

SMALL EMPLOYER GROUP REINSURANCE

POOL

2009 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jackie Biskupski

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends the Insurance Code to establish a reinsurance pool for the small employer group health insurance and defined contribution arrangement market.

Highlighted Provisions:

This bill:

- ▶ creates the Utah Reinsurance Pool as a nonprofit entity within the Department of Insurance;
- ▶ defines terms;
- ▶ establishes the applicability and scope of the act;
- ▶ creates the Utah Reinsurance Pool, the board and the terms and appointment of the board;
- ▶ requires the board to adopt a plan of operation;
- ▶ establishes the powers of the board;
- ▶ establishes the powers of the insurance commissioner;
- ▶ requires a financial examination and report;
- ▶ requires the board to select a pool administrator and establishes the pool administrator's powers;
- ▶ establishes eligibility for pool membership and ceding risk to the pool;
- ▶ permits assessments to fund the pool if premiums do not cover claims; and



28 ▶ establishes the Utah Reinsurance Pool Enterprise Fund.

29 **Monies Appropriated in this Bill:**

30 None

31 **Other Special Clauses:**

32 This bill coordinates with H.B. 188, Health System Reform - Insurance Market, by
33 providing that this bill supercedes parts of H.B. 188.

34 **Utah Code Sections Affected:**

35 ENACTS:

- 36 **31A-42-101**, Utah Code Annotated 1953
 - 37 **31A-42-102**, Utah Code Annotated 1953
 - 38 **31A-42-103**, Utah Code Annotated 1953
 - 39 **31A-42-201**, Utah Code Annotated 1953
 - 40 **31A-42-202**, Utah Code Annotated 1953
 - 41 **31A-42-203**, Utah Code Annotated 1953
 - 42 **31A-42-204**, Utah Code Annotated 1953
 - 43 **31A-42-205**, Utah Code Annotated 1953
 - 44 **31A-42-206**, Utah Code Annotated 1953
 - 45 **31A-42-207**, Utah Code Annotated 1953
 - 46 **31A-42-208**, Utah Code Annotated 1953
 - 47 **31A-42-209**, Utah Code Annotated 1953
-



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

50 Section 1. Section **31A-42-101** is enacted to read:

51 **CHAPTER 42. UTAH REINSURANCE POOL**

52 **Part 1. General Provisions**

53 **31A-42-101. Title.**

54 This chapter is known as the "Utah Reinsurance Pool."

55 Section 2. Section **31A-42-102** is enacted to read:

56 **31A-42-102. Definitions.**

57 As used in this chapter:

58 (1) "Board" means the board of directors of the Utah Reinsurance Pool created in Part

59 2. Creation of Pool.

60 (2) "COBRA" means:

61 (a) the Consolidated Omnibus Budget Reconciliation Act of 1985; and

62 (b) state mini-COBRA under Section 31A-22-722.

63 (3) "Pool" means the Utah Reinsurance Pool created by this chapter.

64 (4) "Pool fund" means the Utah Reinsurance Pool Enterprise Fund created in Section
65 31A-42-209.

66 (5) "Reinsuring carrier" means an insurer:

67 (a) who is qualified to reinsure with the pool as described in Subsection
68 31A-42-207(2); and

69 (b) who reinsures with the reinsurance pool.

70 Section 3. Section **31A-42-103** is enacted to read:

71 **31A-42-103. Applicability and scope.**

72 (1) Except as provided in Subsection (2), this chapter applies to an insurer who offers a
73 health benefit plan that provides coverage to:

74 (a) (i) a small employer group;

75 (ii) a small group; or

76 (iii) a large employer group; and

77 (b) regardless of whether the contract is issued to:

78 (i) an association;

79 (ii) a trust;

80 (iii) a discretionary group;

81 (iv) another similar grouping; or

82 (v) the situs of delivery of the policy or contract.

83 (2) This chapter does not apply to:

84 (a) individual policies;

85 (b) short term limited duration health insurance; or

86 (c) federally funded or partially funded programs.

87 Section 4. Section **31A-42-201** is enacted to read:

88 **Part 2. Creation of Pool**

89 **31A-42-201. Creation of Utah Reinsurance Pool -- Board of directors --**

90 **Appointment -- Terms -- Quorum -- Plan preparation.**

91 (1) There is created the "Utah Reinsurance Pool," a nonprofit entity within the
92 Insurance Department.

93 (2) The pool shall be under the direction of a board of directors composed of 12
94 members.

95 (a) The governor shall appoint eleven of the directors from health insurers in the state
96 with the consent of the Senate as follows:

97 (i) there shall be no more than two members of the board who represent any one
98 insurer; and

99 (ii) the members selected shall represent insurers who offer:

100 (A) health benefit plans to small employer groups;

101 (B) health benefit plans to large employer groups;

102 (C) preferred provider group plans; and

103 (D) health maintenance organization plans.

104 (b) The board shall also include the commissioner or the commissioner's designee.

105 (3) (a) Except as required by Subsection (3)(b), as terms of current board members
106 expire, the governor shall appoint each new member or reappointed member to a four-year
107 term.

108 (b) Notwithstanding the requirements of Subsection (3)(a), the governor shall, at the
109 time of appointment or reappointment, adjust the length of terms to ensure that the terms of
110 board members are staggered so that approximately half of the board is appointed every two
111 years.

112 (4) When a vacancy occurs in the membership for any reason, the replacement shall be
113 appointed for the unexpired term in the same manner as the original appointment was made.

114 (5) (a) Members who are not government employees shall receive no compensation or
115 benefits for their services.

116 (b) State government officer and employee members who do not receive salary, per
117 diem, or expenses from their agency for their service will receive no compensation or benefits
118 for their services.

119 (6) The board shall elect annually a chair and vice chair from its membership.

120 (7) Six board members are a quorum for the transaction of business.

121 (8) The action of a majority of the members of the quorum is the action of the board.

122 Section 5. Section **31A-42-202** is enacted to read:

123 **31A-42-202. Contents of plan.**

124 The plan of operation submitted by the board to the commissioner shall:

125 (1) demonstrate that any and all assumptions of risk or liability by the pool shall be
126 based on sound financial and actuarial principles reviewed and established in advance by the
127 board and approved by the commissioner;

128 (2) establish procedures in compliance with Title 51, Chapter 7, State Money
129 Management Act, and accounting policies and procedures established by the Division of
130 Finance, for handling and accounting for assets and money of the pool;

131 (3) establish regular times and places for meetings of the board;

132 (4) establish procedures for keeping records of all financial transactions and for
133 sending annual fiscal reports to the commissioner;

134 (5) contain additional provisions necessary and proper for the execution of the powers
135 and duties of the pool;

136 (6) establish procedures to:

137 (a) pay claims under the pool; and

138 (b) collect premiums;

139 (7) establish procedures in compliance with Title 63A, Utah Administrative Services
140 Code, to pay for administrative expenses incurred; and

141 (8) establish the methodology for calculating and apportioning among insurers subject
142 to assessments for the pool, any assessments to cover losses incurred in the operation of the
143 pool and the schedule for the assessments.

144 Section 6. Section **31A-42-203** is enacted to read:

145 **31A-42-203. Powers of board.**

146 (1) The board shall have the general powers and authority granted under the laws of
147 this state to insurance companies licensed to transact health insurance business, except the
148 power to issue health benefit plans directly to either groups or individuals. In addition, the
149 board shall have the specific authority to:

150 (a) enter into contracts to carry out the provisions and purposes of this chapter,
151 including, with the approval of the commissioner, contracts with:

- 152 (i) similar pools of other states for the joint performance of common administrative
- 153 functions; and
- 154 (ii) persons or other organizations for the performance of administrative functions;
- 155 (b) consult with persons or other organizations necessary to provide technical
- 156 assistance for the operation of the plan, policy, or reinsurance program;
- 157 (c) sue or be sued, including taking legal action necessary to:
- 158 (i) avoid the payment of improper claims against the pool or the coverage provided
- 159 through the pool; and
- 160 (ii) recover any assessments for, on behalf of, or against members of the pool;
- 161 (d) establish appropriate rates, rate schedules, rate adjustments, expense allowances,
- 162 claim reserve formulas, and any other actuarial function appropriate to the operation of the
- 163 pool;
- 164 (e) issue reinsurance policies in accordance with this chapter;
- 165 (f) establish rules and conditions pertaining to the reinsurance of a reinsuring carrier's
- 166 risk by the pool;
- 167 (g) assess insurers in accordance with Section 31A-42-208, and make interim
- 168 assessments as may be reasonable and necessary for organizational and interim operating
- 169 expenses;
- 170 (h) cause the pool to have an annual audit of its operations by the state auditor;
- 171 (i) provide for and employ cost containment measures and requirements for the
- 172 purpose of making the pool more cost-effective;
- 173 (j) establish annual limits on benefits payable under the pool to or on behalf of any
- 174 reinsuring carrier;
- 175 (k) administer the pool fund; and
- 176 (l) make rules in accordance with Title 63G, Chapter 3, Utah Administrative
- 177 Rulemaking Act, to implement this chapter.
- 178 (2) (a) The board shall prepare and submit an annual report to the department for
- 179 inclusion in the department's annual market report, which shall include:
- 180 (i) the net premiums anticipated;
- 181 (ii) actuarial projections of payments required of the pool;
- 182 (iii) the expenses of administration;

- 183 (iv) any assessments imposed under Section 31A-42-208; and
- 184 (v) the anticipated reserves or losses of the pool.
- 185 (b) The budget for operation of the pool is subject to the approval of the board.
- 186 (c) The administrative budget of the board and the commissioner under this chapter
- 187 shall comply with the requirements of Title 63J, Chapter 1, Budgetary Procedures Act, and is
- 188 subject to review and approval by the Legislature.

189 Section 7. Section **31A-42-204** is enacted to read:

190 **31A-42-204. Powers of commissioner.**

191 (1) The commissioner shall, after notice and hearing, approve the plan of operation if

192 the commissioner determines that the plan:

- 193 (a) will assure the fair and reasonable administration of the pool; and
- 194 (b) provides for the sharing of pool gains and losses on a proportionate basis in
- 195 accordance with Section 31A-42-208.

196 (2) The plan shall be effective upon the commissioner's written approval.

197 (3) If the board fails to submit a proposed plan of operation by January 1, 2010, or any

198 time thereafter fails to submit proposed amendments to the plan of operation within a

199 reasonable time after requested by the commissioner, the commissioner shall, after notice and

200 hearing, adopt rules as necessary to effectuate the provisions of this chapter.

201 (4) Rules promulgated by the commissioner shall continue in force until modified by

202 the commissioner or until superseded by a subsequent plan of operation submitted by the board

203 and approved by the commissioner.

204 (5) The commissioner may designate an executive secretary from the department to

205 provide administrative assistance to the board in carrying out its responsibilities.

206 Section 8. Section **31A-42-205** is enacted to read:

207 **31A-42-205. Examination -- Financial report.**

- 208 (1) The pool is subject to examination by the commissioner.
- 209 (2) By December 1 of each year, the board shall submit to the commissioner an audited
- 210 financial report for the preceding fiscal year in a form approved by the commissioner.

211 Section 9. Section **31A-42-206** is enacted to read:

212 **31A-42-206. Pool administrator -- Selection -- Powers.**

213 (1) The board shall select a pool administrator in accordance with Title 63G, Chapter

214 6, Utah Procurement Code. The board shall evaluate bids based on criteria established by the
215 board, which shall include:

- 216 (a) proven ability to handle state prospective accident and health reinsurance pools;
- 217 (b) efficiency of claim paying procedures;
- 218 (c) determination of eligibility and reimbursement of paid claims by ceded risks;
- 219 (d) small group and large group health insurance eligibility and underwriting;
- 220 (e) an estimate of total charges for start up and ongoing administration; and
- 221 (f) ability to administer the pool with a systematized process.

222 (2) (a) The pool administrator shall serve for a period of five years, with two one-year
223 extension options, subject to the terms, conditions, and limitations of the contract between the
224 board and the administrator.

225 (b) At least one year prior to the expiration of the contract between the board and the
226 pool administrator, the board shall invite all interested parties, including the current pool
227 administrator, to submit bids to serve as the pool administrator.

228 (c) Selection of the pool administrator for a succeeding period shall be made at least
229 six months prior to the expiration of the period of service under Subsection (2)(a).

230 (3) The pool administrator is responsible for all operational functions of the pool and
231 shall:

232 (a) have access to all nonpatient specific experience data, statistics, treatment criteria,
233 and guidelines compiled or adopted by the Medicaid program, the Public Employees Health
234 Plan, the Department of Health, or the Insurance Department, and which are not otherwise
235 declared by statute to be confidential;

236 (b) perform all eligibility, enrollment, member agreements, and administrative claim
237 payment functions relating to the pool;

238 (c) establish, administer, and operate a monthly premium billing process for collection
239 of premiums from reinsuring carriers;

240 (d) perform all necessary functions to assure timely payment of benefits to reinsuring
241 carriers, including:

242 (i) making information available relating to the proper manner of submitting a claim
243 for reimbursement of paid benefits to the pool administrator and distributing forms upon which
244 submission may be made; and

- 245 (ii) evaluating the eligibility of each claim for reimbursement by the pool;
246 (e) submit regular reports to the board regarding the operation of the pool, the
247 frequency, content, and form of which shall be determined by the board;
248 (f) (i) following the close of each calendar year, determine net written and earned
249 premiums, the expense of administration, and the paid and incurred losses for the year; and
250 (ii) submit a report of the information required in this Subsection (f) to the board, the
251 commissioner, and the Division of Finance on a form prescribed by the commissioner; and
252 (g) be paid as provided in the plan of operation for expenses incurred in the
253 performance of the pool administrator's services.

254 Section 10. Section 31A-42-207 is enacted to read:

255 **31A-42-207. Participation in pool.**

256 (1) (a) Every insurer licensed to offer a health benefit plan in the state is subject to
257 assessments in accordance with Section 31A-42-208 to fund the reinsurance pool as a
258 condition of its authority to transact business in the state if the insurer offers one or more of the
259 following:

- 260 (i) a group health plan as defined in Section 31A-1-301;
261 (ii) continuation coverage under COBRA;
262 (iii) health insurance to a large employer as defined in Section 31A-1-301;
263 (iv) a small employer group plan under Chapter 30, Individual, Small Employer and
264 Group Health Insurance Act; or
265 (v) a defined contribution arrangement offered on the Internet portal created in Section
266 63M-1-2504.

267 (b) Subsection (1)(a) does not apply to health benefit plans offered to an individual.

268 (2) (a) Notwithstanding the provisions of Subsection 31A-30-104(4)(c), an insurer may
269 reinsure with the pool if:

270 (i) the insurer is a small employer group carrier offering a small employer group plan
271 under:

272 (A) Part 1, Chapter 30, Individual, Small Employer, and Group Health Insurance Act;

273 or

274 (B) a defined contribution arrangement offered on the Internet portal created in Section
275 63M-1-2509; and

276 (ii) the insurer complies with the provisions of this section.

277 (b) An insurer may not reinsure with the pool for individual policies offered under
278 Chapter 30, Individual, Small Employer, and Group Health Insurance Act.

279 (3) (a) The pool shall reinsure the level of coverage provided in the reinsuring carrier's
280 health benefit plan and shall adjust premiums to be paid for the reinsured risk based on that
281 level of coverage.

282 (b) A reinsuring carrier may reinsure:

283 (i) an entire employer group within 60 days of the commencement of the group's
284 coverage under a health benefit plan; or

285 (ii) an eligible employee or dependant within a 60-day period following the
286 commencement of the coverage with the employer.

287 (4) The pool may reimburse a reinsuring carrier with respect to a paid claim of a
288 reinsured enrollee or dependant:

289 (a) if, in the aggregate, the amount of claims for an employee or a dependant in the
290 plan year are \$5,000 or higher; and

291 (b) if the reinsuring carrier retains 20% of the risk of claims for the employee or
292 dependant, up to a maximum of \$55,000 in claims for the employee or dependant for the plan
293 year.

294 (5) The board shall annually adjust the initial level of claims and the maximum limit to
295 be retained by the reinsuring carrier to reflect increases in cost and utilization within the health
296 benefit plans within the state.

297 (6) A reinsuring carrier may terminate reinsurance with the pool for one or more of the
298 reinsured employees or dependants on any anniversary date of the health benefit plan.

299 (7) A reinsuring carrier shall apply all managed care and claims handling techniques,
300 including utilization review, healthy behavior and wellness programs, individual case
301 management, pharmacy provisions, and any other type of cost or quality control programs
302 within a health benefit plan consistently among all enrollees of the health benefit plan,
303 regardless of whether the enrollee is reinsured with the pool.

304 Section 11. Section **31A-42-208** is enacted to read:

305 **31A-42-208. Premiums -- Assessment for pool.**

306 (1) (a) Premiums for reinsurance by the pool shall be assessed monthly by the board

307 according to the plan adopted by the board under Section 31A-42-202.

308 (b) Premiums charged for reinsurance by the pool to a health maintenance organization
309 that is federally qualified under 42 U.S.C. Sec. 300c(c)(2)(A), and is subject to federal limits
310 on the amount of risk that can be ceded, may be modified by the board as necessary to comply
311 with federal law.

312 (2) If premiums or other receipts received by the pool exceed the amount required for
313 the operation of the pool, including insured but not reported losses and administrative
314 expenses, the board shall direct that the excess be held in the pool fund, or used to offset future
315 losses, including reserves for incurred but not reported claims.

316 (3) (a) A deficit is incurred by the pool when anticipated losses plus incurred but not
317 reported claims expenses exceed anticipated income from earned premiums net of
318 administrative expenses.

319 (b) (i) A deficit incurred or expected to be incurred, shall be recovered from
320 assessments on insurers in accordance with this section, Subsection 31A-42-207(1)(a), and the
321 plan of operation adopted by the board.

322 (ii) The assessment formula adopted by the board in its plan of operation shall apply to
323 insurers as required by Subsection 31A-42-207(1), and shall be based on each insurer's share of
324 the total premiums earned in the preceding calender year for the health benefit plans delivered
325 or issued in the state.

326 (iii) Prior to March 1 of each year, the board shall determine and file with the
327 commissioner an estimate of the assessments needed to fund the losses incurred by the pool in
328 the previous calender year.

329 (c) An insurer may petition the board for an abatement or deferment of all or part of an
330 assessment. The board may abate or defer, in whole or in part, the assessment if, in the opinion
331 of the board, payment of the assessment would endanger the ability of the insurer to fulfill its
332 contractual obligations to pay covered claims. An insurer receiving a deferment shall remain
333 liable to the pool for the deficiency.

334 (d) An insurer may appeal a decision of the board to the commissioner in accordance
335 with Title 63G, Chapter 4, Administrative Procedures Act.

336 Section 12. Section **31A-42-209** is enacted to read:

337 **31A-42-209. Enterprise fund.**

338 (1) There is created an enterprise fund known as the Utah Reinsurance Pool Enterprise
339 Fund.

340 (2) The following funds shall be credited to the pool fund:

341 (a) pool reinsurance premium payments;

342 (b) assessments collected by the pool under Section 31A-42-208; and

343 (c) all interest and dividends earned on the pool fund's assets.

344 (3) All money received by the pool fund shall be deposited in compliance with Section
345 51-4-1 and shall be held by the state treasurer and invested in accordance with Title 51,

346 Chapter 7, State Money Management Act.

347 (4) The pool fund shall comply with the accounting policies, procedures, and reporting
348 requirements established by the Division of Finance.

349 (5) The pool fund shall comply with Title 63A, Utah Administrative Services Code.

350 Section 13. **Coordinating H.B. 454 with H.B. 188 -- Substantively superseding**
351 **amendments.**

352 If this H.B. 454 and H.B. 188, Health System Reform - Insurance Market, both pass, it
353 is the intent of the Legislature that Sections 31A-42-101 through 31A-42-103 and Sections
354 31A-42-201 through 31A-42-204 in this H.B. 454 supercede the provisions of Sections
355 31A-42-101 through 31A-42-103 and Sections 31A-42-201 through 31-42-204 in H.B.188,
356 when the Office of Legislative Research and General Counsel prepares the database for
357 publication.

Legislative Review Note
as of 2-18-09 5:43 PM

Office of Legislative Research and General Counsel

H.B. 454 - Small Employer Group Reinsurance Pool

Fiscal Note

2009 General Session

State of Utah

State Impact

Enacting this bill will require an appropriation of \$422,900 for four additional staff and purchase of computers and office equipment in FY 2010 and an ongoing appropriation of \$382,700 in FY 2011 and beyond. The bill will generate dedicated credits revenues of \$422,900 in FY 2010 and FY 2011. An additional \$67,000 on-going appropriation would be required if the Department of Insurance were to appoint an executive secretary.

	<u>2009</u> <u>Approp.</u>	<u>2010</u> <u>Approp.</u>	<u>2011</u> <u>Approp.</u>	<u>2009</u> <u>Revenue</u>	<u>2010</u> <u>Revenue</u>	<u>2011</u> <u>Revenue</u>
Dedicated Credits	\$0	\$422,900	\$382,700	\$0	\$422,900	\$422,900
Total	\$0	\$422,900	\$382,700	\$0	\$422,900	\$422,900

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for local governments. Businesses and individuals may be impacted due to changes the proposed statute.
