a) those activities of an insurer where state jurisdiction is preempted by Section 514 of
45 the federal Employee Retirement Income Security Act of 1974, as amended;

46 (b) ocean marine insurance;

47 (c) death and accident and health benefits provided by an organization ~~[where]~~ if the
48 organization:

49 (i) has as its principal purpose [is] to achieve charitable, educational, social, or religious
50 objectives rather than to provide death and accident and health benefits~~[-if the organization];~~

51 (ii) does not incur a legal obligation to pay a specified amount; and

52 (iii) does not create reasonable expectations of receiving a specified amount on the part
53 of an insured person;

54 (d) other business specified in rules adopted by the commissioner on a finding that:

55 (i) the transaction of [such] the business in this state does not require regulation for the
56 protection of the interests of the residents of this state; or ~~[on a finding that]~~

57 (ii) it would be impracticable to require compliance with this title;

58 (e) ~~[(i) transactions]~~ except as provided in Subsection (4), a transaction independently

59 procured through negotiations under Section 31A-15-104;

60 ~~[(ii) however, the transactions described in Subsection (3)(e)(i) are subject to taxation~~
 61 ~~under Section 31A-3-301;]~~

62 (f) self-insurance;

63 (g) reinsurance;

64 (h) subject to Subsection ~~[(4)]~~ (5), employee and labor union group or blanket insurance
 65 covering risks in this state if:

66 (i) the policyholder exists primarily for purposes other than to procure insurance;

67 (ii) the policyholder:

68 (A) is not a resident of this state ~~[or]~~;

69 (B) is not a domestic corporation; or

70 (C) does not have its principal office in this state;

71 (iii) no more than 25% of the certificate holders or insureds are residents of this state;

72 (iv) on request of the commissioner, the insurer files with the department a copy of the
 73 policy and a copy of each form or certificate; and

74 (v) (A) the insurer agrees to pay premium taxes on the Utah portion of its business, as if
 75 it were authorized to do business in this state~~[-]~~; and ~~[if]~~

76 (B) the insurer provides the commissioner with the security the commissioner considers
 77 necessary for the payment of premium taxes under Title 59, Chapter 9, Taxation of Admitted
 78 Insurers; ~~[or]~~

79 (i) to the extent provided in Subsection ~~[(5)]~~ (6):

80 (i) a manufacturer's warranty; and

81 (ii) a manufacturer's service contract~~[-]~~; or

82 (j) except to the extent provided in Subsection (7), a public agency insurance mutual.

83 (4) A transaction described in Subsection (3)(e) is subject to taxation under Section
 84 31A-3-301.

85 ~~[(4)]~~ (5) (a) After a hearing, the commissioner may order an insurer of certain group or
 86 blanket contracts to transfer the Utah portion of the business otherwise exempted under Subsection
 87 (3)(h) to an authorized insurer if the contracts have been written by an unauthorized insurer.

88 (b) If the commissioner finds that the conditions required for the exemption of a group or
 89 blanket insurer are not satisfied or that adequate protection to residents of this state is not provided,

90 the commissioner may require:

91 (i) the insurer to be authorized to do business in this state; or

92 (ii) that any of the insurer's transactions be subject to this title.

93 [~~5~~] (6) (a) As used in Subsection (3)(i) and this Subsection [~~5~~] (6):

94 (i) "manufacturer's service contract" means a service contract:

95 (A) made available by a manufacturer of a product:

96 (I) on one specific product; or

97 (II) on products that are components of a system; and

98 (B) under which the manufacturer is liable for services to be provided under the service

99 contract including, if the manufacturer's service contract designates, providing parts and labor;

100 (ii) "manufacturer's warranty" means the guaranty of the manufacturer of a product:

101 (A) (I) on one specific product; or

102 (II) on products that are components of a system; and

103 (B) under which the manufacturer is liable for services to be provided under the warranty,

104 including, if the manufacturer's warranty designates, providing parts and labor; and

105 (iii) "service contract" is as defined in Section 31A-6a-101.

106 (b) A manufacturer's warranty may be designated as:

107 (i) a warranty;

108 (ii) a guaranty; or

109 (iii) a term similar to a term described in Subsection [~~5~~] (6)(b)(i) or (ii).

110 (c) This title does not apply to:

111 (i) a manufacturer's warranty;

112 (ii) a manufacturer's service contract paid for with consideration that is in addition to the
113 consideration paid for the product itself; and

114 (iii) a service contract that is not a manufacturer's warranty or manufacturer's service
115 contract if:

116 (A) the service contract is paid for with consideration that is in addition to the
117 consideration paid for the product itself; and

118 (B) the service contract is for the repair or maintenance of goods;

119 (C) the cost of the product is equal to an amount determined in accordance with
120 Subsection [~~5~~] (6)(e); and

121 (D) the product is not a motor vehicle.

122 (d) This title does not apply to a manufacturer's warranty or service contract paid for with
123 consideration that is in addition to the consideration paid for for the product itself regardless of
124 whether the manufacturer's warranty or service contract is sold:

125 (i) at the time of the purchase of the product; or

126 (ii) at a time other than the time of the purchase of the product.

127 (e) (i) For fiscal year 2001-02, the amount described in Subsection [~~(5)~~] (6)(c)(iii)(C) shall
128 be equal to \$3,700 or less.

129 (ii) For each fiscal year after fiscal year 2001-02, the commissioner shall annually
130 determine whether the amount described in Subsection [~~(5)~~] (6)(c)(iii)(C) should be adjusted in
131 accordance with changes in the Consumer Price Index published by the United States Bureau of
132 Labor Statistics selected by the commissioner by rule, between:

133 (A) the Consumer Price Index for the February immediately preceding the adjustment; and

134 (B) the Consumer Price Index for February 2001.

135 (iii) If under Subsection [~~(5)~~] (6)(e)(ii) the commissioner determines that an adjustment
136 should be made, the commissioner shall make the adjustment by rule.

137 (7) (a) For purposes of this Subsection (7), "public agency insurance mutual" means an
138 entity formed by two or more political subdivisions or public agencies of the state:

139 (i) under Title 11, Chapter 13, Interlocal Cooperation Act; and

140 (ii) for the purpose of providing for the political subdivisions or public agencies:

141 (A) insurance coverage; or

142 (B) risk management.

143 (b) Except for this Subsection (7), a public agency insurance mutual is exempt from this
144 title.

145 (c) A public agency insurance mutual is considered to be a governmental entity and
146 political subdivision of the state with all of the rights, privileges, and immunities of a
147 governmental entity or political subdivision of the state including all the rights and benefits of Title
148 63, Chapter 30, Governmental Immunity Act.

149 Section 2. Section **31A-1-301** is amended to read:

150 **31A-1-301. Definitions.**

151 As used in this title, unless otherwise specified:

- 152 (1) (a) "Accident and health insurance" means insurance to provide protection against
153 economic losses resulting from:
- 154 (i) a medical condition including:
 - 155 (A) medical care expenses; or
 - 156 (B) the risk of disability;
 - 157 (ii) accident; or
 - 158 (iii) sickness.
- 159 (b) "Accident and health insurance":
- 160 (i) includes a contract with disability contingencies including:
 - 161 (A) an income replacement contract;
 - 162 (B) a health care contract;
 - 163 (C) an expense reimbursement contract;
 - 164 (D) a credit accident and health contract;
 - 165 (E) a continuing care contract; and
 - 166 (F) long-term care contracts; and
 - 167 (ii) may provide:
 - 168 (A) hospital coverage;
 - 169 (B) surgical coverage;
 - 170 (C) medical coverage; or
 - 171 (D) loss of income coverage.
 - 172 (c) "Accident and health insurance" does not include workers' compensation insurance.
- 173 (2) "Administrator" is defined in Subsection [~~(111)~~] (110).
- 174 (3) "Adult" means a natural person who has attained the age of at least 18 years.
- 175 (4) "Affiliate" means any person who controls, is controlled by, or is under common
176 control with, another person. A corporation is an affiliate of another corporation, regardless of
177 ownership, if substantially the same group of natural persons manages the corporations.
- 178 (5) "Alien insurer" means an insurer domiciled outside the United States.
- 179 (6) "Amendment" means an endorsement to an insurance policy or certificate.
- 180 (7) "Annuity" means an agreement to make periodical payments for a period certain or over
181 the lifetime of one or more natural persons if the making or continuance of all or some of the series
182 of the payments, or the amount of the payment, is dependent upon the continuance of human life.

- 183 (8) "Application" means a document:
184 (a) completed by an applicant to provide information about the risk to be insured; and
185 (b) that contains information that is used by the insurer to:
186 (i) evaluate risk; and
187 (ii) decide whether to:
188 (A) insure the risk under:
189 (I) the coverages as originally offered; or
190 (II) a modification of the coverage as originally offered; or
191 (B) decline to insure the risk.
- 192 (9) "Articles" or "articles of incorporation" means the original articles, special laws,
193 charters, amendments, restated articles, articles of merger or consolidation, trust instruments, and
194 other constitutive documents for trusts and other entities that are not corporations, and
195 amendments to any of these.
- 196 (10) "Bail bond insurance" means a guarantee that a person will attend court when
197 required, or will obey the orders or judgment of the court, as a condition to the release of that
198 person from confinement.
- 199 (11) "Binder" is defined in Section 31A-21-102.
- 200 (12) "Board," "board of trustees," or "board of directors" means the group of persons with
201 responsibility over, or management of, a corporation, however designated.
- 202 (13) "Business of insurance" is defined in Subsection (64).
- 203 (14) "Business plan" means the information required to be supplied to the commissioner
204 under Subsections 31A-5-204(2)(i) and (j), including the information required when these
205 subsections are applicable by reference under:
206 (a) Section 31A-7-201;
207 (b) Section 31A-8-205; or
208 (c) Subsection 31A-9-205(2).
- 209 (15) "Bylaws" means the rules adopted for the regulation or management of a corporation's
210 affairs, however designated and includes comparable rules for trusts and other entities that are not
211 corporations.
- 212 (16) "Casualty insurance" means liability insurance as defined in Subsection (70).
- 213 (17) "Certificate" means evidence of insurance given to:

214 (a) an insured under a group insurance policy; or

215 (b) a third party.

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

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

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

222 (21) (a) "Commissioner" or "commissioner of insurance" means Utah's insurance
223 commissioner.

224 (b) When appropriate, the terms listed in Subsection (21)(a) apply to the equivalent
225 supervisory official of another jurisdiction.

226 (22) (a) "Continuing care insurance" means insurance that:

227 (i) provides board and lodging;

228 (ii) provides one or more of the following services:

229 (A) personal services;

230 (B) nursing services;

231 (C) medical services; or

232 (D) other health-related services; and

233 (iii) provides the coverage described in Subsection (22)(a)(i) under an agreement effective:

234 (A) for the life of the insured; or

235 (B) for a period in excess of one year.

236 (b) Insurance is continuing care insurance regardless of whether or not the board and
237 lodging are provided at the same location as the services described in Subsection (22)(a)(ii).

238 (23) (a) "Control," "controlling," "controlled," or "under common control" means the direct
239 or indirect possession of the power to direct or cause the direction of the management and policies
240 of a person. This control may be:

241 (i) by contract;

242 (ii) by common management;

243 (iii) through the ownership of voting securities; or

244 (iv) by a means other than those described in Subsections (23)(a)(i) through (iii).

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

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

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

252 (24) (a) "Corporation" means insurance corporation, except when referring to:

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

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

256 (B) Chapter 26, Insurance Adjusters; or

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

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

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

261 (25) "Credit accident and health insurance" means insurance on a debtor to provide
262 indemnity for payments coming due on a specific loan or other credit transaction while the debtor
263 is disabled.

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

266 (27) "Credit life insurance" means insurance on the life of a debtor in connection with a
267 loan or other credit transaction.

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

269 (a) matured;

270 (b) unmatured;

271 (c) liquidated;

272 (d) unliquidated;

273 (e) secured;

274 (f) unsecured;

275 (g) absolute;

- 276 (h) fixed; or
- 277 (i) contingent.
- 278 (29) (a) "Customer service representative" means a person that provides insurance services
- 279 and insurance product information:
- 280 (i) for its agent, broker, or consultant employer; and
- 281 (ii) to its employer's customer, client, or organization.
- 282 (b) A customer service representative may only operate within the scope of authority of
- 283 its agent, broker, or consultant employer.
- 284 (30) "Deadline" means the final date or time:
- 285 (a) imposed by:
- 286 (i) statute;
- 287 (ii) rule; or
- 288 (iii) order; and
- 289 (b) by which a required filing or payment must be received by the department.
- 290 (31) "Deemer clause" means a provision under this title under which upon the occurrence
- 291 of a condition precedent, the commissioner is deemed to have taken a specific action. If the statute
- 292 so provides, the condition precedent may be the commissioner's failure to take a specific action.
- 293 (32) "Degree of relationship" means the number of steps between two persons determined
- 294 by counting the generations separating one person from a common ancestor and then counting the
- 295 generations to the other person.
- 296 (33) "Department" means the Insurance Department.
- 297 (34) "Director" means a member of the board of directors of a corporation.
- 298 (35) "Disability" means a physiological or psychological condition that partially or totally
- 299 limits an individual's ability to:
- 300 (a) perform the duties of:
- 301 (i) that individual's occupation; or
- 302 (ii) any occupation for which the individual is reasonably suited by education, training, or
- 303 experience; or
- 304 (b) perform two or more of the following basic activities of daily living:
- 305 (i) eating;
- 306 (ii) toileting;

307 (iii) transferring;

308 (iv) bathing; or

309 (v) dressing.

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

311 (37) "Domiciliary state" means the state in which an insurer:

312 (a) is incorporated;

313 (b) is organized; or

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

315 (38) "Employee benefits" means one or more benefits or services provided employees or
316 their dependents.

317 (39) (a) "Employee welfare fund" means a fund:

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

319 (A) one or more employers;

320 (B) one or more labor organizations; or

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

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

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

327 (40) "Endorsement" means a written agreement attached to a policy or certificate to modify
328 one or more of the provisions of the policy or certificate.

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

331 (42) "Expense reimbursement insurance" means insurance:

332 (a) written to provide payments for expenses relating to hospital confinements resulting
333 from illness or injury; and

334 (b) written:

335 (i) as a daily limit for a specific number of days in a hospital; and

336 (ii) to have a one or two day waiting period following a hospitalization.

337 (43) "Fidelity insurance" means insurance guaranteeing the fidelity of persons holding

338 positions of public or private trust.

339 (44) (a) "Filed" means that a filing is:

340 (i) submitted to the department in accordance with any applicable statute, rule, or filing
341 order;

342 (ii) received by the department within the time period provided in the applicable statute,
343 rule, or filing order; and

344 (iii) accompanied with the applicable one or more filing fees required by:

345 (A) Section 31A-3-103; or

346 (B) rule.

347 (b) "Filed" does not include a filing that is rejected by the department because it is not
348 submitted in accordance with Subsection (44)(a).

349 (45) "Filing," when used as a noun, means an item required to be filed with the department
350 including:

351 (a) a policy;

352 (b) a rate;

353 (c) a form;

354 (d) a document;

355 (e) a plan;

356 (f) a manual;

357 (g) an application;

358 (h) a report;

359 (i) a certificate;

360 (j) an endorsement;

361 (k) an actuarial certification;

362 (l) a licensee annual statement;

363 (m) a licensee renewal application; or

364 (n) an advertisement.

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

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

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

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

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

374 (50) "Health care" means any of the following intended for use in the diagnosis, treatment,
375 mitigation, or prevention of a human ailment or impairment:

376 (a) professional services;

377 (b) personal services;

378 (c) facilities;

379 (d) equipment;

380 (e) devices;

381 (f) supplies; or

382 (g) medicine.

383 (51) (a) "Health care insurance" or "health insurance" means insurance providing:

384 (i) health care benefits; or

385 (ii) payment of incurred health care expenses.

386 (b) "Health care insurance" or "health insurance" does not include accident and health
387 insurance providing benefits for:

388 (i) replacement of income;

389 (ii) short-term accident;

390 (iii) fixed indemnity;

391 (iv) credit accident and health;

392 (v) supplements to liability;

393 (vi) workers' compensation;

394 (vii) automobile medical payment;

395 (viii) no-fault automobile;

396 (ix) equivalent self-insurance; or

397 (x) any type of accident and health insurance coverage that is a part of or attached to
398 another type of policy.

399 (52) "Income replacement insurance" or "disability income insurance" means insurance

400 written to provide payments to replace income lost from accident or sickness.

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

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

404 (55) "Independently procured insurance" means insurance procured under Section
405 31A-15-104.

406 (56) "Individual" means a natural person.

407 (57) "Inland marine insurance" includes insurance covering:

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

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

410 (c) bailee liability;

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

413 (e) personal and commercial property floaters.

414 (58) "Insolvency" means that:

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

416 (b) an insurer's total adjusted capital is less than the insurer's mandatory control level RBC
417 under Subsection 31A-17-601(8)(c); or

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

419 (59) (a) "Insurance" means:

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

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

424 (b) "Insurance" includes:

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

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

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

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

434 (61) "Interinsurance exchange" is defined in Subsection [~~(100)~~] (99).

435 (62) Except as provided in Subsection 31A-23-201.5(1), "insurance agent" or "agent"
436 means a person who represents insurers in soliciting, negotiating, or placing insurance.

437 (63) Except as provided in Subsection 31A-23-201.5(1), "insurance broker" or "broker"
438 means a person who:

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

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

442 (64) "Insurance business" or "business of insurance" includes:

443 (a) providing health care insurance, as defined in Subsection (51), by organizations that
444 are or should be licensed under this title;

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

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

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

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

452 (d) providing the characteristic services of motor clubs as outlined in Subsection (77);

453 (e) providing other persons with insurance as defined in Subsection (59);

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

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

460 (h) doing, or proposing to do, any business in substance equivalent to Subsections (64)(a)
461 through (g) in a manner designed to evade the provisions of this title.

462 (65) Except as provided in Subsection 31A-23-201.5(1), "insurance consultant" or
463 "consultant" means a person who:

- 464 (a) advises other persons about insurance needs and coverages;
- 465 (b) is compensated by the person advised on a basis not directly related to the insurance
466 placed; and
- 467 (c) is not compensated directly or indirectly by an insurer, agent, or broker for advice
468 given.

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

471 (67) (a) "Insured" means a person to whom or for whose benefit an insurer makes a
472 promise in an insurance policy and includes:

- 473 (i) policyholders;
- 474 (ii) subscribers;
- 475 (iii) members; and
- 476 (iv) beneficiaries.

477 (b) The definition in Subsection (67)(a) applies only to this title and does not define the
478 meaning of this word as used in insurance policies or certificates.

479 (68) (a) (i) "Insurer" means any person doing an insurance business as a principal
480 including:

- 481 (A) fraternal benefit societies;
- 482 (B) issuers of gift annuities other than those specified in Subsections 31A-22-1305(2) and
483 (3);
- 484 (C) motor clubs;
- 485 (D) employee welfare plans; and
- 486 (E) any person purporting or intending to do an insurance business as a principal on that
487 person's own account.

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

490 (b) "Admitted insurer" is defined in Subsection [~~(115)~~] (114)(b).

491 (c) "Alien insurer" is defined in Subsection (5).

492 (d) "Authorized insurer" is defined in Subsection [~~(115)~~] (114)(b).

- 493 (e) "Domestic insurer" is defined in Subsection (36).
- 494 (f) "Foreign insurer" is defined in Subsection (47).
- 495 (g) "Nonadmitted insurer" is defined in Subsection [~~(115)~~] (114)(a).
- 496 (h) "Unauthorized insurer" is defined in Subsection [~~(115)~~] (114)(a).
- 497 (69) (a) Except as provided in Section 31A-1-103, "legal expense insurance" means
- 498 insurance written to indemnify or pay for specified legal expenses.
- 499 (b) "Legal expense insurance" includes arrangements that create reasonable expectations
- 500 of enforceable rights, but it does not include the provision of, or reimbursement for, legal services
- 501 incidental to other insurance coverages.
- 502 (70) (a) "Liability insurance" means insurance against liability:
- 503 (i) for death, injury, or disability of any human being, or for damage to property, exclusive
- 504 of the coverages under:
- 505 (A) Subsection (74) for medical malpractice insurance;
- 506 (B) Subsection (92) for professional liability insurance; and
- 507 (C) Subsection [~~(118)~~] (117) for workers' compensation insurance;
- 508 (ii) for medical, hospital, surgical, and funeral benefits to persons other than the insured
- 509 who are injured, irrespective of legal liability of the insured, when issued with or supplemental to
- 510 insurance against legal liability for the death, injury, or disability of human beings, exclusive of
- 511 the coverages under:
- 512 (A) Subsection (74) for medical malpractice insurance;
- 513 (B) Subsection (92) for professional liability insurance; and
- 514 (C) Subsection [~~(118)~~] (117) for workers' compensation insurance;
- 515 (iii) for loss or damage to property resulting from accidents to or explosions of boilers,
- 516 pipes, pressure containers, machinery, or apparatus;
- 517 (iv) for loss or damage to any property caused by the breakage or leakage of sprinklers,
- 518 water pipes and containers, or by water entering through leaks or openings in buildings; or
- 519 (v) for other loss or damage properly the subject of insurance not within any other kind
- 520 or kinds of insurance as defined in this chapter, if such insurance is not contrary to law or public
- 521 policy.
- 522 (b) "Liability insurance" includes:
- 523 (i) vehicle liability insurance as defined in Subsection [~~(116)~~] (115);

524 (ii) residential dwelling liability insurance as defined in Subsection [~~(102)~~] (101); and
525 (iii) making inspection of, and issuing certificates of inspection upon, elevators, boilers,
526 machinery, and apparatus of any kind when done in connection with insurance on them.

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

530 (72) (a) "Life insurance" means insurance on human lives and insurances pertaining to or
531 connected with human life.

532 (b) The business of life insurance includes:

533 (i) granting death benefits;

534 (ii) granting annuity benefits;

535 (iii) granting endowment benefits;

536 (iv) granting additional benefits in the event of death by accident;

537 (v) granting additional benefits to safeguard the policy against lapse in the event of
538 disability; and

539 (vi) providing optional methods of settlement of proceeds.

540 (73) (a) "Long-term care insurance" means an insurance policy or rider advertised,
541 marketed, offered, or designated to provide coverage:

542 (i) in a setting other than an acute care unit of a hospital;

543 (ii) for not less than 12 consecutive months for each covered person on the basis of:

544 (A) expenses incurred;

545 (B) indemnity;

546 (C) prepayment; or

547 (D) another method;

548 (iii) for one or more necessary or medically necessary services that are:

549 (A) diagnostic;

550 (B) preventative;

551 (C) therapeutic;

552 (D) rehabilitative;

553 (E) maintenance; or

554 (F) personal care; and

- 555 (iv) that may be issued by:
- 556 (A) an insurer;
- 557 (B) a fraternal benefit society;
- 558 (C) (I) a nonprofit health hospital; and
- 559 (II) a medical service corporation;
- 560 (D) a prepaid health plan;
- 561 (E) a health maintenance organization; or
- 562 (F) an entity similar to the entities described in Subsections (73)(a)(iv)(A) through (E) to
- 563 the extent that the entity is otherwise authorized to issue life or health care insurance.
- 564 (b) "Long-term care insurance" includes:
- 565 (i) any of the following that provide directly or supplement long-term care insurance:
- 566 (A) a group or individual annuity or rider; or
- 567 (B) a life insurance policy or rider;
- 568 (ii) a policy or rider that provides for payment of benefits based on:
- 569 (A) cognitive impairment; or
- 570 (B) functional capacity; or
- 571 (iii) a qualified long-term care insurance contract.
- 572 (c) "Long-term care insurance" does not include:
- 573 (i) a policy that is offered primarily to provide basic Medicare supplement coverage;
- 574 (ii) basic hospital expense coverage;
- 575 (iii) basic medical/surgical expense coverage;
- 576 (iv) hospital confinement indemnity coverage;
- 577 (v) major medical expense coverage;
- 578 (vi) income replacement or related asset-protection coverage;
- 579 (vii) accident only coverage;
- 580 (viii) coverage for a specified:
- 581 (A) disease; or
- 582 (B) accident;
- 583 (ix) limited benefit health coverage; or
- 584 (x) a life insurance policy that accelerates the death benefit to provide the option of a lump
- 585 sum payment:

586 (A) if neither the benefits nor eligibility is conditioned on the receipt of long-term care;
587 and

588 (B) the coverage is for one or more the following qualifying events:

589 (I) terminal illness;

590 (II) medical conditions requiring extraordinary medical intervention; or

591 (III) permanent institutional confinement.

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

595 (75) "Member" means a person having membership rights in an insurance corporation.

596 (76) "Minimum capital" or "minimum required capital" means the capital that must be
597 constantly maintained by a stock insurance corporation as required by statute.

598 (77) "Motor club" means a person:

599 (a) licensed under:

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

601 (ii) Chapter 11, Motor Clubs; or

602 (iii) Chapter 14, Foreign Insurers; and

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

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

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

606 (iii) trip reimbursement, towing services, emergency road services, stolen automobile
607 services, a combination of these services, or any other services given in Subsections
608 31A-11-102(1)(b) through (f).

609 (78) "Mutual" means mutual insurance corporation.

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

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

613 (a) ships or hulls of ships;

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

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

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

622 (81) "Order" means an order of the commissioner.

623 (82) "Outline of coverage" means a summary that explains an accident and health
624 insurance policy.

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

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

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

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

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

635 (B) a service contract provided under Chapter 6a, Service Contracts; and

636 (C) a corporation licensed under:

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

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

639 (iii) "Policy" does not include:

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

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

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

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

648 or without designating the persons covered.

649 (86) "Policyholder" means the person who controls a policy, binder, or oral contract by
650 ownership, premium payment, or otherwise.

651 (87) "Policy illustration" means a presentation or depiction that includes nonguaranteed
652 elements of a policy of life insurance over a period of years.

653 (88) "Policy summary" means a synopsis describing the elements of a life insurance policy.

654 (89) (a) "Premium" means the monetary consideration for an insurance policy, and
655 includes assessments, membership fees, required contributions, or monetary consideration,
656 however designated.

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

660 (90) "Principal officers" of a corporation means the officers designated under Subsection
661 31A-5-203(3).

662 (91) "Proceedings" includes actions and special statutory proceedings.

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

665 (93) "Property insurance" means insurance against loss or damage to real or personal
666 property of every kind and any interest in that property, from all hazards or causes, and against loss
667 consequential upon the loss or damage including vehicle comprehensive and vehicle physical
668 damage coverages, but excluding inland marine insurance and ocean marine insurance as defined
669 under Subsections (57) and (80).

670 [~~(94) (a) "Public agency insurance mutual" means any entity formed by joint venture or~~
671 ~~interlocal cooperation agreement by two or more political subdivisions or public agencies of the~~
672 ~~state for the purpose of providing insurance coverage for the political subdivisions or public~~
673 ~~agencies.]~~

674 [~~(b) Any public agency insurance mutual created under this title and Title 11, Chapter 13,~~
675 ~~Interlocal Cooperation Act, is considered to be a governmental entity and political subdivision of~~
676 ~~the state with all of the rights, privileges, and immunities of a governmental entity or political~~
677 ~~subdivision of the state.]~~

678 [~~(95)~~ (94) "Qualified long-term care insurance contract" or "federally tax qualified

679 long-term care insurance contract" means:

680 (a) an individual or group insurance contract that meets the requirements of Section

681 7702B(b), Internal Revenue Code; or

682 (b) the portion of a life insurance contract that provides long-term care insurance:

683 (i) (A) by rider; or

684 (B) as a part of the contract; and

685 (ii) that satisfies the requirements of Section 7702B(b) and (e), Internal Revenue Code.

686 [~~96~~] (95) (a) "Rate" means:

687 (i) the cost of a given unit of insurance; or

688 (ii) for property-casualty insurance, that cost of insurance per exposure unit either

689 expressed as:

690 (A) a single number; or

691 (B) a pure premium rate, adjusted before any application of individual risk variations based

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

693 (I) expenses;

694 (II) profit; and

695 (III) individual insurer variation in loss experience.

696 (b) "Rate" does not include a minimum premium.

697 [~~97~~] (96) (a) Except as provided in Subsection [~~97~~] (96)(b), "rate service organization"

698 means any person who assists insurers in rate making or filing by:

699 (i) collecting, compiling, and furnishing loss or expense statistics;

700 (ii) recommending, making, or filing rates or supplementary rate information; or

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

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

703 (i) an employee of an insurer;

704 (ii) a single insurer or group of insurers under common control;

705 (iii) a joint underwriting group; or

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

707 [~~98~~] (97) "Rating manual" means any of the following used to determine initial and

708 renewal policy premiums:

709 (a) a manual of rates;

710 (b) classifications;
711 (c) rate-related underwriting rules; and
712 (d) rating formulas that describe steps, policies, and procedures for determining initial and
713 renewal policy premiums.

714 [~~(99)~~] (98) "Received by the department" means:

715 (a) except as provided in Subsection [~~(99)~~] (98)(b), the date delivered to and stamped
716 received by the department, whether delivered:

717 (i) in person;

718 (ii) by a delivery service; or

719 (iii) electronically; and

720 (b) if an item with a department imposed deadline is delivered to the department by a
721 delivery service, the delivery service's postmark date or pick-up date unless otherwise stated in:

722 (i) statute;

723 (ii) rule; or

724 (iii) a specific filing order.

725 [~~(100)~~] (99) "Reciprocal" or "interinsurance exchange" means any unincorporated
726 association of persons:

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

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

730 [~~(101)~~] (100) "Reinsurance" means an insurance transaction where an insurer, for
731 consideration, transfers any portion of the risk it has assumed to another insurer. In referring to
732 reinsurance transactions, this title sometimes refers to:

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

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

735 (i) "assuming insurer"; or

736 (ii) "assuming reinsurer."

737 [~~(102)~~] (101) "Residential dwelling liability insurance" means insurance against liability
738 resulting from or incident to the ownership, maintenance, or use of a residential dwelling that is
739 a detached single family residence or multifamily residence up to four units.

740 [~~(103)~~] (102) "Retrocession" means reinsurance with another insurer of a liability assumed

741 under a reinsurance contract. A reinsurer "retrocedes" when it reinsures with another insurer part
742 of a liability assumed under a reinsurance contract.

743 [~~(104)~~] (103) "Rider" means an endorsement to:

744 (a) an insurance policy; or

745 (b) an insurance certificate.

746 [~~(105)~~] (104) (a) "Security" means any:

747 (i) note;

748 (ii) stock;

749 (iii) bond;

750 (iv) debenture;

751 (v) evidence of indebtedness;

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

753 (vii) collateral-trust certificate;

754 (viii) preorganization certificate or subscription;

755 (ix) transferable share;

756 (x) investment contract;

757 (xi) voting trust certificate;

758 (xii) certificate of deposit for a security;

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

761 (xiv) commodity contract or commodity option;

762 (xv) any certificate of interest or participation in, temporary or interim certificate for,
763 receipt for, guarantee of, or warrant or right to subscribe to or purchase any of the items listed in

764 Subsections [~~(105)~~] (104)(a)(i) through (xiv); or

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

766 (b) "Security" does not include:

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

770 (ii) a burial certificate or burial contract.

771 [~~(106)~~] (105) "Self-insurance" means any arrangement under which a person provides for

772 spreading its own risks by a systematic plan.

773 (a) Except as provided in this Subsection [~~(106)~~] (105), self-insurance does not include
774 an arrangement under which a number of persons spread their risks among themselves.

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

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

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

783 [~~(107)~~] (106) "Short-term care insurance" means any insurance policy or rider advertised,
784 marketed, offered, or designed to provide coverage that is similar to long-term care insurance but
785 that provides coverage for less than 12 consecutive months for each covered person.

786 [~~(108)~~] (107) (a) "Subsidiary" of a person means an affiliate controlled by that person
787 either directly or indirectly through one or more affiliates or intermediaries.

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

791 [~~(109)~~] (108) Subject to Subsection (59)(b), "surety insurance" includes:

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

794 (b) bail bond insurance; and

795 (c) fidelity insurance.

796 [~~(110)~~] (109) (a) "Surplus" means the excess of assets over the sum of paid-in capital and
797 liabilities.

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

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

802 (iii) Except for assessable mutuals, the minimum permanent surplus requirement is

803 essentially the same as the minimum required capital requirement that applies to stock insurers.

804 (c) "Excess surplus" means:

805 (i) for life or accident and health insurers, health organizations, and property and casualty
806 insurers as defined in Section 31A-17-601, the lesser of:

807 (A) that amount of an insurer's or health organization's total adjusted capital, as defined
808 in Subsection [~~(113)~~] (112), that exceeds the product of:

809 (I) 2.5; and

810 (II) the sum of the insurer's or health organization's minimum capital or permanent surplus
811 required under Section 31A-5-211, 31A-9-209, or 31A-14-205; or

812 (B) that amount of an insurer's or health organization's total adjusted capital, as defined
813 in Subsection [~~(113)~~] (112), that exceeds the product of:

814 (I) 3.0; and

815 (II) the authorized control level RBC as defined in Subsection 31A-17-601(8)(a); and

816 (ii) for monoline mortgage guaranty insurers, financial guaranty insurers, and title insurers,
817 that amount of an insurer's paid-in-capital and surplus that exceeds the product of:

818 (A) 1.5; and

819 (B) the insurer's total adjusted capital required by Subsection 31A-17-609(1).

820 [~~(111)~~] (110) "Third party administrator" or "administrator" means any person who
821 collects charges or premiums from, or who, for consideration, adjusts or settles claims of residents
822 of the state in connection with insurance coverage, annuities, or service insurance coverage,
823 except:

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

825 (b) a person administering any:

826 (i) pension plan subject to the federal Employee Retirement Income Security Act of 1974;

827 (ii) governmental plan as defined in Section 414(d), Internal Revenue Code; or

828 (iii) nonelecting church plan as described in Section 410(d), Internal Revenue Code;

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

831 (d) an insurer licensed under Chapter 5, 7, 8, 9, or 14, but only for a line of insurance for
832 which the insurer holds a license in this state; or

833 (e) a person licensed or exempt from licensing under Chapter 23 or 26 whose activities are

834 limited to those authorized under the license the person holds or for which the person is exempt.

835 ~~[(H2)]~~ (111) "Title insurance" means the insuring, guaranteeing, or indemnifying of
836 owners of real or personal property or the holders of liens or encumbrances on that property, or
837 others interested in the property against loss or damage suffered by reason of liens or
838 encumbrances upon, defects in, or the unmarketability of the title to the property, or invalidity or
839 unenforceability of any liens or encumbrances on the property.

840 ~~[(H3)]~~ (112) "Total adjusted capital" means the sum of an insurer's or health
841 organization's statutory capital and surplus as determined in accordance with:

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

844 (b) any other items provided by the RBC instructions, as RBC instructions is defined in
845 Section 31A-17-601.

846 ~~[(H4)]~~ (113) (a) "Trustee" means "director" when referring to the board of directors of a
847 corporation.

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

852 ~~[(H5)]~~ (114) (a) "Unauthorized insurer," "unadmitted insurer," or "nonadmitted insurer"
853 means an insurer:

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

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

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

859 ~~[(H6)]~~ (115) "Vehicle liability insurance" means insurance against liability resulting from
860 or incident to ownership, maintenance, or use of any land vehicle or aircraft, exclusive of vehicle
861 comprehensive and vehicle physical damage coverages under Subsection (93).

862 ~~[(H7)]~~ (116) "Voting security" means a security with voting rights, and includes any
863 security convertible into a security with a voting right associated with it.

864 ~~[(H8)]~~ (117) "Workers' compensation insurance" means:

865 (a) insurance for indemnification of employers against liability for compensation based
866 on:

867 (i) compensable accidental injuries; and

868 (ii) occupational disease disability;

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

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

873 Section 3. Section **31A-2-214** is amended to read:

874 **31A-2-214. Market assistance programs -- Joint underwriting associations.**

875 (1) (a) [~~If the commissioner finds that in any part of this state a line of insurance is not~~
876 ~~generally available in the marketplace or that it is priced in such a manner as to severely limit its~~
877 ~~availability, and that the public interest requires it, the] The commissioner may by rule implement
878 a market assistance program whereby all licensed insurers and agents may pool their information
879 as to the available markets[-] if the commissioner finds that in any part of this state:~~

880 (i) a line of insurance:

881 (A) is not generally available in the marketplace; or

882 (B) is priced in such a manner as to severely limit its availability; and

883 (ii) the public interest requires availability of the line of insurance described in Subsection
884 (1)(a)(i).

885 (b) Insurers doing business in this state may, at their own instance or at the request of the
886 commissioner, prepare and submit to the commissioner, for the commissioner's approval and
887 adoption, voluntary plans providing any line of insurance coverage for all or any part of this state
888 in which [~~this~~]:

889 (i) the line of insurance;

890 (A) is not generally available in the voluntary market; or

891 (B) is priced in such a manner as to severely limit its availability; and [in]

892 (ii) which the public interest requires the availability of [~~this~~] the coverage described in
893 Subsection (1)(b)(i).

894 (2) (a) If the commissioner finds after notice and hearing that a market assistance program
895 formed under Subsection (1)(a) or (b) has not met the needs it was intended to address, the

896 commissioner may by rule form a joint underwriting association to make available the insurance
897 to applicants who are in good faith entitled to but unable to procure this insurance through ordinary
898 methods.

899 (b) The commissioner shall allow any market assistance program formed under Subsection
900 (1)(a) or (b) a minimum of 30 days operation before the commissioner forms a joint underwriting
901 association.

902 (c) The commissioner may not adopt a rule forming a joint underwriting association under
903 Subsection (2)(a) unless the commissioner finds as a result of the hearing that:

904 (i) a certain coverage is not available or that the price for that coverage is no longer
905 commensurate with the risk in this state; and

906 (ii) the coverage is:

907 (A) vital to the economic health of this state;

908 (B) vital to the quality of life in this state;

909 (C) vital in maintaining competition in insurance in this state; or

910 (D) the number of people affected is significant enough to justify its creation.

911 ~~(c)~~ (d) The commissioner may not adopt a rule forming a joint underwriting association
912 under Subsection (2)(a) on the basis that:

913 (i) applicants for particular lines of insurance are unable to pay a premium that is
914 commensurate with the risk involved; or ~~that~~

915 (ii) the number of applicants or people affected is too small to justify its creation.

916 ~~(d)~~ (e) Each joint underwriting association formed under Subsection (2)(a) shall require
917 participation by all insurers licensed and engaged in writing that line of insurance or any
918 component of that line of insurance within this state.

919 ~~(e)~~ (f) Each association formed under Subsection (2)(a) shall:

920 (i) give consideration to:

921 (A) the need for adequate and readily accessible coverage;

922 (B) alternative methods of improving the market affected;

923 (C) the preference of the insurers and agents;

924 (D) the inherent limitations of the insurance mechanism;

925 (E) the need for reasonable underwriting standards; and

926 (F) the requirement of reasonable loss prevention measures;

927 (ii) establish procedures that will create minimum interference with the voluntary market;
928 (iii) allocate the burden imposed by the association equitably and efficiently among the
929 insurers doing business in this state;

930 (iv) establish procedures for applicants and participants to have grievances reviewed by
931 an impartial body;

932 (v) provide for the method of classifying risks and making and filing applicable rates; and

933 (vi) specify:

934 (A) the basis of participation of insurers and agents in the association;

935 (B) the conditions under which risks must be accepted; and

936 (C) the commission rates to be paid for insurance business placed with the association.

937 ~~[(f)]~~ (g) Any deficit in an association in any year shall be recouped by rate increases for
938 the association, applicable prospectively.

939 (h) Any surplus in excess of the loss reserves of the association in any year shall be
940 distributed either by rate decreases or by distribution to the members of the association on a
941 pro-rata basis.

942 (3) Notwithstanding Subsection (2), the commissioner may not create a joint underwriting
943 association under Subsection (2) for:

944 (a) life insurance;

945 (b) annuities;

946 (c) accident and health insurance;

947 (d) ocean marine insurance;

948 (e) medical malpractice insurance;

949 (f) earthquake insurance;

950 (g) workers' compensation insurance; or

951 ~~[(h) public agency insurance mutuals; or]~~

952 ~~[(i)]~~ (h) private passenger automobile liability insurance.

953 (4) Every insurer and agent participating in a joint underwriting association adopted by the
954 commissioner under Subsection (2) shall provide the services prescribed by the association to any
955 person seeking coverage of the kind available in the plan, including full information about the
956 requirements and procedures for obtaining coverage with the association.

957 (5) If the commissioner finds that the lack of cooperating insurers or agents in an area

958 makes the functioning of the association difficult, the commissioner may order the association to:

959 (a) establish branch service offices;

960 (b) make special contracts for provision of the service; or

961 (c) take other appropriate steps to ensure that service is available.

962 (6) (a) The association may issue policies for a period of one year.

963 (b) If, at the end of any one year period, the commissioner determines that the market
964 conditions justify the continued existence of the association, the commissioner may reauthorize
965 its existence.

966 (c) In reauthorizing the association in accordance with this Subsection (6), the
967 commissioner shall follow the procedure set forth in Subsection (2).

968 Section 4. Section **31A-5-202** is amended to read:

969 **31A-5-202. Incorporators.**

970 [~~(1) As used in this section, "public agency" means any public institution deriving its~~
971 ~~authority from this state and which is not privately owned. It includes municipalities as defined~~
972 ~~in Subsection 11-14-1 (1), the state and its departments and agencies, and all public educational~~
973 ~~institutions.]~~

974 [~~(2)~~] (1) One or more adult natural persons may organize and act as incorporators of a
975 corporation under Section 31A-5-204.

976 [~~(3)~~] (2) One to 15 adult natural persons may organize and act as incorporators of a
977 corporation under the accelerated organization procedure of Section 31A-5-213.

978 [~~(4)(a) Subject to Subsection (4)(b), any number of public agencies, associations of public~~
979 ~~agencies, or both, may organize a public agency insurance mutual under Section 31A-5-214 to~~
980 ~~provide insurance and risk management services exclusively for its members.]~~

981 [~~(b) Governmental agencies of contiguous states may, with the consent of the~~
982 ~~commissioner, become members of a public agency mutual under this section.]~~

983 [~~(5)~~] (3) This section does not apply to stock and mutual insurance corporations already
984 in existence on July 1, 1986.

985 Section 5. Section **31A-7-201** is amended to read:

986 **31A-7-201. Organization, incorporation, and licensing.**

987 Part II of Chapter 5 governs the organization, incorporation, and licensing of nonprofit
988 health service corporations with the following exceptions:

989 (1) Section 16-6a-201 applies in place of Section 31A-5-202.

990 (2) Sections 16-6a-401 and 31A-1-109 apply in place of Subsection 31A-5-203 (2)(a).

991 (3) The last sentence of Subsection 31A-5-203(2)(e) does not apply.

992 [~~(4) Sections 31A-5-214 and 31A-5-215 do not apply to nonprofit health service insurance~~
993 ~~corporations.~~]

994 Section 6. Section **31A-12-107** is amended to read:

995 **31A-12-107. Governmental immunity.**

996 Notwithstanding any other provision of this title, a governmental entity, as defined in

997 Section 63-30-2, is not an insurer for purposes of this title and is not engaged in the business of
998 insurance to the extent that it is:

999 (1) covering its own liabilities under Title 63, Chapter 30, [the] Governmental Immunity
1000 Act[;]; or

1001 (2) engaging in other related risk management activities related to the normal course of
1002 its activities. [A public agency insurance mutual created or regulated under Section 31A-5-214
1003 is a governmental entity entitled to all the rights and benefits of the Governmental Immunity Act.]

1004 Section 7. Section **31A-20-108** is amended to read:

1005 **31A-20-108. Single risk limitation.**

1006 (1) This section applies to all lines of insurance, including ocean marine and reinsurance,
1007 except:

1008 (a) title insurance[;];

1009 (b) workers' compensation insurance[;];

1010 (c) occupational disease insurance[;]; and

1011 (d) employers' liability insurance.

1012 (2) (a) Except as provided under Subsections (3)[;] and (4)[, and (6)] and under Section
1013 31A-20-109, an insurance company authorized to do an insurance business in Utah may not expose
1014 itself to loss on any single risk in an amount exceeding 10% of its capital and surplus.

1015 (b) The commissioner may adopt rules to calculate surplus under this section.

1016 (c) The portion of any risk reinsured by a reinsurance contract worthy of a reserve credit
1017 under Section 31A-17-404 may not be included in determining the limitation of risk under this
1018 section.

1019 (3) (a) The commissioner may adopt rules, after hearings held with notice provided under

1020 Section 31A-2-303, to specify the maximum exposure to which an assessable mutual may subject
1021 itself.

1022 (b) The rules described in Subsection (3)(a) may provide for classifications of insurance
1023 and insurers to preserve the solidity of insurers.

1024 (4) As used in this section, a "single risk" includes all losses reasonably expected as a
1025 result of the same event.

1026 (5) A company transacting fidelity or surety insurance may expose itself to a risk or hazard
1027 in excess of the amount prescribed in Subsection (2), if the commissioner, after considering all the
1028 facts and circumstances, approves the risk.

1029 [~~(6) (a) Subsection (2) does not apply to limit the percentage of capital and surplus that a
1030 public agency insurance mutual may expose to any single risk, if a fellow of the Casualty Actuarial
1031 Society or other actuary acceptable to the commissioner certifies in an opinion filed with and
1032 approved by the commissioner that the single risk diversification exposure of the public agency
1033 insurance mutual does not by itself create a hazardous condition nor a condition that is not
1034 actuarially sound in light of the public agency insurance mutual's operation.]~~

1035 [~~(b) Current obligations of insured policyholders to pay surplus contributions shall be
1036 considered as surplus for the purpose of establishing reasonable single risk diversification
1037 standards for public agency insurance mutuals.]~~

1038 Section 8. Section **31A-22-502** is amended to read:

1039 **31A-22-502. Employee groups.**

1040 (1) As used in this section:

1041 (a) "Employees" includes:

1042 (i) for one or more affiliated corporations, proprietorships, or partnerships under common
1043 control, their:

1044 (A) officers;

1045 (B) managers;

1046 (C) retired employees; and

1047 (D) individual proprietors or partners; and

1048 (ii) for a trusteeship, if their duties are primarily connected with the trusteeship:

1049 (A) trustees;

1050 (B) employees of trustees; or

1051 (C) both Subsection (1)(a)(ii)(A) and (B).

1052 (b) "Employer" includes a Utah public agency.

1053 (c) (i) "Utah public agency" means a public institution that:

1054 (A) derives its authority from this state; and

1055 (B) is not privately owned.

1056 (ii) "Utah public agency" includes:

1057 (A) a municipality as defined in Subsection 11-14-1(1);

1058 (B) the state;

1059 (C) a department or agency of the state; and

1060 (D) all public educational institutions.

1061 (2) The lives of a group of individuals may be insured under a policy:

1062 (a) issued as policyholder, to:

1063 (i) an employer; or [to]

1064 (ii) the trustees of a fund established by an employer[;];

1065 (b) insuring employees of the employer for the benefit of persons other than the

1066 employer[;]; and

1067 (c) subject to the [following] requirements[;] of Subsections (3) through (5).

1068 [+] (3) (a) All the employer's employees or all of any class of employees of the employer

1069 [are] shall be eligible for insurance under the policy described in Subsection (2).

1070 [b) As used in this section:]

1071 [(i) "Employees" includes the officers and managers, retired employees, and the individual

1072 proprietors or partners of one or more affiliated corporations, proprietorships, or partnerships under

1073 common control.]

1074 [(ii) "Employees" includes trustees, their employees, or both if their duties are primarily

1075 connected with the trusteeship.]

1076 [c) (b) A policy issued to insure the employees of a public body may include elected or

1077 appointed officials.

1078 [(2) (a) As used in this section, "employer" includes all Utah public agencies, as defined

1079 under Subsection 31A-5-202 (1).]

1080 [b) These]

1081 (4) A Utah public [agencies] agency may pay or authorize the payment out of [its] the Utah

1082 public agency's corporate revenue, the premiums required to maintain the group insurance in force.

1083 [~~(3)~~] (5) (a) The premiums for the policy described in Subsection (2) shall be paid by the

1084 policyholders[~~, either~~]:

1085 (i) from the employer's funds [~~or from~~];

1086 (ii) funds contributed by the insured employees[~~;~~]; or

1087 (iii) both the funds described in Subsections (5)(a)(i) and (ii).

1088 (b) Except as provided under Section 31A-22-512, a policy on which no part of the
1089 premium is contributed by the insured employees shall insure all eligible employees.

1090 Section 9. Section **31A-25-205** is amended to read:

1091 **31A-25-205. Financial responsibility.**

1092 (1) Every person licensed under this chapter shall, while licensed and for one year after
1093 that date, maintain an insurance policy or surety bond, issued by an authorized insurer, in an
1094 amount specified under Subsection (2), on a policy or contract form which is acceptable under
1095 Subsection (3).

1096 (2) (a) Insurance policies or surety bonds satisfying the requirement of Subsection (1) shall
1097 be in a face amount equal to at least 10% of the total funds handled by the administrator.
1098 However, no policy or bond under this Subsection (2)(a) may be in a face amount of less than
1099 \$5,000 nor more than \$500,000.

1100 (b) In fixing the policy or bond face amount under Subsection (2)(a), the total funds
1101 handled is:

1102 (i) the greater of:

1103 (A) the premiums received during the previous calendar year; or

1104 (B) claims paid through the administrator during the previous calendar year; or

1105 (ii) if no funds were handled during the preceding year, the total funds reasonably
1106 anticipated to be handled by the administrator during the current calendar year.

1107 (c) This section does not prohibit any person dealing with the administrator from requiring,
1108 by contract, insurance coverage in amounts greater than required under this section.

1109 (3) Insurance policies or surety bonds issued to satisfy Subsection (1) shall be on forms
1110 approved by the commissioner. The policies or bonds shall require the insurer to pay, up to the
1111 policy or bond face amount, any judgment obtained by participants in or beneficiaries of plans
1112 administered by the insured licensee which arise from the negligence or culpable acts of the

1113 licensee or any employee or agent of the licensee in connection with the activities described under
1114 Subsection 31A-1-301[~~(HH)~~](110). The commissioner may require that policies or bonds issued
1115 to satisfy the requirements of this section require the insurer to give the commissioner 20 day prior
1116 notice of policy cancellation.

1117 (4) The commissioner shall establish annual reporting requirements and forms to monitor
1118 compliance with this section.

1119 (5) This section may not be construed as limiting any cause of action an insured would
1120 otherwise have against the insurer.

1121 Section 10. **Repealer.**

1122 This act repeals:

1123 Section **31A-5-214, Public agency insurance mutuals.**

1124 Section **31A-5-215, Insurers formed under Interlocal Cooperation Act.**

Legislative Review Note
as of 12-27-01 8:53 AM

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

Office of Legislative Research and General Counsel