

1 **INSURANCE LAW AMENDMENTS**

2 2005 GENERAL SESSION

3 STATE OF UTAH

4 **Sponsor: James A. Dunnigan**

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**LONG TITLE**

6 **General Description:**

7 This bill modifies various provisions of the Insurance Code.

8 **Highlighted Provisions:**

9 This bill:

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- 11 ▶ addresses general powers and duties of the commissioner;
  - 12 ▶ requires insurers to pay taxes required by Title 59, Revenue and Taxation, to the
  - 13 State Tax Commission;
  - 14 ▶ corrects citations;
  - 15 ▶ increases from three to five years the amount of time that insurers must maintain
  - 16 certain records;
  - 17 ▶ addresses termination of insurance policies by insurers;
  - 18 ▶ addresses reporting requirements;
  - 19 ▶ addresses unfair marketing practices;
  - 20 ▶ extends the sunset date for comparison tables;
  - 21 ▶ repeals a provision related to transitioning prior licensees; and
  - 22 ▶ makes technical changes.

23 **Monies Appropriated in this Bill:**

24 None

25 **Other Special Clauses:**

26 None

27 **Utah Code Sections Affected:**



28 AMENDS:

29 31A-2-201, as last amended by Chapter 108, Laws of Utah 2004

30 31A-5-211, as last amended by Chapter 116, Laws of Utah 2001

31 31A-8-201, as enacted by Chapter 204, Laws of Utah 1986

32 31A-8-301, as last amended by Chapter 90, Laws of Utah 2004

33 31A-21-201, as last amended by Chapter 252, Laws of Utah 2003

34 31A-21-303, as last amended by Chapter 266, Laws of Utah 2004

35 31A-22-633, as enacted by Chapter 1, Laws of Utah 2002

36 31A-23a-402, as renumbered and amended by Chapter 298, Laws of Utah 2003

37 63-55-231, as last amended by Chapter 254, Laws of Utah 2003

38 ENACTS:

39 31A-3-205, Utah Code Annotated 1953

40 REPEALS:

41 31A-8-302, as enacted by Chapter 204, Laws of Utah 1986



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

44 Section 1. Section 31A-2-201 is amended to read:

45 **31A-2-201. General duties and powers.**

46 (1) The commissioner shall administer and enforce this title.

47 (2) The commissioner has all powers specifically granted, and all further powers that  
48 are reasonable and necessary to enable ~~him~~ the commissioner to perform the duties imposed  
49 by this title.

50 (3) (a) The commissioner may make rules to implement the provisions of this title  
51 according to the procedures and requirements of Title 63, Chapter 46a, Utah Administrative  
52 Rulemaking Act.

53 (b) In addition to the notice requirements of Section 63-46a-4, the commissioner shall  
54 provide notice under Section 31A-2-303 of hearings concerning insurance department rules.

55 (4) (a) The commissioner shall issue prohibitory, mandatory, and other orders as  
56 necessary to secure compliance with this title. An order by the commissioner is not effective  
57 unless the order:

58 (i) is in writing; and

- 59 (ii) is signed by the commissioner or under the commissioner's authority.
- 60 (b) On request of any person who would be affected by an order under Subsection
- 61 (4)(a), the commissioner may issue a declaratory order to clarify the person's rights or duties.
- 62 (5) (a) The commissioner may hold informal adjudicative proceedings and public
- 63 meetings, for the purpose of:
- 64 (i) investigation[;];
- 65 (ii) ascertainment of public sentiment[;]; or
- 66 (iii) informing the public.
- 67 (b) ~~[No]~~ An effective rule or order may not result from informal hearings and meetings
- 68 unless the requirement of a hearing under ~~[Section 31A-2-301]~~ this section is satisfied.
- 69 (6) The commissioner shall inquire into violations of this title and may conduct any
- 70 examinations and investigations of insurance matters, in addition to examinations and
- 71 investigations expressly authorized, that ~~[he]~~ the commissioner considers proper to determine:
- 72 (a) whether or not any person has violated any provision of this title; or
- 73 (b) to secure information useful in the lawful administration of ~~[any provision of]~~ this
- 74 title.
- 75 (7) (a) Each year, the commissioner shall:
- 76 (i) conduct an evaluation of the state's health insurance market;
- 77 (ii) report the findings of the evaluation to the Health and Human Services Interim
- 78 Committee before October 1; and
- 79 (iii) publish the findings of the evaluation ~~[of]~~ on the department website.
- 80 (b) The evaluation required by Subsection (7)(a) shall:
- 81 (i) analyze the effectiveness of the insurance regulations and statutes in promoting a
- 82 healthy, competitive health insurance market that meets the needs of Utahns by assessing such
- 83 things as:
- 84 (A) the availability and marketing of individual and group products[;];
- 85 (B) rate charges[;];
- 86 (C) coverage and demographic changes[;];
- 87 (D) benefit trends[;];
- 88 (E) market share changes[;]; and
- 89 (F) accessibility;

90 (ii) assess complaint ratios and trends within the health insurance market, which  
91 assessment shall integrate complaint data from the Office of Consumer Health Assistance  
92 within the department;

93 (iii) contain recommendations for action to improve the overall effectiveness of the  
94 health insurance market, administrative rules, and statutes; and

95 (iv) include claims loss ratio data for each insurance company doing business in the  
96 state.

97 (c) When preparing the evaluation required by this ~~[section]~~ Subsection (7), the  
98 commissioner may seek the input of insurers, employers, insured persons, providers, and others  
99 with an interest in the health insurance market.

100 Section 2. Section **31A-3-205** is enacted to read:

101 **31A-3-205. Taxation of insurance companies.**

102 An admitted insurer shall pay to the State Tax Commission taxes imposed on the  
103 admitted insurer by Title 59, Revenue and Taxation.

104 Section 3. Section **31A-5-211** is amended to read:

105 **31A-5-211. Minimum capital or permanent surplus requirements.**

106 (1) (a) Except as provided in Subsections (4) and (5), insurers being organized or  
107 operating under this chapter shall maintain minimum capital or permanent surplus for a mutual,  
108 in amounts specified in Subsection (2).

109 (b) The certificate of authority issued under Section 31A-5-212 does not permit an  
110 insurer to transact types of insurance for which the insurer does not have the required minimum  
111 capital or permanent surplus for a mutual, in at least the amounts specified under Subsection  
112 (2).

113 (c) ~~[The types of insurance under this section are defined in Section 31A-1-301.]~~  
114 Minimum capital and permanent surplus requirements under this section are based upon all  
115 types of insurance transacted by the insurer in any and all areas which it operates, whether or  
116 not only a portion of those types of insurance is or is to be transacted in this state.

117 (2) The minimum capital, or permanent surplus for a nonassessable mutual, is as  
118 follows for the indicated types of insurance:

119 (a) life, annuity, accident and health, or any combination of these . . . . . \$400,000

120 (b) subject to an aggregate maximum of \$1,000,000 for more than one of the following

121 types of coverages:

- 122 (i) property insurance ..... 200,000
- 123 (ii) surety insurance ..... 300,000
- 124 (iii) bail bonds insurance only ..... 100,000
- 125 (iv) marine and transportation insurance ..... 200,000
- 126 (v) vehicle liability insurance, residential dwelling liability insurance,
- 127 or both ..... 400,000
- 128 (vi) liability insurance ..... 600,000
- 129 (vii) workers' compensation insurance ..... 300,000
- 130 (c) title insurance ..... 200,000
- 131 (d) professional liability insurance, excluding medical malpractice ..... 700,000
- 132 (e) professional liability, including medical malpractice ..... 1,000,000
- 133 (f) all types of insurance, except life, annuity, or title ..... 2,000,000

134 (3) Prior to beginning operations, an insurer licensed under this chapter shall have total  
135 adjusted capital in excess of the company action level RBC as defined in Subsection  
136 31A-17-601(8)(b).

137 (4) (a) Subject to Subsections (4)(b) and (4)(c), an insurer holding a valid certificate of  
138 authority to transact insurance in this state prior to July 1, 1986, continues to be authorized to  
139 transact the same kinds of insurance as permitted by that certificate of authority, if the insurer  
140 maintains not less than the amount of minimum capital or permanent surplus required for that  
141 authority under the laws of this state in force immediately prior to July 1, 1986.

142 (b) If, after July 1, 1986, an insurer ever has minimum capital or permanent surplus  
143 that meets or exceeds the requirements of Subsections (2) and (3), then Subsection (4)(a) is  
144 inapplicable to that insurer and it shall comply with Subsections (2) and (3).

145 (c) Any insurer satisfying the minimum capital or permanent surplus requirement  
146 through application of Subsection (4)(a) shall comply with Subsections (2) and (3) by July 1,  
147 1990.

148 (d) Beginning July 1, 1987, former county mutuals shall comply with the capital and  
149 surplus requirements of this section.

150 (5) (a) (i) An assessable mutual may be organized under this chapter, but it may not  
151 issue life insurance or annuities.

152           (ii) An assessable mutual need not have a permanent surplus if the assessment liability  
153 of its policyholders is unlimited and all insurance policies clearly state that.

154           (iii) If assessments are limited to a specified amount or a specified multiple of annual  
155 advance premiums, the minimum permanent surplus is the amount that would be required  
156 under Subsections (2) and (3) if the corporation were not assessable, reduced by an amount that  
157 reasonably reflects the value of the policyholders' assessment liability in satisfying the financial  
158 needs of the corporation.

159           (iv) The liability of members in an assessable mutual is joint and several up to the  
160 limits provided by:

161           (A) the articles of incorporation of the assessable mutual; or

162           (B) this title.

163           (b) (i) Except as provided in Subsections (5)(c) and (d), ~~no~~ a certificate of authority  
164 may not be issued to an assessable mutual until it has at least 400 bona fide applications for  
165 insurance from not less than 400 separate applicants, on separate risks located in this state, in  
166 each of the classes of business upon which assessments may be separately levied. A full year's  
167 premium shall be paid with each application and the aggregate premium is at least \$50,000 for  
168 each class.

169           (ii) If at any time while the corporation is an assessable mutual, the business plan is  
170 amended to include an additional class of business on which assessments may be separately  
171 levied, identical requirements of Subsection (5)(b)(i) are applicable to each additional class.

172           (c) Five or more employers may join in the formation of an assessable mutual to write  
173 only workers' compensation insurance if, instead of the requirements of Subsection (5)(b),  
174 policies are simultaneously put into effect that cover at least 1,500 employees, with no single  
175 employer having more than 1/5 of the employees insured by the assessable mutual. A full  
176 year's premium shall be paid by each employer, aggregating at least \$200,000.

177           (d) (i) The number and amount of required initial applications and premium payments  
178 may be reduced by substituting surplus for the applications or premium payments.

179           (ii) The commissioner shall determine the reduction in required initial applications and  
180 premium payments that is appropriate for a given amount of surplus.

181           (iii) The insurer shall continue to be assessable until conversion under Subsection  
182 ~~[31A-5-508]~~ 31A-5-507(1) to a nonassessable mutual.

183 (6) (a) The capital or permanent surplus requirements of Subsection (2) apply to  
184 persons seeking certificates of authority under this chapter to write reinsurance.

185 (b) This Subsection (6) may not be construed as requiring reinsurers to obtain a  
186 certificate of authority. [~~However,~~]

187 (c) Section 31A-17-404 imposes alternate safety prerequisites to reserve credit being  
188 granted for reinsurance ceded to a reinsurer without a certificate of authority.

189 Section 4. Section **31A-8-201** is amended to read:

190 **31A-8-201. Scope of part.**

191 This part applies to all organizations doing business in this state[~~, including foreign~~  
192 ~~organizations subject to the transition provision provided in Section 31A-8-302].~~

193 Section 5. Section **31A-8-301** is amended to read:

194 **31A-8-301. Requirements for doing business in state.**

195 (1) [~~Except as provided in Section 31A-8-302, only corporations~~] Only a corporation  
196 incorporated and licensed under Part 2, Domestic Organizations, may do business in this state  
197 as an organization.

198 (2) To do business in this state as an organization, foreign corporations doing a similar  
199 business in other states shall incorporate a subsidiary and license if under Part 2, Domestic  
200 Organizations, for its Utah business. Except as to Chapter 16, Insurance Holding Companies,  
201 the laws applicable to domestic organizations apply only to the organization and not to its  
202 foreign parent corporation.

203 Section 6. Section **31A-21-201** is amended to read:

204 **31A-21-201. Filing of forms.**

205 (1) (a) Except as exempted under Subsections 31A-21-101(2) through (6), a form may  
206 not be used, sold, or offered for sale unless the form has been filed with the commissioner.

207 (b) A form is considered filed with the commissioner when the commissioner receives:

208 (i) the form;

209 (ii) the applicable filing fee as prescribed under Section 31A-3-103; and

210 (iii) the applicable transmittal forms as required by the commissioner.

211 (2) In filing a form for use in this state the insurer is responsible for assuring that the  
212 form is in compliance with this title and rules adopted by the commissioner.

213 (3) (a) The commissioner may prohibit the use of a form at any time upon a finding

214 that:

215 (i) the form is:

216 (A) inequitable;

217 (B) unfairly discriminatory;

218 (C) misleading;

219 (D) deceptive;

220 (E) obscure;

221 (F) unfair;

222 (G) encourages misrepresentation; or

223 (H) not in the public interest;

224 (ii) the form provides benefits or contains other provisions that endanger the solidity of  
225 the insurer;

226 (iii) in the case of the basic policy and the application for a basic policy, the basic  
227 policy or application for the basic policy fails to conspicuously, as defined by rule, provide:

228 (A) the exact name of the insurer;

229 (B) the state of domicile of the insurer filing the basic policy or application for the  
230 basic policy; and

231 (C) for life insurance and annuity policies only, the address of the administrative office  
232 of the insurer filing the basic policy or application for the basic policy;

233 (iv) the form violates a statute or a rule adopted by the commissioner; or

234 (v) the form is otherwise contrary to law.

235 (b) Subsection (3)(a)(iii) does not apply to riders and endorsements to a basic policy.

236 (c) (i) Whenever the commissioner prohibits the use of a form under Subsection (3)(a),  
237 the commissioner may order that, on or before a date not less than 15 days after the order, the  
238 use of the form be discontinued.

239 (ii) Once a form has been prohibited, the form may not be used unless appropriate  
240 changes are filed with and reviewed by the commissioner.

241 (iii) Whenever the commissioner prohibits the use of a form under Subsection (3)(a),  
242 the commissioner may require the insurer to disclose contract deficiencies to existing  
243 policyholders.

244 (d) If the commissioner prohibits use of a form under this Subsection (3), the

245 prohibition shall:

246 (i) be in writing;

247 (ii) constitute an order; and

248 (iii) state the reasons for the prohibition.

249 (4) (a) If, after a hearing, the commissioner determines that it is in the public interest,  
250 the commissioner may require by rule or order that certain forms be subject to the  
251 commissioner's approval prior to their use.

252 (b) The rule or order described in Subsection (4)(a) shall prescribe the filing  
253 procedures for the forms if the procedures are different than the procedures stated in this  
254 section.

255 (c) The types of forms that may be addressed under Subsection (4)(a) include:

256 (i) a form for a particular class of insurance;

257 (ii) a form for a specific line of insurance;

258 (iii) a specific type of form; or

259 (iv) a form for a specific market segment.

260 (5) (a) An insurer shall maintain a complete and accurate record of the following for  
261 the time period described in Subsection (5)(b):

262 (i) any form:

263 (A) filed under this section for use; and

264 (B) that is in use; and

265 (ii) any document filed under this section with a form described in Subsection (5)(a)(i).

266 (b) The insurer shall maintain a record required under Subsection (5)(a) for the balance  
267 of the current year, plus ~~three~~ five years from:

268 (i) the last day on which the form is used; or

269 (ii) the last day any policy that is issued using the form is in effect.

270 Section 7. Section **31A-21-303** is amended to read:

271 **31A-21-303. Termination of insurance policies by insurers.**

272 (1) (a) Except as otherwise provided in this section, in other statutes, or by rule under  
273 Subsection (1)(c), this section applies to all policies of insurance ~~[other than]~~:

274 (i) except for:

275 (A) life[;] insurance;

276            (B) accident and health insurance[;]; and  
277            (C) annuities[;]; and  
278            (ii) if the policies of insurance are issued on forms that are subject to filing [~~and~~  
279 ~~approval~~] under Subsection 31A-21-201(1).  
280            (b) A policy may provide terms more favorable to insureds than this section requires.  
281            (c) The commissioner may by rule totally or partially exempt from this section classes  
282 of insurance policies in which the insureds do not need protection against arbitrary or  
283 unannounced termination.  
284            (d) The rights provided by this section are in addition to and do not prejudice any other  
285 rights the insureds may have at common law or under other statutes.  
286            (2) (a) As used in this Subsection (2), "grounds" means:  
287            (i) material misrepresentation;  
288            (ii) substantial change in the risk assumed, unless the insurer should reasonably have  
289 foreseen the change or contemplated the risk when entering into the contract;  
290            (iii) substantial breaches of contractual duties, conditions, or warranties;  
291            (iv) attainment of the age specified as the terminal age for coverage, in which case the  
292 insurer may cancel by notice under Subsection (2)(c), accompanied by a tender of proportional  
293 return of premium; or  
294            (v) in the case of automobile insurance, revocation or suspension of the driver's license  
295 of:  
296            (A) the named insured; or  
297            (B) any other person who customarily drives the car.  
298            (b) (i) Except as provided in Subsection (2)(e) or unless the conditions of Subsection  
299 (2)(b)(ii) are met, an insurance policy may not be canceled by the insurer before the earlier of:  
300            (A) the expiration of the agreed term; or  
301            (B) one year from the effective date of the policy or renewal.  
302            (ii) Notwithstanding Subsection (2)(b)(i), an insurance policy may be canceled by the  
303 insurer for:  
304            (A) nonpayment of a premium when due; or  
305            (B) on grounds defined in Subsection (2)(a).  
306            (c) (i) The cancellation provided by Subsection (2)(b), except cancellation for

307 nonpayment of premium, is effective no sooner than 30 days after the delivery or first-class  
308 mailing of a written notice to the policyholder.

309 (ii) Cancellation for nonpayment of premium is effective no sooner than ten days after  
310 delivery or first class mailing of a written notice to the policyholder.

311 (d) (i) Notice of cancellation for nonpayment of premium shall include a statement of  
312 the reason for cancellation.

313 (ii) Subsection (6) applies to the notice required for grounds of cancellation other than  
314 nonpayment of premium.

315 (e) (i) Subsections (2)(a) through (d) do not apply to any insurance contract that has not  
316 been previously renewed if the contract has been in effect less than 60 days when the written  
317 notice of cancellation is mailed or delivered.

318 (ii) A cancellation under this Subsection (2)(e) may not be effective until at least ten  
319 days after the delivery to the insured of a written notice of cancellation.

320 (iii) If the notice required by this Subsection (2)(e) is sent by first-class mail, postage  
321 prepaid, to the insured at the insured's last-known address, delivery is considered accomplished  
322 after the passing, since the mailing date, of the mailing time specified in the Utah Rules of  
323 Civil Procedure.

324 (iv) A policy cancellation subject to this Subsection (2)(e) is not subject to the  
325 procedures described in Subsection (6).

326 (3) A policy may be issued for a term longer than one year or for an indefinite term if  
327 the policy includes a clause providing for cancellation by the insurer by giving notice as  
328 provided in Subsection (4)(b)(i) 30 days prior to any anniversary date.

329 (4) (a) Subject to Subsections (2), (3), and (4)(b), a policyholder has a right to have the  
330 policy renewed:

331 (i) on the terms then being applied by the insurer to similar risks; and

332 (ii) (A) for an additional period of time equivalent to the expiring term if the agreed  
333 term is one year or less; or

334 (B) for one year if the agreed term is longer than one year.

335 (b) Except as provided in Subsection (4)(c), the right to renewal under Subsection  
336 (4)(a) is extinguished if:

337 (i) at least 30 days prior to the policy expiration or anniversary date a notice of

338 intention not to renew the policy beyond the agreed expiration or anniversary date is delivered  
339 or sent by first-class mail by the insurer to the policyholder at the policyholder's last-known  
340 address;

341 (ii) not more than 45 nor less than 14 days prior to the due date of the renewal  
342 premium, the insurer delivers or sends by first-class mail a notice to the policyholder at the  
343 policyholder's last-known address, clearly stating:

344 (A) the renewal premium;

345 (B) how the renewal premium may be paid; and

346 (C) that failure to pay the renewal premium by the due date extinguishes the  
347 policyholder's right to renewal;

348 (iii) the policyholder has:

349 (A) accepted replacement coverage; or

350 (B) requested or agreed to nonrenewal; or

351 (iv) the policy is expressly designated as nonrenewable.

352 (c) Unless the conditions of Subsection (4)(b)(iii) or (iv) apply, an insurer may not fail  
353 to renew an insurance policy as a result of a telephone call or other inquiry that:

354 (i) references a policy coverage; and

355 (ii) does not result in the insured requesting payment of a claim.

356 (5) (a) (i) Subject to Subsection (5)(b), if the insurer offers or purports to renew the  
357 policy, but on less favorable terms or at higher rates, the new terms or rates take effect on the  
358 renewal date if the insurer delivered or sent by first-class mail to the policyholder notice of the  
359 new terms or rates at least 30 days prior to the expiration date of the prior policy.

360 (ii) If the insurer did not give the prior notification described in Subsection (5)(a)(i) to  
361 the policyholder, the new terms or rates do not take effect until 30 days after the notice is  
362 delivered or sent by first-class mail, in which case the policyholder may elect to cancel the  
363 renewal policy at any time during the 30-day period.

364 (iii) Return premiums or additional premium charges shall be calculated  
365 proportionately on the basis that the old rates apply.

366 (b) Subsection (5)(a) does not apply if the only change in terms that is adverse to the  
367 policyholder is:

368 (i) a rate increase generally applicable to the class of business to which the policy

369 belongs;

370 (ii) a rate increase resulting from a classification change based on the altered nature or  
371 extent of the risk insured against; or

372 (iii) a policy form change made to make the form consistent with Utah law.

373 (6) (a) If a notice of cancellation or nonrenewal under Subsection (2)(c) does not state  
374 with reasonable precision the facts on which the insurer's decision is based, the insurer shall  
375 send by first-class mail or deliver that information within ten working days after receipt of a  
376 written request by the policyholder.

377 (b) A notice under Subsection (2)(c) is not effective unless it contains information  
378 about the policyholder's right to make the request.

379 (7) If a risk-sharing plan under Section 31A-2-214 exists for the kind of coverage  
380 provided by the insurance being cancelled or nonrenewed, a notice of cancellation or  
381 nonrenewal required under Subsection (2)(c) or (4)(b)(i) may not be effective unless it contains  
382 instructions to the policyholder for applying for insurance through the available risk-sharing  
383 plan.

384 (8) There is no liability on the part of, and no cause of action against, any insurer, its  
385 authorized representatives, agents, employees, or any other person furnishing to the insurer  
386 information relating to the reasons for cancellation or nonrenewal or for any statement made or  
387 information given by them in complying or enabling the insurer to comply with this section  
388 unless actual malice is proved by clear and convincing evidence.

389 (9) This section does not alter any common law right of contract rescission for material  
390 misrepresentation.

391 Section 8. Section **31A-22-633** is amended to read:

392 **31A-22-633. Exemptions from standards.**

393 Notwithstanding the provisions of Title 31A, Insurance Code, any accident and health  
394 insurer or health maintenance organization may offer a choice of coverage that is less or  
395 different than is otherwise required by applicable state law if:

396 (1) the Department of Health offers a choice of coverage as part of a Medicaid waiver  
397 under Title 26, Chapter 18, Medical Assistance Act, which includes:

398 (a) less or different coverage than the basic coverage;

399 (b) less or different coverage than is otherwise required in an insurance policy or health

400 maintenance organization contract under applicable state law; or  
 401 (c) less or different coverage than required by Subsection 31A-22-605(4)(b); and  
 402 (2) the choice of coverage offered by the carrier:  
 403 (a) is the same or similar coverage as the coverage offered by the Department of Health  
 404 under Subsection (1);  
 405 (b) is offered to the same or similar population as the coverage offered by the  
 406 Department of Health under Subsection (1); and  
 407 (c) contains an explanation for each insured of coverage exclusions and limitations;  
 408 (3) the commissioner [~~as part of the requirements of Subsection 31A-2-201(7);~~] and  
 409 the executive director of the Department of Health shall report to the Health and Human  
 410 Services Interim Committee prior to November 15 of each year concerning:  
 411 (a) the number of lives covered under any policy offered under the provisions of this  
 412 section or under the Medicaid waiver described in Subsection (1);  
 413 (b) the claims experienced under the policies or Medicaid programs described in  
 414 Subsection (3)(a);  
 415 (c) any cost shifting to the private sector for care not covered under the programs or  
 416 policies described in Subsection (3)(a); and  
 417 (d) efforts or agreements between the Department of Health, the commissioner,  
 418 insurers regulated under this chapter, and health care providers regarding combining publicly  
 419 funded coverage with private, employer-based coverage to increase benefits and health care  
 420 coverage.

421 Section 9. Section ~~31A-23a-402~~ is amended to read:

422 **31A-23a-402. Unfair marketing practices -- Communication -- Inducement --**  
 423 **Unfair Discrimination -- Coercion or intimidation -- Restriction on choice.**

424 (1) (a) (i) Any of the following may not make or cause to be made any communication  
 425 that contains false or misleading information, relating to an insurance product or contract, any  
 426 insurer, or [~~other~~] any licensee under this title, including information that is false or misleading  
 427 because it is incomplete:

- 428 (A) a person who is or should be licensed under this title;
- 429 (B) an employee or producer of a person described in Subsection (1)(a)(i)(A);
- 430 (C) a person whose primary interest is as a competitor of a person licensed under this

431 title; and

432 (D) a person on behalf of any of the persons listed in this Subsection (1)(a)(i).

433 (ii) As used in this Subsection (1), "false or misleading information" includes:

434 (A) assuring the nonobligatory payment of future dividends or refunds of unused

435 premiums in any specific or approximate amounts, but reporting fully and accurately past

436 experience is not false or misleading information; and

437 (B) with intent to deceive a person examining it[;];

438 (I) filing a report[;];

439 (II) making a false entry in a record[;]; or

440 (III) wilfully refraining from making a proper entry in a record.

441 (iii) A licensee under this title may not:

442 (A) use any business name, slogan, emblem, or related device that is misleading or

443 likely to cause the insurer or other licensee to be mistaken for another insurer or other licensee

444 already in business; or

445 (B) use any advertisement or other insurance promotional material that would cause a

446 reasonable person to mistakenly believe that a state or federal government agency:

447 (I) is responsible for the insurance sales activities of the person;

448 (II) stands behind the credit of the person;

449 (III) guarantees any returns on insurance products of or sold by the person; or

450 (IV) is a source of payment of any insurance obligation of or sold by the person.

451 (iv) A person who is not an insurer may not assume or use any name that deceptively

452 implies or suggests that it is an insurer.

453 (v) A person other than persons licensed as health maintenance organizations under

454 Chapter 8 may not use the term "Health Maintenance Organization" or "HMO" in referring to

455 itself.

456 (b) ~~[H-a]~~ A licensee's violation creates a rebuttable presumption that the violation was

457 also committed by the insurer if:

458 (i) the licensee under this title distributes cards or documents, exhibits a sign, or

459 publishes an advertisement that violates Subsection (1)(a), with reference to a particular

460 insurer;

461 (A) that the licensee represents[;]; or

462            (B) for whom the licensee processes claims[;]; and [if]  
463            (ii) the cards, documents, signs, or advertisements are supplied or approved by that  
464 insurer[~~-, the licensee's violation creates a rebuttable presumption that the violation was also~~  
465 ~~committed by the insurer~~].

466            (2) (a) (i) A licensee under this title, or an officer or employee of a licensee may not  
467 induce any person to enter into or continue an insurance contract or to terminate an existing  
468 insurance contract by offering benefits not specified in the policy to be issued or continued,  
469 including premium or commission rebates.

470            (ii) An insurer may not make or knowingly allow any agreement of insurance that is  
471 not clearly expressed in the policy to be issued or renewed.

472            (iii) This Subsection (2)(a) does not preclude:

473            (A) insurers from reducing premiums because of expense savings;

474            (B) the usual kinds of social courtesies not related to particular transactions; or

475            (C) an insurer from receiving premiums under an installment payment plan.

476            (b) A licensee under this title may not absorb the tax under Section 31A-3-301.

477            (c) (i) A title insurer or producer or any officer or employee of either may not pay,  
478 allow, give, or offer to pay, allow, or give, directly or indirectly, as an inducement to obtaining  
479 any title insurance business[;];

480            (A) any rebate, reduction, or abatement of any rate or charge made incident to the  
481 issuance of the insurance[;];

482            (B) any special favor or advantage not generally available to others[;]; or

483            (C) any money or other consideration or material inducement.

484            (ii) "Charge made incident to the issuance of the insurance" includes escrow charges,  
485 and any other services that are prescribed by the commissioner.

486            (iii) An insured or any other person connected, directly or indirectly, with the  
487 transaction, including a mortgage lender, real estate broker, builder, attorney, or any officer,  
488 employee, or agent of any of them, may not knowingly receive or accept, directly or indirectly,  
489 any benefit referred to in Subsection (2)(c)(i).

490            (3) (a) An insurer may not unfairly discriminate among policyholders by charging  
491 different premiums or by offering different terms of coverage, except on the basis of  
492 classifications related to the nature and the degree of the risk covered or the expenses involved.

493 (b) Rates are not unfairly discriminatory if they are averaged broadly among persons  
 494 insured under a group, blanket, or franchise policy, and the terms of those policies are not  
 495 unfairly discriminatory merely because they are more favorable than in similar individual  
 496 policies.

497 (4) ~~[A]~~ (a) This Subsection (4) applies to:

498 (i) a person who is or should be licensed under this title[;];

499 (ii) an employee of that licensee or person who should be licensed[;];

500 (iii) a person whose primary interest is as a competitor of a person licensed under this  
 501 title[;]; and

502 (iv) one acting on behalf of any ~~[of these persons,]~~ person described in Subsection  
 503 (4)(a)(i) through (iii).

504 (b) A person described in Subsection (4)(a) may not commit or enter into any  
 505 agreement to participate in any act of boycott, coercion, or intimidation that:

506 ~~[(a)]~~ (i) tends to produce:

507 ~~[(i)]~~ (A) an unreasonable restraint of the business of insurance; or

508 ~~[(ii)]~~ (B) a monopoly in that business; or

509 ~~[(b)]~~ (ii) results in an applicant purchasing or replacing an insurance contract.

510 (5) (a) ~~[A]~~ (i) Subject to Subsection (5)(a)(ii), a person may not restrict in the choice  
 511 of an insurer or licensee under this chapter, another person who is required to pay for insurance  
 512 as a condition for the conclusion of a contract or other transaction or for the exercise of any  
 513 right under a contract. ~~[The]~~

514 (ii) A person requiring ~~[the]~~ coverage may~~[-, however,]~~ reserve the right to disapprove  
 515 the insurer or the coverage selected on reasonable grounds.

516 (b) The form of corporate organization of an insurer authorized to do business in this  
 517 state is not a reasonable ground for disapproval, and the commissioner may by rule specify  
 518 additional grounds that are not reasonable. This Subsection (5) does not bar an insurer from  
 519 declining an application for insurance.

520 (6) A person may not make any charge other than insurance premiums and premium  
 521 financing charges for the protection of property or of a security interest in property, as a  
 522 condition for obtaining, renewing, or continuing the financing of a purchase of the property or  
 523 the lending of money on the security of an interest in the property.

524 (7) (a) A licensee under this title may not refuse or fail to return promptly all indicia of  
525 agency to the principal on demand.

526 (b) A licensee whose license is suspended, limited, or revoked under Section  
527 31A-2-308, 31A-23a-111, or 31A-23a-112 may not refuse or fail to return the license to the  
528 commissioner on demand.

529 (8) A person may not engage in any other unfair method of competition or any other  
530 unfair or deceptive act or practice in the business of insurance, as defined by the commissioner  
531 by rule, after a finding that they are misleading, deceptive, unfairly discriminatory, provide an  
532 unfair inducement, or unreasonably restrain competition.

533 Section 10. Section ~~63-55-231~~ is amended to read:

534 **63-55-231. Repeal dates, Title 31A.**

535 (1) Section 31A-2-208.5, Comparison tables, is repealed July 1, ~~[2005]~~ 2010.

536 (2) Section 31A-2-217, Coordination with other states, is repealed July 1, 2013.

537 (3) Section 31A-3-104, Electronic [~~Commerce Dedicated Fees~~] commerce dedicated  
538 fees, is repealed July 1, 2006.

539 (4) Section 31A-22-315, Motor [~~Vehicle Insurance Reporting~~] vehicle insurance  
540 reporting, is repealed July 1, 2010.

541 (5) Section 31A-22-625, Catastrophic [~~Coverage of Mental Health Conditions~~]  
542 coverage of mental health conditions, is repealed July 1, 2011.

543 (6) Title 31A, Chapter 31, Insurance Fraud Act, is repealed July 1, 2007.

544 Section 11. **Repealer.**

545 This bill repeals:

546 Section **31A-8-302, Transition period for prior licensees.**

**Legislative Review Note**  
as of 1-7-05 9:26 AM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

**Office of Legislative Research and General Counsel**

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**Fiscal Note**  
**Bill Number HB0195**

**Insurance Law Amendments**

*19-Jan-05*

*11:31 AM*

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**State Impact**

No fiscal impact.

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**Individual and Business Impact**

No fiscal impact.

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**Office of the Legislative Fiscal Analyst**