

**INSURANCE AMENDMENTS**

2012 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: James A. Dunnigan**

Senate Sponsor: \_\_\_\_\_

---

---

**LONG TITLE**

**Committee Note:**

The Business and Labor Interim Committee recommended this bill.

**General Description:**

This bill modifies the Insurance Code to make various changes related to the regulation of insurance.

**Highlighted Provisions:**

This bill:

- ▶ modifies definition provisions;
- ▶ addresses catastrophic coverage of mental health conditions;
- ▶ amends provisions related to adverse benefit determination review process;
- ▶ addresses when uniform waiver of coverage forms may be combined or modified;
- ▶ provides for the establishment of surplus lines producers;
- ▶ modifies definitions related to insurance marketing and licensing;
- ▶ addresses what constitutes administrative action taken against a person that is to be reported to the commissioner;
- ▶ clarifies when a line of authority no longer remains in force for a person;
- ▶ addresses references to the federal Violent Crime Control and Law Enforcement Act;
- ▶ requires a person who wants to reinstate a voluntarily surrendered license to comply with continuing education requirements;



- 28           ▶ modifies special requirements for bail bond producers and bail bond enforcement
- 29 agents;
- 30           ▶ addresses special requirements for variable contracts lines of authority;
- 31           ▶ addresses disbursements from certain trust accounts;
- 32           ▶ modifies language regarding trust obligation for certain money;
- 33           ▶ addresses payments of claims by administrator;
- 34           ▶ addresses commissioner's administrative actions;
- 35           ▶ grants rulemaking authority to the commissioner regarding model regulations
- 36 related to determining hazardous financial condition of an insurer;
- 37           ▶ changes dates related to coverage under a pool policy;
- 38           ▶ deletes definition of basic benefit plan;
- 39           ▶ addresses health benefit plan choices;
- 40           ▶ grants immunity related to good faith communications between insurers or
- 41 employees of insurers;
- 42           ▶ addresses reporting by the board of directors of the Utah Defined Contribution Risk
- 43 Adjuster; and
- 44           ▶ makes technical and conforming amendments.

**45 Money Appropriated in this Bill:**

46           None

**47 Other Special Clauses:**

48           None

**49 Utah Code Sections Affected:**

50 AMENDS:

- 51           **31A-1-301**, as last amended by Laws of Utah 2011, Chapters 284 and 366
- 52           **31A-2-308**, as last amended by Laws of Utah 2009, Chapter 347
- 53           **31A-2-404**, as last amended by Laws of Utah 2010, Chapter 10
- 54           **31A-22-625**, as last amended by Laws of Utah 2011, Chapters 240, 284, 297, 366, and
- 55 400
- 56           **31A-22-629**, as last amended by Laws of Utah 2007, Chapter 307
- 57           **31A-22-635**, as last amended by Laws of Utah 2011, Chapter 400
- 58           **31A-23a-101**, as renumbered and amended by Laws of Utah 2003, Chapter 298

- 59           **31A-23a-102**, as last amended by Laws of Utah 2011, Chapter 284  
60           **31A-23a-103**, as renumbered and amended by Laws of Utah 2003, Chapter 298  
61           **31A-23a-104**, as last amended by Laws of Utah 2011, Chapter 337  
62           **31A-23a-105**, as last amended by Laws of Utah 2011, Chapter 337  
63           **31A-23a-106**, as last amended by Laws of Utah 2011, Chapter 284  
64           **31A-23a-107**, as renumbered and amended by Laws of Utah 2003, Chapter 298  
65           **31A-23a-108**, as last amended by Laws of Utah 2005, Chapters 185 and 219  
66           **31A-23a-109**, as last amended by Laws of Utah 2008, Chapter 3  
67           **31A-23a-111**, as last amended by Laws of Utah 2011, Chapter 284  
68           **31A-23a-113**, as last amended by Laws of Utah 2009, Chapter 349  
69           **31A-23a-115.5**, as enacted by Laws of Utah 2011, Chapter 400  
70           **31A-23a-203**, as last amended by Laws of Utah 2011, Chapter 284  
71           **31A-23a-205**, as renumbered and amended by Laws of Utah 2003, Chapter 298  
72           **31A-23a-206**, as renumbered and amended by Laws of Utah 2003, Chapter 298  
73           **31A-23a-301**, as enacted by Laws of Utah 2003, Chapter 298  
74           **31A-23a-302**, as last amended by Laws of Utah 2009, Chapter 349  
75           **31A-23a-406**, as last amended by Laws of Utah 2011, Chapter 284  
76           **31A-23a-409**, as last amended by Laws of Utah 2011, Chapter 342  
77           **31A-23a-412**, as last amended by Laws of Utah 2011, Chapter 284  
78           **31A-25-203**, as last amended by Laws of Utah 2009, Chapter 349  
79           **31A-25-306**, as enacted by Laws of Utah 1985, Chapter 242  
80           **31A-26-203**, as last amended by Laws of Utah 2009, Chapter 349  
81           **31A-27-503**, as renumbered and amended by Laws of Utah 2007, Chapter 309  
82           **31A-27a-101**, as enacted by Laws of Utah 2007, Chapter 309  
83           **31A-29-112**, as last amended by Laws of Utah 2004, Chapter 2  
84           **31A-30-103**, as last amended by Laws of Utah 2011, Chapters 284 and 400  
85           **31A-30-109**, as last amended by Laws of Utah 2009, Chapter 12  
86           **31A-30-112**, as last amended by Laws of Utah 2011, Chapter 284  
87           **31A-31-105**, as last amended by Laws of Utah 2008, Chapter 150  
88           **31A-41-301**, as enacted by Laws of Utah 2008, Chapter 220  
89           **31A-42-203**, as enacted by Laws of Utah 2009, Chapter 12

90  
91  
92  
93  
94  
95  
96  
97  
98  
99  
100  
101  
102  
103  
104  
105  
106  
107  
108  
109  
110  
111  
112  
113  
114  
115  
116  
117  
118  
119  
120

---

---

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

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

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

As used in this title, unless otherwise specified:

(1) (a) "Accident and health insurance" means insurance to provide protection against economic losses resulting from:

(i) a medical condition including:

(A) a medical care expense; or

(B) the risk of disability;

(ii) accident; or

(iii) sickness.

(b) "Accident and health insurance":

(i) includes a contract with disability contingencies including:

(A) an income replacement contract;

(B) a health care contract;

(C) an expense reimbursement contract;

(D) a credit accident and health contract;

(E) a continuing care contract; and

(F) a long-term care contract; and

(ii) may provide:

(A) hospital coverage;

(B) surgical coverage;

(C) medical coverage;

(D) loss of income coverage;

(E) prescription drug coverage;

(F) dental coverage; or

(G) vision coverage.

(c) "Accident and health insurance" does not include workers' compensation insurance.

(2) "Actuary" is as defined by the commissioner by rule, made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

- 121 (3) "Administrator" is defined in Subsection [~~(161)~~] (162).
- 122 (4) "Adult" means an individual who has attained the age of at least 18 years.
- 123 (5) "Affiliate" means a person who controls, is controlled by, or is under common  
124 control with, another person. A corporation is an affiliate of another corporation, regardless of  
125 ownership, if substantially the same group of individuals manage the corporations.
- 126 (6) "Agency" means:
  - 127 (a) a person other than an individual, including a sole proprietorship by which an  
128 individual does business under an assumed name; and
  - 129 (b) an insurance organization licensed or required to be licensed under Section  
130 31A-23a-301, 31A-25-207, or 31A-26-209.
- 131 (7) "Alien insurer" means an insurer domiciled outside the United States.
- 132 (8) "Amendment" means an endorsement to an insurance policy or certificate.
- 133 (9) "Annuity" means an agreement to make periodical payments for a period certain or  
134 over the lifetime of one or more individuals if the making or continuance of all or some of the  
135 series of the payments, or the amount of the payment, is dependent upon the continuance of  
136 human life.
- 137 (10) "Application" means a document:
  - 138 (a) (i) completed by an applicant to provide information about the risk to be insured;  
139 and
  - 140 (ii) that contains information that is used by the insurer to evaluate risk and decide  
141 whether to:
    - 142 (A) insure the risk under:
      - 143 (I) the coverage as originally offered; or
      - 144 (II) a modification of the coverage as originally offered; or
    - 145 (B) decline to insure the risk; or
  - 146 (b) used by the insurer to gather information from the applicant before issuance of an  
147 annuity contract.
- 148 (11) "Articles" or "articles of incorporation" means:
  - 149 (a) the original articles;
  - 150 (b) a special law;
  - 151 (c) a charter;

- 152 (d) an amendment;
- 153 (e) restated articles;
- 154 (f) articles of merger or consolidation;
- 155 (g) a trust instrument;
- 156 (h) another constitutive document for a trust or other entity that is not a corporation;

157 and

- 158 (i) an amendment to an item listed in Subsections (11)(a) through (h).

159 (12) "Bail bond insurance" means a guarantee that a person will attend court when  
160 required, up to and including surrender of the person in execution of a sentence imposed under  
161 Subsection 77-20-7(1), as a condition to the release of that person from confinement.

162 (13) "Binder" is defined in Section 31A-21-102.

163 (14) "Blanket insurance policy" means a group policy covering a defined class of  
164 persons:

- 165 (a) without individual underwriting or application; and
- 166 (b) that is determined by definition without designating each person covered.

167 (15) "Board," "board of trustees," or "board of directors" means the group of persons  
168 with responsibility over, or management of, a corporation, however designated.

169 (16) "Bona fide office" means a physical office in this state:

- 170 (a) that is open to the public;
- 171 (b) that is staffed during regular business hours on regular business days; and
- 172 (c) at which the public may appear in person to obtain services.

173 (17) "Business entity" means:

- 174 (a) a corporation;
- 175 (b) an association;
- 176 (c) a partnership;
- 177 (d) a limited liability company;
- 178 (e) a limited liability partnership; or
- 179 (f) another legal entity.

180 (18) "Business of insurance" is defined in Subsection [~~(87)~~] (88).

181 (19) "Business plan" means the information required to be supplied to the  
182 commissioner under Subsections 31A-5-204(2)(i) and (j), including the information required

183 when these subsections apply by reference under:

184 (a) Section 31A-7-201;

185 (b) Section 31A-8-205; or

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

187 (20) (a) "Bylaws" means the rules adopted for the regulation or management of a  
188 corporation's affairs, however designated.

189 (b) "Bylaws" includes comparable rules for a trust or other entity that is not a  
190 corporation.

191 (21) "Captive insurance company" means:

192 (a) an insurer:

193 (i) owned by another organization; and

194 (ii) whose exclusive purpose is to insure risks of the parent organization and an  
195 affiliated company; or

196 (b) in the case of a group or association, an insurer:

197 (i) owned by the insureds; and

198 (ii) whose exclusive purpose is to insure risks of:

199 (A) a member organization;

200 (B) a group member; or

201 (C) an affiliate of:

202 (I) a member organization; or

203 (II) a group member.

204 (22) "Casualty insurance" means liability insurance.

205 (23) "Certificate" means evidence of insurance given to:

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

207 (b) a third party.

208 (24) "Certificate of authority" is included within the term "license."

209 (25) "Claim," unless the context otherwise requires, means a request or demand on an  
210 insurer for payment of a benefit according to the terms of an insurance policy.

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

214 (27) (a) "Commissioner" or "commissioner of insurance" means Utah's insurance  
215 commissioner.

216 (b) When appropriate, the terms listed in Subsection (27)(a) apply to the equivalent  
217 supervisory official of another jurisdiction.

218 (28) (a) "Continuing care insurance" means insurance that:

219 (i) provides board and lodging;

220 (ii) provides one or more of the following:

221 (A) a personal service;

222 (B) a nursing service;

223 (C) a medical service; or

224 (D) any other health-related service; and

225 (iii) provides the coverage described in this Subsection (28)(a) under an agreement  
226 effective:

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

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

229 (b) Insurance is continuing care insurance regardless of whether or not the board and  
230 lodging are provided at the same location as a service described in Subsection (28)(a)(ii).

231 (29) (a) "Control," "controlling," "controlled," or "under common control" means the  
232 direct or indirect possession of the power to direct or cause the direction of the management  
233 and policies of a person. This control may be:

234 (i) by contract;

235 (ii) by common management;

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

237 (iv) by a means other than those described in Subsections (29)(a)(i) through (iii).

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

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

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

245 (30) "Controlled insurer" means a licensed insurer that is either directly or indirectly  
246 controlled by a producer.

247 (31) "Controlling person" means a person that directly or indirectly has the power to  
248 direct or cause to be directed, the management, control, or activities of a reinsurance  
249 intermediary.

250 (32) "Controlling producer" means a producer who directly or indirectly controls an  
251 insurer.

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

253 (i) a corporation doing business:

254 (A) as:

255 (I) an insurance producer;

256 (II) a surplus lines producer;

257 [~~(III)~~] (III) a limited line producer;

258 [~~(IV)~~] (IV) a consultant;

259 [~~(V)~~] (V) a managing general agent;

260 [~~(VI)~~] (VI) a reinsurance intermediary;

261 [~~(VII)~~] (VII) a third party administrator; or

262 [~~(VIII)~~] (VIII) an adjuster; and

263 (B) under:

264 (I) Chapter 23a, Insurance Marketing - Licensing Producers, Consultants, and  
265 Reinsurance Intermediaries;

266 (II) Chapter 25, Third Party Administrators; or

267 (III) Chapter 26, Insurance Adjusters; or

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

270 (b) "Stock corporation" means a stock insurance corporation.

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

272 (34) (a) "Creditable coverage" has the same meaning as provided in federal regulations  
273 adopted pursuant to the Health Insurance Portability and Accountability Act.

274 (b) "Creditable coverage" includes coverage that is offered through a public health plan  
275 such as:

- 276 (i) the Primary Care Network Program under a Medicaid primary care network  
277 demonstration waiver obtained subject to Section 26-18-3;
- 278 (ii) the Children's Health Insurance Program under Section 26-40-106; or  
279 (iii) the Ryan White Program Comprehensive AIDS Resources Emergency Act, Pub. L.  
280 101-381, and Ryan White HIV/AIDS Treatment Modernization Act of 2006, Pub. L. 109-415.
- 281 (35) "Credit accident and health insurance" means insurance on a debtor to provide  
282 indemnity for payments coming due on a specific loan or other credit transaction while the  
283 debtor has a disability.
- 284 (36) (a) "Credit insurance" means insurance offered in connection with an extension of  
285 credit that is limited to partially or wholly extinguishing that credit obligation.
- 286 (b) "Credit insurance" includes:  
287 (i) credit accident and health insurance;  
288 (ii) credit life insurance;  
289 (iii) credit property insurance;  
290 (iv) credit unemployment insurance;  
291 (v) guaranteed automobile protection insurance;  
292 (vi) involuntary unemployment insurance;  
293 (vii) mortgage accident and health insurance;  
294 (viii) mortgage guaranty insurance; and  
295 (ix) mortgage life insurance.
- 296 (37) "Credit life insurance" means insurance on the life of a debtor in connection with  
297 an extension of credit that pays a person if the debtor dies.
- 298 (38) "Credit property insurance" means insurance:  
299 (a) offered in connection with an extension of credit; and  
300 (b) that protects the property until the debt is paid.
- 301 (39) "Credit unemployment insurance" means insurance:  
302 (a) offered in connection with an extension of credit; and  
303 (b) that provides indemnity if the debtor is unemployed for payments coming due on a:  
304 (i) specific loan; or  
305 (ii) credit transaction.
- 306 (40) "Creditor" means a person, including an insured, having a claim, whether:

- 307 (a) matured;
- 308 (b) unmatured;
- 309 (c) liquidated;
- 310 (d) unliquidated;
- 311 (e) secured;
- 312 (f) unsecured;
- 313 (g) absolute;
- 314 (h) fixed; or
- 315 (i) contingent.

316 (41) (a) "Crop insurance" means insurance providing protection against damage to  
317 crops from unfavorable weather conditions, fire or lightning, flood, hail, insect infestation,  
318 disease or other yield-reducing conditions or perils that is:

- 319 (i) provided by the private insurance market; or
- 320 (ii) subsidized by the Federal Crop Insurance Corporation.

321 (b) "Crop insurance" includes multi-peril crop insurance.

322 ~~[(41)]~~ (42) (a) "Customer service representative" means a person that provides an  
323 insurance service and insurance product information:

- 324 (i) for the customer service representative's:
  - 325 (A) producer; ~~[or]~~
  - 326 (B) surplus lines producer; or
  - 327 ~~[(B)]~~ (C) consultant employer; and
- 328 (ii) to the customer service representative's employer's:
  - 329 (A) customer;
  - 330 (B) client; or
  - 331 (C) organization.

332 (b) A customer service representative may only operate within the scope of authority of  
333 the customer service representative's producer, surplus lines producer, or consultant employer.

334 ~~[(42)]~~ (43) "Deadline" means a final date or time:

- 335 (a) imposed by:
  - 336 (i) statute;
  - 337 (ii) rule; or

338 (iii) order; and  
339 (b) by which a required filing or payment must be received by the department.  
340 [~~(43)~~] (44) "Deemer clause" means a provision under this title under which upon the  
341 occurrence of a condition precedent, the commissioner is considered to have taken a specific  
342 action. If the statute so provides, a condition precedent may be the commissioner's failure to  
343 take a specific action.  
344 [~~(44)~~] (45) "Degree of relationship" means the number of steps between two persons  
345 determined by counting the generations separating one person from a common ancestor and  
346 then counting the generations to the other person.  
347 [~~(45)~~] (46) "Department" means the Insurance Department.  
348 [~~(46)~~] (47) "Director" means a member of the board of directors of a corporation.  
349 [~~(47)~~] (48) "Disability" means a physiological or psychological condition that partially  
350 or totally limits an individual's ability to:  
351 (a) perform the duties of:  
352 (i) that individual's occupation; or  
353 (ii) any occupation for which the individual is reasonably suited by education, training,  
354 or experience; or  
355 (b) perform two or more of the following basic activities of daily living:  
356 (i) eating;  
357 (ii) toileting;  
358 (iii) transferring;  
359 (iv) bathing; or  
360 (v) dressing.  
361 [~~(48)~~] (49) "Disability income insurance" is defined in Subsection [~~(78)~~] (79).  
362 [~~(49)~~] (50) "Domestic insurer" means an insurer organized under the laws of this state.  
363 [~~(50)~~] (51) "Domiciliary state" means the state in which an insurer:  
364 (a) is incorporated;  
365 (b) is organized; or  
366 (c) in the case of an alien insurer, enters into the United States.  
367 [~~(51)~~] (52) (a) "Eligible employee" means:  
368 (i) an employee who:

- 369 (A) works on a full-time basis; and  
370 (B) has a normal work week of 30 or more hours; or  
371 (ii) a person described in Subsection [~~(51)~~] (52)(b).  
372 (b) "Eligible employee" includes, if the individual is included under a health benefit  
373 plan of a small employer:  
374 (i) a sole proprietor;  
375 (ii) a partner in a partnership; or  
376 (iii) an independent contractor.  
377 (c) "Eligible employee" does not include, unless eligible under Subsection [~~(51)~~]  
378 (52)(b):  
379 (i) an individual who works on a temporary or substitute basis for a small employer;  
380 (ii) an employer's spouse; or  
381 (iii) a dependent of an employer.  
382 [~~(52)~~] (53) "Employee" means an individual employed by an employer.  
383 [~~(53)~~] (54) "Employee benefits" means one or more benefits or services provided to:  
384 (a) an employee; or  
385 (b) a dependent of an employee.  
386 [~~(54)~~] (55) (a) "Employee welfare fund" means a fund:  
387 (i) established or maintained, whether directly or through a trustee, by:  
388 (A) one or more employers;  
389 (B) one or more labor organizations; or  
390 (C) a combination of employers and labor organizations; and  
391 (ii) that provides employee benefits paid or contracted to be paid, other than income  
392 from investments of the fund:  
393 (A) by or on behalf of an employer doing business in this state; or  
394 (B) for the benefit of a person employed in this state.  
395 (b) "Employee welfare fund" includes a plan funded or subsidized by a user fee or tax  
396 revenues.  
397 [~~(55)~~] (56) "Endorsement" means a written agreement attached to a policy or certificate  
398 to modify the policy or certificate coverage.  
399 [~~(56)~~] (57) "Enrollment date," with respect to a health benefit plan, means:

- 400 (a) the first day of coverage; or
- 401 (b) if there is a waiting period, the first day of the waiting period.
- 402 [~~57~~] (58) (a) "Escrow" means:
- 403 (i) a real estate settlement or real estate closing conducted by a third party pursuant to
- 404 the requirements of a written agreement between the parties in a real estate transaction; or
- 405 (ii) a settlement or closing involving:
- 406 (A) a mobile home;
- 407 (B) a grazing right;
- 408 (C) a water right; or
- 409 (D) other personal property authorized by the commissioner.
- 410 (b) "Escrow" includes the act of conducting a:
- 411 (i) real estate settlement; or
- 412 (ii) real estate closing.
- 413 [~~58~~] (59) "Escrow agent" means:
- 414 (a) an insurance producer with:
- 415 (i) a title insurance line of authority; and
- 416 (ii) an escrow subline of authority; or
- 417 (b) a person defined as an escrow agent in Section 7-22-101.
- 418 [~~59~~] (60) (a) "Excludes" is not exhaustive and does not mean that another thing is not
- 419 also excluded.
- 420 (b) The items listed in a list using the term "excludes" are representative examples for
- 421 use in interpretation of this title.
- 422 [~~60~~] (61) "Exclusion" means for the purposes of accident and health insurance that an
- 423 insurer does not provide insurance coverage, for whatever reason, for one of the following:
- 424 (a) a specific physical condition;
- 425 (b) a specific medical procedure;
- 426 (c) a specific disease or disorder; or
- 427 (d) a specific prescription drug or class of prescription drugs.
- 428 [~~61~~] (62) "Expense reimbursement insurance" means insurance:
- 429 (a) written to provide a payment for an expense relating to hospital confinement
- 430 resulting from illness or injury; and

- 431 (b) written:
- 432 (i) as a daily limit for a specific number of days in a hospital; and
- 433 (ii) to have a one or two day waiting period following a hospitalization.
- 434 [~~(62)~~] (63) "Fidelity insurance" means insurance guaranteeing the fidelity of a person
- 435 holding a position of public or private trust.
- 436 [~~(63)~~] (64) (a) "Filed" means that a filing is:
- 437 (i) submitted to the department as required by and in accordance with applicable
- 438 statute, rule, or filing order;
- 439 (ii) received by the department within the time period provided in applicable statute,
- 440 rule, or filing order; and
- 441 (iii) accompanied by the appropriate fee in accordance with:
- 442 (A) Section 31A-3-103; or
- 443 (B) rule.
- 444 (b) "Filed" does not include a filing that is rejected by the department because it is not
- 445 submitted in accordance with Subsection [~~(63)~~] (64)(a).
- 446 [~~(64)~~] (65) "Filing," when used as a noun, means an item required to be filed with the
- 447 department including:
- 448 (a) a policy;
- 449 (b) a rate;
- 450 (c) a form;
- 451 (d) a document;
- 452 (e) a plan;
- 453 (f) a manual;
- 454 (g) an application;
- 455 (h) a report;
- 456 (i) a certificate;
- 457 (j) an endorsement;
- 458 (k) an actuarial certification;
- 459 (l) a licensee annual statement;
- 460 (m) a licensee renewal application;
- 461 (n) an advertisement; or

462 (o) an outline of coverage.

463 [~~(65)~~] (66) "First party insurance" means an insurance policy or contract in which the  
464 insurer agrees to pay a claim submitted to it by the insured for the insured's losses.

465 [~~(66)~~] (67) "Foreign insurer" means an insurer domiciled outside of this state, including  
466 an alien insurer.

467 [~~(67)~~] (68) (a) "Form" means one of the following prepared for general use:

468 (i) a policy;

469 (ii) a certificate;

470 (iii) an application;

471 (iv) an outline of coverage; or

472 (v) an endorsement.

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

475 [~~(68)~~] (69) "Franchise insurance" means an individual insurance policy provided  
476 through a mass marketing arrangement involving a defined class of persons related in some  
477 way other than through the purchase of insurance.

478 [~~(69)~~] (70) "General lines of authority" include:

479 (a) the general lines of insurance in Subsection [~~(70)~~] (71);

480 (b) title insurance under one of the following sublines of authority:

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

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

483 (iii) title marketing representative only;

484 (c) surplus lines;

485 (d) workers' compensation; and

486 (e) any other line of insurance that the commissioner considers necessary to recognize  
487 in the public interest.

488 [~~(70)~~] (71) "General lines of insurance" include:

489 (a) accident and health;

490 (b) casualty;

491 (c) life;

492 (d) personal lines;

- 493 (e) property; and
- 494 (f) variable contracts, including variable life and annuity.
- 495 ~~[(71)]~~ (72) "Group health plan" means an employee welfare benefit plan to the extent
- 496 that the plan provides medical care:
- 497 (a) (i) to an employee; or
- 498 (ii) to a dependent of an employee; and
- 499 (b) (i) directly;
- 500 (ii) through insurance reimbursement; or
- 501 (iii) through another method.
- 502 ~~[(72)]~~ (73) (a) "Group insurance policy" means a policy covering a group of persons
- 503 that is issued:
- 504 (i) to a policyholder on behalf of the group; and
- 505 (ii) for the benefit of a member of the group who is selected under a procedure defined
- 506 in:
- 507 (A) the policy; or
- 508 (B) an agreement that is collateral to the policy.
- 509 (b) A group insurance policy may include a member of the policyholder's family or a
- 510 dependent.
- 511 ~~[(73)]~~ (74) "Guaranteed automobile protection insurance" means insurance offered in
- 512 connection with an extension of credit that pays the difference in amount between the
- 513 insurance settlement and the balance of the loan if the insured automobile is a total loss.
- 514 ~~[(74)]~~ (75) (a) Except as provided in Subsection ~~[(74)]~~ (75)(b), "health benefit plan"
- 515 means a policy or certificate that:
- 516 (i) provides health care insurance;
- 517 (ii) provides major medical expense insurance; or
- 518 (iii) is offered as a substitute for hospital or medical expense insurance, such as:
- 519 (A) a hospital confinement indemnity; or
- 520 (B) a limited benefit plan.
- 521 (b) "Health benefit plan" does not include a policy or certificate that:
- 522 (i) provides benefits solely for:
- 523 (A) accident;

- 524 (B) dental;
- 525 (C) income replacement;
- 526 (D) long-term care;
- 527 (E) a Medicare supplement;
- 528 (F) a specified disease;
- 529 (G) vision; or
- 530 (H) a short-term limited duration; or
- 531 (ii) is offered and marketed as supplemental health insurance.

532 [~~75~~] (76) "Health care" means any of the following intended for use in the diagnosis,  
533 treatment, mitigation, or prevention of a human ailment or impairment:

- 534 (a) a professional service;
- 535 (b) a personal service;
- 536 (c) a facility;
- 537 (d) equipment;
- 538 (e) a device;
- 539 (f) supplies; or
- 540 (g) medicine.

541 [~~76~~] (77) (a) "Health care insurance" or "health insurance" means insurance  
542 providing:

- 543 (i) a health care benefit; or
- 544 (ii) payment of an incurred health care expense.
- 545 (b) "Health care insurance" or "health insurance" does not include accident and health

546 insurance providing a benefit for:

- 547 (i) replacement of income;
- 548 (ii) short-term accident;
- 549 (iii) fixed indemnity;
- 550 (iv) credit accident and health;
- 551 (v) supplements to liability;
- 552 (vi) workers' compensation;
- 553 (vii) automobile medical payment;
- 554 (viii) no-fault automobile;

555 (ix) equivalent self-insurance; or

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

558 [~~(77)~~] (78) "Health Insurance Portability and Accountability Act" means the Health  
559 Insurance Portability and Accountability Act of 1996, Pub. L. 104-191, 110 Stat. 1936, as  
560 amended.

561 [~~(78)~~] (79) "Income replacement insurance" or "disability income insurance" means  
562 insurance written to provide payments to replace income lost from accident or sickness.

563 [~~(79)~~] (80) "Indemnity" means the payment of an amount to offset all or part of an  
564 insured loss.

565 [~~(80)~~] (81) "Independent adjuster" means an insurance adjuster required to be licensed  
566 under Section 31A-26-201 who engages in insurance adjusting as a representative of an insurer.

567 [~~(81)~~] (82) "Independently procured insurance" means insurance procured under  
568 Section 31A-15-104.

569 [~~(82)~~] (83) "Individual" means a natural person.

570 [~~(83)~~] (84) "Inland marine insurance" includes insurance covering:

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

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

573 (c) bailee liability;

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

576 (e) personal and commercial property floaters.

577 [~~(84)~~] (85) "Insolvency" means that:

578 (a) an insurer is unable to pay its debts or meet its obligations as the debts and  
579 obligations mature;

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

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

583 [~~(85)~~] (86) (a) "Insurance" means:

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

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

588 (b) "Insurance" includes:

589 (i) a risk distributing arrangement providing for compensation or replacement for  
590 damages or loss through the provision of a service or a benefit in kind;

591 (ii) a contract of guaranty or suretyship entered into by the guarantor or surety as a  
592 business and not as merely incidental to a business transaction; and

593 (iii) a plan in which the risk does not rest upon the person who makes an arrangement,  
594 but with a class of persons who have agreed to share the risk.

595 ~~[(86)]~~ (87) "Insurance adjuster" means a person who directs the investigation,  
596 negotiation, or settlement of a claim under an insurance policy other than life insurance or an  
597 annuity, on behalf of an insurer, policyholder, or a claimant under an insurance policy.

598 ~~[(87)]~~ (88) "Insurance business" or "business of insurance" includes:

599 (a) providing health care insurance by an organization that is or is required to be  
600 licensed under this title;

601 (b) providing a benefit to an employee in the event of a contingency not within the  
602 control of the employee, in which the employee is entitled to the benefit as a right, which  
603 benefit may be provided either:

604 (i) by a single employer or by multiple employer groups; or

605 (ii) through one or more trusts, associations, or other entities;

606 (c) providing an annuity:

607 (i) including an annuity issued in return for a gift; and

608 (ii) except an annuity provided by a person specified in Subsections 31A-22-1305(2)

609 and (3);

610 (d) providing the characteristic services of a motor club as outlined in Subsection

611 ~~[(115)]~~ (116);

612 (e) providing another person with insurance;

613 (f) making as insurer, guarantor, or surety, or proposing to make as insurer, guarantor,  
614 or surety, a contract or policy of title insurance;

615 (g) transacting or proposing to transact any phase of title insurance, including:

616 (i) solicitation;

- 617 (ii) negotiation preliminary to execution;
- 618 (iii) execution of a contract of title insurance;
- 619 (iv) insuring; and
- 620 (v) transacting matters subsequent to the execution of the contract and arising out of
- 621 the contract, including reinsurance;
- 622 (h) transacting or proposing a life settlement; and
- 623 (i) doing, or proposing to do, any business in substance equivalent to Subsections
- 624 ~~[(87)]~~ (88)(a) through (h) in a manner designed to evade this title.
- 625 ~~[(88)]~~ (89) "Insurance consultant" or "consultant" means a person who:
- 626 (a) advises another person about insurance needs and coverages;
- 627 (b) is compensated by the person advised on a basis not directly related to the insurance
- 628 placed; and
- 629 (c) except as provided in Section 31A-23a-501, is not compensated directly or
- 630 indirectly by an insurer or producer for advice given.
- 631 ~~[(89)]~~ (90) "Insurance holding company system" means a group of two or more
- 632 affiliated persons, at least one of whom is an insurer.
- 633 ~~[(90)]~~ (91) (a) "Insurance producer" or "producer" means a person licensed or required
- 634 to be licensed under the laws of this state to sell, solicit, or negotiate insurance.
- 635 (b) (i) "Producer for the insurer" means a producer who is compensated directly or
- 636 indirectly by an insurer for selling, soliciting, or negotiating an insurance product of that
- 637 insurer.
- 638 (ii) "Producer for the insurer" may be referred to as an "agent."
- 639 (c) (i) "Producer for the insured" means a producer who:
- 640 (A) is compensated directly and only by an insurance customer or an insured; and
- 641 (B) receives no compensation directly or indirectly from an insurer for selling,
- 642 soliciting, or negotiating an insurance product of that insurer to an insurance customer or
- 643 insured.
- 644 (ii) "Producer for the insured" may be referred to as a "broker."
- 645 ~~[(91)]~~ (92) (a) "Insured" means a person to whom or for whose benefit an insurer
- 646 makes a promise in an insurance policy and includes:
- 647 (i) a policyholder;

648 (ii) a subscriber;  
649 (iii) a member; and  
650 (iv) a beneficiary.  
651 (b) The definition in Subsection [~~(91)~~] (92)(a):  
652 (i) applies only to this title; and  
653 (ii) does not define the meaning of this word as used in an insurance policy or  
654 certificate.  
655 [~~(92)~~] (93) (a) "Insurer" means a person doing an insurance business as a principal  
656 including:  
657 (i) a fraternal benefit society;  
658 (ii) an issuer of a gift annuity other than an annuity specified in Subsections  
659 31A-22-1305(2) and (3);  
660 (iii) a motor club;  
661 (iv) an employee welfare plan; and  
662 (v) a person purporting or intending to do an insurance business as a principal on that  
663 person's own account.  
664 (b) "Insurer" does not include a governmental entity to the extent the governmental  
665 entity is engaged in an activity described in Section 31A-12-107.  
666 [~~(93)~~] (94) "Interinsurance exchange" is defined in Subsection [~~(144)~~] (145).  
667 [~~(94)~~] (95) "Involuntary unemployment insurance" means insurance:  
668 (a) offered in connection with an extension of credit; and  
669 (b) that provides indemnity if the debtor is involuntarily unemployed for payments  
670 coming due on a:  
671 (i) specific loan; or  
672 (ii) credit transaction.  
673 [~~(95)~~] (96) "Large employer," in connection with a health benefit plan, means an  
674 employer who, with respect to a calendar year and to a plan year:  
675 (a) employed an average of at least 51 eligible employees on each business day during  
676 the preceding calendar year; and  
677 (b) employs at least two employees on the first day of the plan year.  
678 [~~(96)~~] (97) "Late enrollee," with respect to an employer health benefit plan, means an

679 individual whose enrollment is a late enrollment.

680 ~~[(97)]~~ (98) "Late enrollment," with respect to an employer health benefit plan, means  
681 enrollment of an individual other than:

682 (a) on the earliest date on which coverage can become effective for the individual  
683 under the terms of the plan; or

684 (b) through special enrollment.

685 ~~[(98)]~~ (99) (a) Except for a retainer contract or legal assistance described in Section  
686 31A-1-103, "legal expense insurance" means insurance written to indemnify or pay for a  
687 specified legal expense.

688 (b) "Legal expense insurance" includes an arrangement that creates a reasonable  
689 expectation of an enforceable right.

690 (c) "Legal expense insurance" does not include the provision of, or reimbursement for,  
691 legal services incidental to other insurance coverage.

692 ~~[(99)]~~ (100) (a) "Liability insurance" means insurance against liability:

693 (i) for death, injury, or disability of a human being, or for damage to property,  
694 exclusive of the coverages under:

695 (A) Subsection ~~[(109)]~~ (110) for medical malpractice insurance;

696 (B) Subsection ~~[(136)]~~ (137) for professional liability insurance; and

697 (C) Subsection ~~[(170)]~~ (171) for workers' compensation insurance;

698 (ii) for a medical, hospital, surgical, and funeral benefit to a person other than the  
699 insured who is injured, irrespective of legal liability of the insured, when issued with or  
700 supplemental to insurance against legal liability for the death, injury, or disability of a human  
701 being, exclusive of the coverages under:

702 (A) Subsection ~~[(109)]~~ (110) for medical malpractice insurance;

703 (B) Subsection ~~[(136)]~~ (137) for professional liability insurance; and

704 (C) Subsection ~~[(170)]~~ (171) for workers' compensation insurance;

705 (iii) for loss or damage to property resulting from an accident to or explosion of a  
706 boiler, pipe, pressure container, machinery, or apparatus;

707 (iv) for loss or damage to property caused by:

708 (A) the breakage or leakage of a sprinkler, water pipe, or water container; or

709 (B) water entering through a leak or opening in a building; or

710 (v) for other loss or damage properly the subject of insurance not within another kind  
711 of insurance as defined in this chapter, if the insurance is not contrary to law or public policy.

712 (b) "Liability insurance" includes:

713 (i) vehicle liability insurance;

714 (ii) residential dwelling liability insurance; and

715 (iii) making inspection of, and issuing a certificate of inspection upon, an elevator,  
716 boiler, machinery, or apparatus of any kind when done in connection with insurance on the  
717 elevator, boiler, machinery, or apparatus.

718 [~~(100)~~] (101) (a) "License" means authorization issued by the commissioner to engage  
719 in an activity that is part of or related to the insurance business.

720 (b) "License" includes a certificate of authority issued to an insurer.

721 [~~(101)~~] (102) (a) "Life insurance" means:

722 (i) insurance on a human life; and

723 (ii) insurance pertaining to or connected with human life.

724 (b) The business of life insurance includes:

725 (i) granting a death benefit;

726 (ii) granting an annuity benefit;

727 (iii) granting an endowment benefit;

728 (iv) granting an additional benefit in the event of death by accident;

729 (v) granting an additional benefit to safeguard the policy against lapse; and

730 (vi) providing an optional method of settlement of proceeds.

731 [~~(102)~~] (103) "Limited license" means a license that:

732 (a) is issued for a specific product of insurance; and

733 (b) limits an individual or agency to transact only for that product or insurance.

734 [~~(103)~~] (104) "Limited line credit insurance" includes the following forms of  
735 insurance:

736 (a) credit life;

737 (b) credit accident and health;

738 (c) credit property;

739 (d) credit unemployment;

740 (e) involuntary unemployment;

- 741 (f) mortgage life;
- 742 (g) mortgage guaranty;
- 743 (h) mortgage accident and health;
- 744 (i) guaranteed automobile protection; and
- 745 (j) another form of insurance offered in connection with an extension of credit that:
- 746 (i) is limited to partially or wholly extinguishing the credit obligation; and
- 747 (ii) the commissioner determines by rule should be designated as a form of limited line
- 748 credit insurance.

749 [~~(104)~~] (105) "Limited line credit insurance producer" means a person who sells,

750 solicits, or negotiates one or more forms of limited line credit insurance coverage to an

751 individual through a master, corporate, group, or individual policy.

752 [~~(105)~~] (106) "Limited line insurance" includes:

- 753 (a) bail bond;
- 754 (b) limited line credit insurance;
- 755 (c) legal expense insurance;
- 756 (d) motor club insurance;
- 757 (e) car rental related insurance;
- 758 (f) travel insurance;
- 759 (g) crop insurance;
- 760 (h) self-service storage insurance;
- 761 (i) guaranteed asset protection waiver; and
- 762 (j) another form of limited insurance that the commissioner determines by rule should
- 763 be designated a form of limited line insurance.

764 [~~(106)~~] (107) "Limited lines authority" includes:

- 765 (a) the lines of insurance listed in Subsection [~~(105)~~] (106); and
- 766 (b) a customer service representative.

767 [~~(107)~~] (108) "Limited lines producer" means a person who sells, solicits, or negotiates

768 limited lines insurance.

769 [~~(108)~~] (109) (a) "Long-term care insurance" means an insurance policy or rider

770 advertised, marketed, offered, or designated to provide coverage:

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

- 772 (ii) for not less than 12 consecutive months for a covered person on the basis of:
- 773 (A) expenses incurred;
- 774 (B) indemnity;
- 775 (C) prepayment; or
- 776 (D) another method;
- 777 (iii) for one or more necessary or medically necessary services that are:
- 778 (A) diagnostic;
- 779 (B) preventative;
- 780 (C) therapeutic;
- 781 (D) rehabilitative;
- 782 (E) maintenance; or
- 783 (F) personal care; and
- 784 (iv) that may be issued by:
- 785 (A) an insurer;
- 786 (B) a fraternal benefit society;
- 787 (C) (I) a nonprofit health hospital; and
- 788 (II) a medical service corporation;
- 789 (D) a prepaid health plan;
- 790 (E) a health maintenance organization; or
- 791 (F) an entity similar to the entities described in Subsections [~~(108)~~] (109)(a)(iv)(A)
- 792 through (E) to the extent that the entity is otherwise authorized to issue life or health care
- 793 insurance.
- 794 (b) "Long-term care insurance" includes:
- 795 (i) any of the following that provide directly or supplement long-term care insurance:
- 796 (A) a group or individual annuity or rider; or
- 797 (B) a life insurance policy or rider;
- 798 (ii) a policy or rider that provides for payment of benefits on the basis of:
- 799 (A) cognitive impairment; or
- 800 (B) functional capacity; or
- 801 (iii) a qualified long-term care insurance contract.
- 802 (c) "Long-term care insurance" does not include:

- 803 (i) a policy that is offered primarily to provide basic Medicare supplement coverage;
- 804 (ii) basic hospital expense coverage;
- 805 (iii) basic medical/surgical expense coverage;
- 806 (iv) hospital confinement indemnity coverage;
- 807 (v) major medical expense coverage;
- 808 (vi) income replacement or related asset-protection coverage;
- 809 (vii) accident only coverage;
- 810 (viii) coverage for a specified:
- 811 (A) disease; or
- 812 (B) accident;
- 813 (ix) limited benefit health coverage; or
- 814 (x) a life insurance policy that accelerates the death benefit to provide the option of a

815 lump sum payment:

816 (A) if the following are not conditioned on the receipt of long-term care:

817 (I) benefits; or

818 (II) eligibility; and

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

820 (I) terminal illness;

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

822 (III) permanent institutional confinement.

823 [~~(109)~~] (110) "Medical malpractice insurance" means insurance against legal liability  
824 incident to the practice and provision of a medical service other than the practice and provision  
825 of a dental service.

826 [~~(110)~~] (111) "Member" means a person having membership rights in an insurance  
827 corporation.

828 [~~(111)~~] (112) "Minimum capital" or "minimum required capital" means the capital that  
829 must be constantly maintained by a stock insurance corporation as required by statute.

830 [~~(112)~~] (113) "Mortgage accident and health insurance" means insurance offered in  
831 connection with an extension of credit that provides indemnity for payments coming due on a  
832 mortgage while the debtor has a disability.

833 [~~(113)~~] (114) "Mortgage guaranty insurance" means surety insurance under which a

834 mortgagee or other creditor is indemnified against losses caused by the default of a debtor.

835 [~~(114)~~] (115) "Mortgage life insurance" means insurance on the life of a debtor in  
836 connection with an extension of credit that pays if the debtor dies.

837 [~~(115)~~] (116) "Motor club" means a person:

838 (a) licensed under:

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

840 (ii) Chapter 11, Motor Clubs; or

841 (iii) Chapter 14, Foreign Insurers; and

842 (b) that promises for an advance consideration to provide for a stated period of time  
843 one or more:

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

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

846 (iii) (A) trip reimbursement;

847 (B) towing services;

848 (C) emergency road services;

849 (D) stolen automobile services;

850 (E) a combination of the services listed in Subsections [~~(115)~~] (116)(b)(iii)(A) through  
851 (D); or

852 (F) other services given in Subsections 31A-11-102(1)(b) through (f).

853 [~~(116)~~] (117) "Mutual" means a mutual insurance corporation.

854 [~~(117)~~] (118) "Network plan" means health care insurance:

855 (a) that is issued by an insurer; and

856 (b) under which the financing and delivery of medical care is provided, in whole or in  
857 part, through a defined set of providers under contract with the insurer, including the financing  
858 and delivery of an item paid for as medical care.

859 [~~(118)~~] (119) "Nonparticipating" means a plan of insurance under which the insured is  
860 not entitled to receive a dividend representing a share of the surplus of the insurer.

861 [~~(119)~~] (120) "Ocean marine insurance" means insurance against loss of or damage to:

862 (a) ships or hulls of ships;

863 (b) goods, freight, cargoes, merchandise, effects, disbursements, profits, money,  
864 securities, choses in action, evidences of debt, valuable papers, bottomry, respondentia

865 interests, or other cargoes in or awaiting transit over the oceans or inland waterways;

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

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

871 [~~(120)~~] (121) "Order" means an order of the commissioner.

872 [~~(121)~~] (122) "Outline of coverage" means a summary that explains an accident and  
873 health insurance policy.

874 [~~(122)~~] (123) "Participating" means a plan of insurance under which the insured is  
875 entitled to receive a dividend representing a share of the surplus of the insurer.

876 [~~(123)~~] (124) "Participation," as used in a health benefit plan, means a requirement  
877 relating to the minimum percentage of eligible employees that must be enrolled in relation to  
878 the total number of eligible employees of an employer reduced by each eligible employee who  
879 voluntarily declines coverage under the plan because the employee:

880 (a) has other group health care insurance coverage; or

881 (b) receives:

882 (i) Medicare, under the Health Insurance for the Aged Act, Title XVIII of the Social  
883 Security Amendments of 1965; or

884 (ii) another government health benefit.

885 [~~(124)~~] (125) "Person" includes:

886 (a) an individual;

887 (b) a partnership;

888 (c) a corporation;

889 (d) an incorporated or unincorporated association;

890 (e) a joint stock company;

891 (f) a trust;

892 (g) a limited liability company;

893 (h) a reciprocal;

894 (i) a syndicate; or

895 (j) another similar entity or combination of entities acting in concert.

896            [~~(125)~~] (126) "Personal lines insurance" means property and casualty insurance  
897 coverage sold for primarily noncommercial purposes to:

- 898            (a) an individual; or
- 899            (b) a family.

900            [~~(126)~~] (127) "Plan sponsor" is as defined in 29 U.S.C. Sec. 1002(16)(B).

901            [~~(127)~~] (128) "Plan year" means:

- 902            (a) the year that is designated as the plan year in:
  - 903            (i) the plan document of a group health plan; or
  - 904            (ii) a summary plan description of a group health plan;
- 905            (b) if the plan document or summary plan description does not designate a plan year or

906 there is no plan document or summary plan description:

- 907            (i) the year used to determine deductibles or limits;
- 908            (ii) the policy year, if the plan does not impose deductibles or limits on a yearly basis;

909 or

910            (iii) the employer's taxable year if:

- 911            (A) the plan does not impose deductibles or limits on a yearly basis; and
- 912            (B) (I) the plan is not insured; or
- 913            (II) the insurance policy is not renewed on an annual basis; or

914            (c) in a case not described in Subsection [~~(127)~~] (128)(a) or (b), the calendar year.

915            [~~(128)~~] (129) (a) "Policy" means a document, including an attached endorsement or  
916 application that:

- 917            (i) purports to be an enforceable contract; and
- 918            (ii) memorializes in writing some or all of the terms of an insurance contract.

919            (b) "Policy" includes a service contract issued by:

- 920            (i) a motor club under Chapter 11, Motor Clubs;
- 921            (ii) a service contract provided under Chapter 6a, Service Contracts; and

922            (iii) a corporation licensed under:

- 923            (A) Chapter 7, Nonprofit Health Service Insurance Corporations; or
- 924            (B) Chapter 8, Health Maintenance Organizations and Limited Health Plans.

925            (c) "Policy" does not include:

- 926            (i) a certificate under a group insurance contract; or

927 (ii) a document that does not purport to have legal effect.

928 [~~(129)~~] (130) "Policyholder" means a person who controls a policy, binder, or oral  
929 contract by ownership, premium payment, or otherwise.

930 [~~(130)~~] (131) "Policy illustration" means a presentation or depiction that includes  
931 nonguaranteed elements of a policy of life insurance over a period of years.

932 [~~(131)~~] (132) "Policy summary" means a synopsis describing the elements of a life  
933 insurance policy.

934 [~~(132)~~] (133) "Preexisting condition," with respect to a health benefit plan:

935 (a) means a condition that was present before the effective date of coverage, whether or  
936 not medical advice, diagnosis, care, or treatment was recommended or received before that day;  
937 and

938 (b) does not include a condition indicated by genetic information unless an actual  
939 diagnosis of the condition by a physician has been made.

940 [~~(133)~~] (134) (a) "Premium" means the monetary consideration for an insurance policy.

941 (b) "Premium" includes, however designated:

942 (i) an assessment;

943 (ii) a membership fee;

944 (iii) a required contribution; or

945 (iv) monetary consideration.

946 (c) (i) "Premium" does not include consideration paid to a third party administrator for  
947 the third party administrator's services.

948 (ii) "Premium" includes an amount paid by a third party administrator to an insurer for  
949 insurance on the risks administered by the third party administrator.

950 [~~(134)~~] (135) "Principal officers" for a corporation means the officers designated under  
951 Subsection 31A-5-203(3).

952 [~~(135)~~] (136) "Proceeding" includes an action or special statutory proceeding.

953 [~~(136)~~] (137) "Professional liability insurance" means insurance against legal liability  
954 incident to the practice of a profession and provision of a professional service.

955 [~~(137)~~] (138) (a) Except as provided in Subsection [~~(137)~~] (138)(b), "property  
956 insurance" means insurance against loss or damage to real or personal property of every kind  
957 and any interest in that property:

- 958 (i) from all hazards or causes; and
- 959 (ii) against loss consequential upon the loss or damage including vehicle
- 960 comprehensive and vehicle physical damage coverages.
- 961 (b) "Property insurance" does not include:
- 962 (i) inland marine insurance; and
- 963 (ii) ocean marine insurance.
- 964 [~~(138)~~] (139) "Qualified long-term care insurance contract" or "federally tax qualified
- 965 long-term care insurance contract" means:
- 966 (a) an individual or group insurance contract that meets the requirements of Section
- 967 7702B(b), Internal Revenue Code; or
- 968 (b) the portion of a life insurance contract that provides long-term care insurance:
- 969 (i) (A) by rider; or
- 970 (B) as a part of the contract; and
- 971 (ii) that satisfies the requirements of Sections 7702B(b) and (e), Internal Revenue
- 972 Code.
- 973 [~~(139)~~] (140) "Qualified United States financial institution" means an institution that:
- 974 (a) is:
- 975 (i) organized under the laws of the United States or any state; or
- 976 (ii) in the case of a United States office of a foreign banking organization, licensed
- 977 under the laws of the United States or any state;
- 978 (b) is regulated, supervised, and examined by a United States federal or state authority
- 979 having regulatory authority over a bank or trust company; and
- 980 (c) meets the standards of financial condition and standing that are considered
- 981 necessary and appropriate to regulate the quality of a financial institution whose letters of credit
- 982 will be acceptable to the commissioner as determined by:
- 983 (i) the commissioner by rule; or
- 984 (ii) the Securities Valuation Office of the National Association of Insurance
- 985 Commissioners.
- 986 [~~(140)~~] (141) (a) "Rate" means:
- 987 (i) the cost of a given unit of insurance; or
- 988 (ii) for property or casualty insurance, that cost of insurance per exposure unit either

989 expressed as:

990 (A) a single number; or

991 (B) a pure premium rate, adjusted before the application of individual risk variations  
992 based on loss or expense considerations to account for the treatment of:

993 (I) expenses;

994 (II) profit; and

995 (III) individual insurer variation in loss experience.

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

997 ~~[(141)]~~ (142) (a) Except as provided in Subsection ~~[(141)]~~ (142)(b), "rate service  
998 organization" means a person who assists an insurer in rate making or filing by:

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

1000 (ii) recommending, making, or filing rates or supplementary rate information; or

1001 (iii) advising about rate questions, except as an attorney giving legal advice.

1002 (b) "Rate service organization" does not mean:

1003 (i) an employee of an insurer;

1004 (ii) a single insurer or group of insurers under common control;

1005 (iii) a joint underwriting group; or

1006 (iv) an individual serving as an actuarial or legal consultant.

1007 ~~[(142)]~~ (143) "Rating manual" means any of the following used to determine initial and  
1008 renewal policy premiums:

1009 (a) a manual of rates;

1010 (b) a classification;

1011 (c) a rate-related underwriting rule; and

1012 (d) a rating formula that describes steps, policies, and procedures for determining  
1013 initial and renewal policy premiums.

1014 ~~[(143)]~~ (144) "Received by the department" means:

1015 (a) the date delivered to and stamped received by the department, if delivered in  
1016 person;

1017 (b) the post mark date, if delivered by mail;

1018 (c) the delivery service's post mark or pickup date, if delivered by a delivery service;

1019 (d) the received date recorded on an item delivered, if delivered by:

- 1020 (i) facsimile;
- 1021 (ii) email; or
- 1022 (iii) another electronic method; or
- 1023 (e) a date specified in:
  - 1024 (i) a statute;
  - 1025 (ii) a rule; or
  - 1026 (iii) an order.
- 1027 [~~(144)~~] (145) "Reciprocal" or "interinsurance exchange" means an unincorporated
- 1028 association of persons:
  - 1029 (a) operating through an attorney-in-fact common to all of the persons; and
  - 1030 (b) exchanging insurance contracts with one another that provide insurance coverage
  - 1031 on each other.
- 1032 [~~(145)~~] (146) "Reinsurance" means an insurance transaction where an insurer, for
- 1033 consideration, transfers any portion of the risk it has assumed to another insurer. In referring to
- 1034 reinsurance transactions, this title sometimes refers to:
  - 1035 (a) the insurer transferring the risk as the "ceding insurer"; and
  - 1036 (b) the insurer assuming the risk as the:
    - 1037 (i) "assuming insurer"; or
    - 1038 (ii) "assuming reinsurer."
- 1039 [~~(146)~~] (147) "Reinsurer" means a person licensed in this state as an insurer with the
- 1040 authority to assume reinsurance.
- 1041 [~~(147)~~] (148) "Residential dwelling liability insurance" means insurance against
- 1042 liability resulting from or incident to the ownership, maintenance, or use of a residential
- 1043 dwelling that is a detached single family residence or multifamily residence up to four units.
- 1044 [~~(148)~~] (149) (a) "Retrocession" means reinsurance with another insurer of a liability
- 1045 assumed under a reinsurance contract.
  - 1046 (b) A reinsurer "retrocedes" when the reinsurer reinsures with another insurer part of a
  - 1047 liability assumed under a reinsurance contract.
- 1048 [~~(149)~~] (150) "Rider" means an endorsement to:
  - 1049 (a) an insurance policy; or
  - 1050 (b) an insurance certificate.

- 1051 [~~(150)~~] (151) (a) "Security" means a:
- 1052 (i) note;
- 1053 (ii) stock;
- 1054 (iii) bond;
- 1055 (iv) debenture;
- 1056 (v) evidence of indebtedness;
- 1057 (vi) certificate of interest or participation in a profit-sharing agreement;
- 1058 (vii) collateral-trust certificate;
- 1059 (viii) preorganization certificate or subscription;
- 1060 (ix) transferable share;
- 1061 (x) investment contract;
- 1062 (xi) voting trust certificate;
- 1063 (xii) certificate of deposit for a security;
- 1064 (xiii) certificate of interest of participation in an oil, gas, or mining title or lease or in
- 1065 payments out of production under such a title or lease;
- 1066 (xiv) commodity contract or commodity option;
- 1067 (xv) certificate of interest or participation in, temporary or interim certificate for,
- 1068 receipt for, guarantee of, or warrant or right to subscribe to or purchase any of the items listed
- 1069 in Subsections [~~(150)~~] (151)(a)(i) through (xiv); or
- 1070 (xvi) another interest or instrument commonly known as a security.
- 1071 (b) "Security" does not include:
- 1072 (i) any of the following under which an insurance company promises to pay money in a
- 1073 specific lump sum or periodically for life or some other specified period:
- 1074 (A) insurance;
- 1075 (B) an endowment policy; or
- 1076 (C) an annuity contract; or
- 1077 (ii) a burial certificate or burial contract.
- 1078 [~~(151)~~] (152) "Secondary medical condition" means a complication related to an
- 1079 exclusion from coverage in accident and health insurance.
- 1080 [~~(152)~~] (153) (a) "Self-insurance" means an arrangement under which a person
- 1081 provides for spreading its own risks by a systematic plan.

1082 (b) Except as provided in this Subsection [~~(152)~~] (153), "self-insurance" does not  
1083 include an arrangement under which a number of persons spread their risks among themselves.

1084 (c) "Self-insurance" includes:

1085 (i) an arrangement by which a governmental entity undertakes to indemnify an  
1086 employee for liability arising out of the employee's employment; and

1087 (ii) an arrangement by which a person with a managed program of self-insurance and  
1088 risk management undertakes to indemnify its affiliates, subsidiaries, directors, officers, or  
1089 employees for liability or risk that is related to the relationship or employment.

1090 (d) "Self-insurance" does not include an arrangement with an independent contractor.  
1091 [~~(153)~~] (154) "Sell" means to exchange a contract of insurance:

1092 (a) by any means;

1093 (b) for money or its equivalent; and

1094 (c) on behalf of an insurance company.

1095 [~~(154)~~] (155) "Short-term care insurance" means an insurance policy or rider  
1096 advertised, marketed, offered, or designed to provide coverage that is similar to long-term care  
1097 insurance, but that provides coverage for less than 12 consecutive months for each covered  
1098 person.

1099 [~~(155)~~] (156) "Significant break in coverage" means a period of 63 consecutive days  
1100 during each of which an individual does not have creditable coverage.

1101 [~~(156)~~] (157) "Small employer," in connection with a health benefit plan, means an  
1102 employer who, with respect to a calendar year and to a plan year:

1103 (a) employed an average of at least two employees but not more than 50 eligible  
1104 employees on each business day during the preceding calendar year; and

1105 (b) employs at least two employees on the first day of the plan year.

1106 [~~(157)~~] (158) "Special enrollment period," in connection with a health benefit plan, has  
1107 the same meaning as provided in federal regulations adopted pursuant to the Health Insurance  
1108 Portability and Accountability Act.

1109 [~~(158)~~] (159) (a) "Subsidiary" of a person means an affiliate controlled by that person  
1110 either directly or indirectly through one or more affiliates or intermediaries.

1111 (b) "Wholly owned subsidiary" of a person is a subsidiary of which all of the voting  
1112 shares are owned by that person either alone or with its affiliates, except for the minimum

1113 number of shares the law of the subsidiary's domicile requires to be owned by directors or  
1114 others.

1115 ~~[(159)]~~ (160) Subject to Subsection ~~[(85)]~~ (86)(b), "surety insurance" includes:

1116 (a) a guarantee against loss or damage resulting from the failure of a principal to pay or  
1117 perform the principal's obligations to a creditor or other obligee;

1118 (b) bail bond insurance; and

1119 (c) fidelity insurance.

1120 ~~[(160)]~~ (161) (a) "Surplus" means the excess of assets over the sum of paid-in capital  
1121 and liabilities.

1122 (b) (i) "Permanent surplus" means the surplus of a mutual insurer that is designated by  
1123 the insurer as permanent.

1124 (ii) Sections 31A-5-211, 31A-7-201, 31A-8-209, 31A-9-209, and 31A-14-209 require  
1125 that mutuals doing business in this state maintain specified minimum levels of permanent  
1126 surplus.

1127 (iii) Except for assessable mutuals, the minimum permanent surplus requirement is the  
1128 same as the minimum required capital requirement that applies to stock insurers.

1129 (c) "Excess surplus" means:

1130 (i) for a life insurer, accident and health insurer, health organization, or property and  
1131 casualty insurer as defined in Section 31A-17-601, the lesser of:

1132 (A) that amount of an insurer's or health organization's total adjusted capital that  
1133 exceeds the product of:

1134 (I) 2.5; and

1135 (II) the sum of the insurer's or health organization's minimum capital or permanent  
1136 surplus required under Section 31A-5-211, 31A-9-209, or 31A-14-205; or

1137 (B) that amount of an insurer's or health organization's total adjusted capital that  
1138 exceeds the product of:

1139 (I) 3.0; and

1140 (II) the authorized control level RBC as defined in Subsection 31A-17-601(8)(a); and

1141 (ii) for a monoline mortgage guaranty insurer, financial guaranty insurer, or title insurer  
1142 that amount of an insurer's paid-in-capital and surplus that exceeds the product of:

1143 (A) 1.5; and

1144 (B) the insurer's total adjusted capital required by Subsection 31A-17-609(1).  
1145 [~~(161)~~] (162) "Third party administrator" or "administrator" means a person who  
1146 collects charges or premiums from, or who, for consideration, adjusts or settles claims of  
1147 residents of the state in connection with insurance coverage, annuities, or service insurance  
1148 coverage, except:

- 1149 (a) a union on behalf of its members;
- 1150 (b) a person administering a:
  - 1151 (i) pension plan subject to the federal Employee Retirement Income Security Act of  
1152 1974;
  - 1153 (ii) governmental plan as defined in Section 414(d), Internal Revenue Code; or
  - 1154 (iii) nonelecting church plan as described in Section 410(d), Internal Revenue Code;
- 1155 (c) an employer on behalf of the employer's employees or the employees of one or  
1156 more of the subsidiary or affiliated corporations of the employer;
- 1157 (d) an insurer licensed under the following, but only for a line of insurance for which  
1158 the insurer holds a license in this state:
  - 1159 (i) Chapter 5, Domestic Stock and Mutual Insurance Corporations;
  - 1160 (ii) Chapter 7, Nonprofit Health Service Insurance Corporations;
  - 1161 (iii) Chapter 8, Health Maintenance Organizations and Limited Health Plans;
  - 1162 (iv) Chapter 9, Insurance Fraternal; or
  - 1163 (v) Chapter 14, Foreign Insurers; or
  - 1164 (e) a person:
    - 1165 (i) licensed or exempt from licensing under:
      - 1166 (A) Chapter 23a, Insurance Marketing - Licensing Producers, Consultants, and  
1167 Reinsurance Intermediaries; or
      - 1168 (B) Chapter 26, Insurance Adjusters; and
    - 1169 (ii) whose activities are limited to those authorized under the license the person holds  
1170 or for which the person is exempt.
- 1171 [~~(162)~~] (163) "Title insurance" means the insuring, guaranteeing, or indemnifying of an  
1172 owner of real or personal property or the holder of liens or encumbrances on that property, or  
1173 others interested in the property against loss or damage suffered by reason of liens or  
1174 encumbrances upon, defects in, or the unmarketability of the title to the property, or invalidity

1175 or unenforceability of any liens or encumbrances on the property.

1176 ~~[(163)]~~ (164) "Total adjusted capital" means the sum of an insurer's or health  
1177 organization's statutory capital and surplus as determined in accordance with:

1178 (a) the statutory accounting applicable to the annual financial statements required to be  
1179 filed under Section 31A-4-113; and

1180 (b) another item provided by the RBC instructions, as RBC instructions is defined in  
1181 Section 31A-17-601.

1182 ~~[(164)]~~ (165) (a) "Trustee" means "director" when referring to the board of directors of  
1183 a corporation.

1184 (b) "Trustee," when used in reference to an employee welfare fund, means an  
1185 individual, firm, association, organization, joint stock company, or corporation, whether acting  
1186 individually or jointly and whether designated by that name or any other, that is charged with  
1187 or has the overall management of an employee welfare fund.

1188 ~~[(165)]~~ (166) (a) "Unauthorized insurer," "unadmitted insurer," or "nonadmitted  
1189 insurer" means an insurer:

1190 (i) not holding a valid certificate of authority to do an insurance business in this state;

1191 or

1192 (ii) transacting business not authorized by a valid certificate.

1193 (b) "Admitted insurer" or "authorized insurer" means an insurer:

1194 (i) holding a valid certificate of authority to do an insurance business in this state; and

1195 (ii) transacting business as authorized by a valid certificate.

1196 ~~[(166)]~~ (167) "Underwrite" means the authority to accept or reject risk on behalf of the  
1197 insurer.

1198 ~~[(167)]~~ (168) "Vehicle liability insurance" means insurance against liability resulting  
1199 from or incident to ownership, maintenance, or use of a land vehicle or aircraft, exclusive of a  
1200 vehicle comprehensive or vehicle physical damage coverage under Subsection ~~[(137)]~~ (138).

1201 ~~[(168)]~~ (169) "Voting security" means a security with voting rights, and includes a  
1202 security convertible into a security with a voting right associated with the security.

1203 ~~[(169)]~~ (170) "Waiting period" for a health benefit plan means the period that must  
1204 pass before coverage for an individual, who is otherwise eligible to enroll under the terms of  
1205 the health benefit plan, can become effective.

1206 [~~(170)~~] (171) "Workers' compensation insurance" means:

1207 (a) insurance for indemnification of an employer against liability for compensation  
1208 based on:

1209 (i) a compensable accidental injury; and

1210 (ii) occupational disease disability;

1211 (b) employer's liability insurance incidental to workers' compensation insurance and  
1212 written in connection with workers' compensation insurance; and

1213 (c) insurance assuring to a person entitled to workers' compensation benefits the  
1214 compensation provided by law.

1215 Section 2. Section 31A-2-308 is amended to read:

1216 **31A-2-308. Enforcement penalties and procedures.**

1217 (1) (a) A person who violates any insurance statute or rule or any order issued under  
1218 Subsection 31A-2-201(4) shall forfeit to the state twice the amount of any profit gained from  
1219 the violation, in addition to any other forfeiture or penalty imposed.

1220 (b) (i) The commissioner may order an individual producer, surplus line producer,  
1221 limited line producer, customer service representative, managing general agent, reinsurance  
1222 intermediary, adjuster, or insurance consultant who violates an insurance statute or rule to  
1223 forfeit to the state not more than \$2,500 for each violation.

1224 (ii) The commissioner may order any other person who violates an insurance statute or  
1225 rule to forfeit to the state not more than \$5,000 for each violation.

1226 (c) (i) The commissioner may order an individual producer, surplus line producer,  
1227 limited line producer, customer service representative, managing general agent, reinsurance  
1228 intermediary, adjuster, or insurance consultant who violates an order issued under Subsection  
1229 31A-2-201(4) to forfeit to the state not more than \$2,500 for each violation. Each day the  
1230 violation continues is a separate violation.

1231 (ii) The commissioner may order any other person who violates an order issued under  
1232 Subsection 31A-2-201(4) to forfeit to the state not more than \$5,000 for each violation. Each  
1233 day the violation continues is a separate violation.

1234 (d) The commissioner may accept or compromise any forfeiture under this Subsection  
1235 (1) until after a complaint is filed under Subsection (2). After the filing of the complaint, only  
1236 the attorney general may compromise the forfeiture.

1237 (2) When a person fails to comply with an order issued under Subsection  
1238 31A-2-201(4), including a forfeiture order, the commissioner may file an action in any court of  
1239 competent jurisdiction or obtain a court order or judgment:

1240 (a) enforcing the commissioner's order;

1241 (b) (i) directing compliance with the commissioner's order and restraining further  
1242 violation of the order; and

1243 (ii) subjecting the person ordered to the procedures and sanctions available to the court  
1244 for punishing contempt if the failure to comply continues; or

1245 (c) imposing a forfeiture in an amount the court considers just, up to \$10,000 for each  
1246 day the failure to comply continues after the filing of the complaint until judgment is rendered.

1247 (3) (a) The Utah Rules of Civil Procedure govern actions brought under Subsection (2),  
1248 except that the commissioner may file a complaint seeking a court-ordered forfeiture under  
1249 Subsection (2)(c) no sooner than two weeks after giving written notice of the commissioner's  
1250 intention to proceed under Subsection (2)(c).

1251 (b) The commissioner's order issued under Subsection 31A-2-201(4) may contain a  
1252 notice of intention to seek a court-ordered forfeiture if the commissioner's order is disobeyed.

1253 (4) If, after a court order is issued under Subsection (2), the person fails to comply with  
1254 the commissioner's order or judgment:

1255 (a) the commissioner may certify the fact of the failure to the court by affidavit; and

1256 (b) the court may, after a hearing following at least five days written notice to the  
1257 parties subject to the order or judgment, amend the order or judgment to add the forfeiture or  
1258 forfeitures, as prescribed in Subsection (2)(c), until the person complies.

1259 (5) (a) The proceeds of ~~all~~ the forfeitures under this section, including collection  
1260 expenses, shall be paid into the General Fund.

1261 (b) The expenses of collection shall be credited to the department's budget.

1262 (c) The attorney general's budget shall be credited to the extent the department  
1263 reimburses the attorney general's office for its collection expenses under this section.

1264 (6) (a) Forfeitures and judgments under this section bear interest at the rate charged by  
1265 the United States Internal Revenue Service for past due taxes on the:

1266 (i) date of entry of the commissioner's order under Subsection (1); or

1267 (ii) date of judgment under Subsection (2).

1268 (b) Interest accrues from the later of the dates described in Subsection (6)(a) until the  
1269 forfeiture and accrued interest are fully paid.

1270 (7) A forfeiture may not be imposed under Subsection (2)(c) if:

1271 (a) at the time the forfeiture action is commenced, the person was in compliance with  
1272 the commissioner's order; or

1273 (b) the violation of the order occurred during the order's suspension.

1274 (8) The commissioner may seek an injunction as an alternative to issuing an order  
1275 under Subsection 31A-2-201(4).

1276 (9) (a) A person is guilty of a class B misdemeanor if that person:

1277 (i) intentionally violates:

1278 (A) an insurance statute of this state; or

1279 (B) an order issued under Subsection 31A-2-201(4);

1280 (ii) intentionally permits a person over whom that person has authority to violate:

1281 (A) an insurance statute of this state; or

1282 (B) an order issued under Subsection 31A-2-201(4); or

1283 (iii) intentionally aids any person in violating:

1284 (A) an insurance statute of this state; or

1285 (B) an order issued under Subsection 31A-2-201(4).

1286 (b) Unless a specific criminal penalty is provided elsewhere in this title, the person may  
1287 be fined not more than:

1288 (i) \$10,000 if a corporation; or

1289 (ii) \$5,000 if a person other than a corporation.

1290 (c) If the person is an individual, the person may, in addition, be imprisoned for up to  
1291 one year.

1292 (d) As used in this Subsection (9), "intentionally" has the same meaning as under  
1293 Subsection 76-2-103(1).

1294 (10) (a) A person who knowingly and intentionally violates Section 31A-4-102,  
1295 31A-8a-208, 31A-15-105, 31A-23a-116, or 31A-31-111 is guilty of a felony as provided in this  
1296 Subsection (10).

1297 (b) When the value of the property, money, or other things obtained or sought to be  
1298 obtained in violation of Subsection (10)(a):

- 1299 (i) is less than \$5,000, a person is guilty of a third degree felony; or  
 1300 (ii) is or exceeds \$5,000, a person is guilty of a second degree felony.
- 1301 (11) (a) After a hearing, the commissioner may, in whole or in part, revoke, suspend,  
 1302 place on probation, limit, or refuse to renew the licensee's license or certificate of authority:  
 1303 (i) when a licensee of the department, other than a domestic insurer:  
 1304 (A) persistently or substantially violates the insurance law; or  
 1305 (B) violates an order of the commissioner under Subsection 31A-2-201(4);  
 1306 (ii) if there are grounds for delinquency proceedings against the licensee under Section  
 1307 31A-27a-207; or  
 1308 (iii) if the licensee's methods and practices in the conduct of the licensee's business  
 1309 endanger, or the licensee's financial resources are inadequate to safeguard, the legitimate  
 1310 interests of the licensee's customers and the public.
- 1311 (b) Additional license termination or probation provisions for licensees other than  
 1312 insurers are set forth in Sections 31A-19a-303, 31A-19a-304, 31A-23a-111, 31A-23a-112,  
 1313 31A-25-208, 31A-25-209, 31A-26-213, 31A-26-214, 31A-35-501, and 31A-35-503.
- 1314 (12) The enforcement penalties and procedures set forth in this section are not  
 1315 exclusive, but are cumulative of other rights and remedies the commissioner has pursuant to  
 1316 applicable law.
- 1317 Section 3. Section **31A-2-404** is amended to read:  
 1318 **31A-2-404. Duties of the commissioner and Title and Escrow Commission.**
- 1319 (1) Notwithstanding the other provisions of this chapter, to the extent provided in this  
 1320 part, the commissioner shall administer and enforce the provisions in this title related to:  
 1321 (a) title insurance; and  
 1322 (b) escrow conducted by a title licensee or title insurer.
- 1323 (2) The commission shall:  
 1324 (a) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and  
 1325 subject to Subsection (3), make rules for the administration of the provisions in this title related  
 1326 to title insurance including rules related to:  
 1327 (i) rating standards and rating methods for a title licensee, as provided in Section  
 1328 31A-19a-209;  
 1329 (ii) the licensing for a title licensee, including the licensing requirements of [Sections

- 1330 ~~31A-23a-203 and]~~ Section 31A-23a-204;
- 1331 (iii) continuing education requirements of Section 31A-23a-202;
- 1332 (iv) examination procedures, after consultation with the commissioner and the
- 1333 commissioner's test administrator when required by Section 31A-23a-204; and
- 1334 (v) standards of conduct for a title licensee;
- 1335 (b) concur in the issuance and renewal of a license in accordance with Section
- 1336 31A-23a-105 or 31A-26-203;
- 1337 (c) in accordance with Section 31A-3-103, establish, with the concurrence of the
- 1338 commissioner, the fees imposed by this title on a title licensee;
- 1339 (d) in accordance with Section 31A-23a-415 determine, after consulting with the
- 1340 commissioner, the assessment on a title insurer as defined in Section 31A-23a-415;
- 1341 (e) conduct an administrative hearing not delegated by the commission to an
- 1342 administrative law judge related to the:
- 1343 (i) licensing of an applicant;
- 1344 (ii) conduct of a title licensee; or
- 1345 (iii) approval of a continuing education program required by Section 31A-23a-202;
- 1346 (f) with the concurrence of the commissioner, approve a continuing education program
- 1347 required by Section 31A-23a-202;
- 1348 (g) with the concurrence of the commissioner, impose a penalty:
- 1349 (i) under this title related to:
- 1350 (A) title insurance; or
- 1351 (B) escrow conducted by a title licensee;
- 1352 (ii) after investigation by the commissioner in accordance with Part 3, Procedures and
- 1353 Enforcement; and
- 1354 (iii) that is enforced by the commissioner;
- 1355 (h) advise the commissioner on the administration and enforcement of any matter
- 1356 affecting the title insurance industry;
- 1357 (i) advise the commissioner on matters affecting the commissioner's budget related to
- 1358 title insurance; and
- 1359 (j) perform other duties as provided in this title.
- 1360 (3) The commission may make a rule under this title only if at the time the commission

1361 files its proposed rule and rule analysis with the Division of Administrative Rules in  
1362 accordance with Section 63G-3-301, the commission provides the Real Estate Commission that  
1363 same information.

1364 (4) (a) The commissioner shall annually report the information described in Subsection  
1365 (4)(b) in writing to:

1366 (i) the commission; and

1367 (ii) the Business and Labor Interim Committee.

1368 (b) The information required to be reported under this Subsection (4):

1369 (i) may not identify a person; and

1370 (ii) shall include:

1371 (A) the number of complaints the commissioner receives with regard to transactions  
1372 involving title insurance or a title licensee during the calendar year immediately proceeding the  
1373 report;

1374 (B) the type of complaints described in Subsection (4)(b)(ii)(A); and

1375 (C) for each complaint described in Subsection (4)(b)(ii)(A):

1376 (I) any action taken by the commissioner with regard to the complaint; and

1377 (II) the time-period beginning the day on which a complaint is made and ending the  
1378 day on which the commissioner determines it will take no further action with regard to the  
1379 complaint.

1380 Section 4. Section **31A-22-625** is amended to read:

1381 **31A-22-625. Catastrophic coverage of mental health conditions.**

1382 (1) As used in this section:

1383 (a) (i) "Catastrophic mental health coverage" means coverage in a health benefit plan  
1384 that does not impose a lifetime limit, annual payment limit, episodic limit, inpatient or  
1385 outpatient service limit, or maximum out-of-pocket limit that places a greater financial burden  
1386 on an insured for the evaluation and treatment of a mental health condition than for the  
1387 evaluation and treatment of a physical health condition.

1388 (ii) "Catastrophic mental health coverage" may include a restriction on cost sharing  
1389 factors, such as deductibles, copayments, or coinsurance, before reaching a maximum  
1390 out-of-pocket limit.

1391 (iii) "Catastrophic mental health coverage" may include one maximum out-of-pocket

1392 limit for physical health conditions and another maximum out-of-pocket limit for mental health  
1393 conditions, except that if separate out-of-pocket limits are established, the out-of-pocket limit  
1394 for mental health conditions may not exceed the out-of-pocket limit for physical health  
1395 conditions.

1396 (b) (i) "50/50 mental health coverage" means coverage in a health benefit plan that  
1397 pays for at least 50% of covered services for the diagnosis and treatment of mental health  
1398 conditions.

1399 (ii) "50/50 mental health coverage" may include a restriction on:

1400 (A) episodic limits;

1401 (B) inpatient or outpatient service limits; or

1402 (C) maximum out-of-pocket limits.

1403 (c) "Large employer" is as defined in 42 U.S.C. Sec. 300gg-91.

1404 (d) (i) "Mental health condition" means a condition or disorder involving mental illness  
1405 that falls under a diagnostic category listed in the Diagnostic and Statistical Manual, as  
1406 periodically revised.

1407 (ii) "Mental health condition" does not include the following when diagnosed as the  
1408 primary or substantial reason or need for treatment:

1409 (A) a marital or family problem;

1410 (B) a social, occupational, religious, or other social maladjustment;

1411 (C) a conduct disorder;

1412 (D) a chronic adjustment disorder;

1413 (E) a psychosexual disorder;

1414 (F) a chronic organic brain syndrome;

1415 (G) a personality disorder;

1416 (H) a specific developmental disorder or learning disability; or

1417 (I) an intellectual disability.

1418 (e) "Small employer" is as defined in 42 U.S.C. Sec. 300gg-91.

1419 (2) (a) At the time of purchase and renewal, an insurer shall offer to a small employer  
1420 that it insures or seeks to insure a choice between:

1421 (i) (A) catastrophic mental health coverage; or

1422 (B) federally qualified mental health coverage as described in Subsection (3); and

- 1423 (ii) 50/50 mental health coverage.
- 1424 (b) In addition to complying with Subsection (2)(a), an insurer may offer to provide:
- 1425 (i) catastrophic mental health coverage, 50/50 mental health coverage, or both at levels
- 1426 that exceed the minimum requirements of this section; or
- 1427 (ii) coverage that excludes benefits for mental health conditions.
- 1428 (c) A small employer may, at its option, regardless of the employer's previous coverage
- 1429 for mental health conditions, choose either:
- 1430 (i) coverage offered under Subsection (2)(a)(i);
- 1431 (ii) 50/50 mental health coverage; or
- 1432 (iii) coverage offered under Subsection (2)(b).
- 1433 (d) An insurer is exempt from the 30% index rating restriction in Section
- 1434 31A-30-106.1 and, for the first year only that the employer chooses coverage that meets or
- 1435 exceeds catastrophic mental health coverage [~~is chosen~~], the 15% annual adjustment restriction
- 1436 in Section 31A-30-106.1, for any small employer with 20 or less enrolled employees who
- 1437 chooses coverage that meets or exceeds catastrophic mental health coverage.
- 1438 (3) An insurer shall offer a large employer mental health and substance use disorder
- 1439 benefit in compliance with Section 2705 of the Public Health Service Act, 42 U.S.C. Sec.
- 1440 300gg-26, and federal regulations adopted pursuant to that act.
- 1441 (4) (a) An insurer may provide catastrophic mental health coverage to a small employer
- 1442 through a managed care organization or system in a manner consistent with Chapter 8, Health
- 1443 Maintenance Organizations and Limited Health Plans, regardless of whether the insurance
- 1444 policy uses a managed care organization or system for the treatment of physical health
- 1445 conditions.
- 1446 (b) (i) Notwithstanding any other provision of this title, an insurer may:
- 1447 (A) establish a closed panel of providers for catastrophic mental health coverage; and
- 1448 (B) refuse to provide a benefit to be paid for services rendered by a nonpanel provider
- 1449 unless:
- 1450 (I) the insured is referred to a nonpanel provider with the prior authorization of the
- 1451 insurer; and
- 1452 (II) the nonpanel provider agrees to follow the insurer's protocols and treatment
- 1453 guidelines.

1454 (ii) If an insured receives services from a nonpanel provider in the manner permitted by  
1455 Subsection (4)(b)(i)(B), the insurer shall reimburse the insured for not less than 75% of the  
1456 average amount paid by the insurer for comparable services of panel providers under a  
1457 noncapitated arrangement who are members of the same class of health care providers.

1458 (iii) This Subsection (4)(b) may not be construed as requiring an insurer to authorize a  
1459 referral to a nonpanel provider.

1460 (c) To be eligible for catastrophic mental health coverage, a diagnosis or treatment of a  
1461 mental health condition shall be rendered:

1462 (i) by a mental health therapist as defined in Section 58-60-102; or

1463 (ii) in a health care facility:

1464 (A) licensed or otherwise authorized to provide mental health services pursuant to:

1465 (I) Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act; or

1466 (II) Title 62A, Chapter 2, Licensure of Programs and Facilities; and

1467 (B) that provides a program for the treatment of a mental health condition pursuant to a  
1468 written plan.

1469 (5) The commissioner may prohibit an insurance policy that provides mental health  
1470 coverage in a manner that is inconsistent with this section.

1471 (6) The commissioner shall:

1472 (a) adopt rules, in accordance with Title 63G, Chapter 3, Utah Administrative  
1473 Rulemaking Act, as necessary to ensure compliance with this section; and

1474 (b) provide general figures on the percentage of insurance policies that include:

1475 (i) no mental health coverage;

1476 (ii) 50/50 mental health coverage;

1477 (iii) catastrophic mental health coverage; and

1478 (iv) coverage that exceeds the minimum requirements of this section.

1479 (7) This section may not be construed as discouraging or otherwise preventing an  
1480 insurer from providing mental health coverage in connection with an individual insurance  
1481 policy.

1482 Section 5. Section **31A-22-629** is amended to read:

1483 **31A-22-629. Adverse benefit determination review process.**

1484 (1) As used in this section:

- 1485 (a) (i) "Adverse benefit determination" means the:
- 1486 (A) denial of a benefit;
- 1487 (B) reduction of a benefit;
- 1488 (C) termination of a benefit; or
- 1489 (D) failure to provide or make payment, in whole or in part, for a benefit.
- 1490 (ii) "Adverse benefit determination" includes:
- 1491 (A) denial, reduction, termination, or failure to provide or make payment that is based
- 1492 on a determination of an insured's or a beneficiary's eligibility to participate in a plan;
- 1493 (B) ~~[with respect to individual or group health plans, and income replacement or~~
- 1494 ~~disability income policies, a]~~ denial, reduction, or termination of, or a failure to provide or
- 1495 make payment, in whole or in part, for, a benefit resulting from the application of a utilization
- 1496 review; ~~and~~ or
- 1497 (C) failure to cover an item or service for which benefits are otherwise provided
- 1498 because it is determined to be:
- 1499 (I) experimental;
- 1500 (II) investigational; or
- 1501 (III) not medically necessary or appropriate.
- 1502 (b) "Independent review" means a process that:
- 1503 (i) is a voluntary option for the resolution of an adverse benefit determination;
- 1504 (ii) is conducted at the discretion of the claimant;
- 1505 (iii) is conducted by an independent review organization designated by the insurer;
- 1506 (iv) renders an independent and impartial decision on an adverse benefit determination
- 1507 submitted by an insured; and
- 1508 (v) may not require the insured to pay a fee for requesting the independent review.
- 1509 (c) "Independent review organization" means a person, subject to Subsection (6), who
- 1510 conducts an independent external review of adverse determinations.
- 1511 (d) "Insured" is as defined in Section 31A-1-301 and includes a person who is
- 1512 authorized to act on the insured's behalf.
- 1513 (e) "Insurer" is as defined in Section 31A-1-301 and includes:
- 1514 (i) a health maintenance organization; and
- 1515 (ii) a third party administrator that offers, sells, manages, or administers a health

1516 insurance policy or health maintenance organization contract that is subject to this title.

1517 (f) "Internal review" means the process an insurer uses to review an insured's adverse  
1518 benefit determination before the adverse benefit determination is submitted for independent  
1519 review.

1520 (2) This section applies generally to health insurance policies, health maintenance  
1521 organization contracts, and income replacement or disability income policies.

1522 (3) (a) An insured may submit an adverse benefit determination to the insurer.

1523 (b) The insurer shall conduct an internal review of the insured's adverse benefit  
1524 determination.

1525 (c) An insured who disagrees with the results of an internal review may submit the  
1526 adverse benefit determination for an independent review if the adverse benefit determination  
1527 involves:

1528 (i) payment of a claim regarding medical necessity; or

1529 (ii) denial of a claim regarding medical necessity.

1530 (4) The commissioner shall adopt rules that establish minimum standards for:

1531 (a) internal reviews;

1532 (b) independent reviews to ensure independence and impartiality;

1533 (c) the types of adverse benefit determinations that may be submitted to an independent  
1534 review; and

1535 (d) the timing of the review process, including an expedited review when medically  
1536 necessary.

1537 (5) Nothing in this section may be construed as:

1538 (a) expanding, extending, or modifying the terms of a policy or contract with respect to  
1539 benefits or coverage;

1540 (b) permitting an insurer to charge an insured for the internal review of an adverse  
1541 benefit determination;

1542 (c) restricting the use of arbitration in connection with or subsequent to an independent  
1543 review; or

1544 (d) altering the legal rights of any party to seek court or other redress in connection  
1545 with:

1546 (i) an adverse decision resulting from an independent review, except that if the insurer

1547 is the party seeking legal redress, the insurer shall pay for the reasonable attorney fees of the  
 1548 insured related to the action and court costs; or

1549 (ii) an adverse benefit determination or other claim that is not eligible for submission  
 1550 to independent review.

1551 (6) (a) An independent review organization in relation to the insurer may not be:

1552 (i) the insurer;

1553 (ii) the health plan;

1554 (iii) the health plan's fiduciary;

1555 (iv) the employer; or

1556 (v) an employee or agent of any one listed in Subsections (6)(a)(i) through (iv).

1557 (b) An independent review organization may not have a material professional, familial,  
 1558 or financial conflict of interest with:

1559 (i) the health plan;

1560 (ii) an officer, director, or management employee of the health plan;

1561 (iii) the enrollee;

1562 (iv) the enrollee's health care provider;

1563 (v) the health care provider's medical group or independent practice association;

1564 (vi) a health care facility where service would be provided; or

1565 (vii) the developer or manufacturer of the service that would be provided.

1566 Section 6. Section **31A-22-635** is amended to read:

1567 **31A-22-635. Uniform application -- Uniform waiver of coverage -- Information**  
 1568 **on Health Insurance Exchange.**

1569 (1) For purposes of this section, "insurer":

1570 (a) is defined in Subsection 31A-22-634(1); and

1571 (b) includes the state employee's risk pool under Section 49-20-202.

1572 (2) (a) Insurers offering a health benefit plan to an individual or small employer shall  
 1573 use a uniform application form.

1574 (b) The uniform application form:

1575 (i) except for cancer and transplants, may not include questions about an applicant's  
 1576 health history prior to the previous five years; and

1577 (ii) shall be shortened and simplified in accordance with rules adopted by the

1578 commissioner.

1579 (c) Insurers offering a health benefit plan to a small employer shall use a uniform  
1580 waiver of coverage form, which may not include health status related questions other than  
1581 pregnancy, and is limited to:

- 1582 (i) information that identifies the employee;
- 1583 (ii) proof of the employee's insurance coverage; and
- 1584 (iii) a statement that the employee declines coverage with a particular employer group.

1585 (3) Notwithstanding the requirements of Subsection (2)(a), the uniform application and  
1586 uniform waiver of coverage forms may, if the combination or modification is approved by the  
1587 commissioner, be combined or modified to facilitate a more efficient and consumer friendly  
1588 experience for:

- 1589 (a) enrollees using the Health Insurance Exchange [~~if the modification is approved by~~  
1590 ~~the commissioner.~~]; or
- 1591 (b) insurers using electronic applications.

1592 (4) The uniform application form, and uniform waiver form, shall be adopted and  
1593 approved by the commissioner in accordance with Title 63G, Chapter 3, Utah Administrative  
1594 Rulemaking Act.

1595 (5) (a) An insurer who offers a health benefit plan in either the group or individual  
1596 market on the Health Insurance Exchange created in Section 63M-1-2504, shall:

1597 (i) accept and process an electronic submission of the uniform application or uniform  
1598 waiver from the Health Insurance Exchange using the electronic standards adopted pursuant to  
1599 Section 63M-1-2506;

1600 (ii) if requested, provide the applicant with a copy of the completed application either  
1601 by mail or electronically;

1602 (iii) post all health benefit plans offered by the insurer in the defined contribution  
1603 arrangement market on the Health Insurance Exchange; and

1604 (iv) post the information required by Subsection (6) on the Health Insurance Exchange  
1605 for every health benefit plan the insurer offers on the Health Insurance Exchange.

1606 (b) Except as provided in Subsection (5)(c), an insurer who posts health benefit plans  
1607 on the Health Insurance Exchange may not directly or indirectly offer products on the Health  
1608 Insurance Exchange that are not health benefit plans.

1609 (c) Notwithstanding Subsection (5)(b), an insurer may offer a health savings account  
1610 on the Health Insurance Exchange.

1611 (6) An insurer shall provide the commissioner and the Health Insurance Exchange with  
1612 the following information for each health benefit plan submitted to the Health Insurance  
1613 Exchange, in the electronic format required by Subsection 63M-1-2506(1):

1614 (a) plan design, benefits, and options offered by the health benefit plan including state  
1615 mandates the plan does not cover;

1616 (b) information and Internet address to online provider networks;

1617 (c) wellness programs and incentives;

1618 (d) descriptions of prescription drug benefits, exclusions, or limitations;

1619 (e) the percentage of claims paid by the insurer within 30 days of the date a claim is  
1620 submitted to the insurer for the prior year; and

1621 (f) the claims denial and insurer transparency information developed in accordance  
1622 with Subsection 31A-22-613.5(4).

1623 (7) The [~~Insurance Department~~] department shall post on the Health Insurance  
1624 Exchange the [~~Insurance Department's~~] department's solvency rating for each insurer who posts  
1625 a health benefit plan on the Health Insurance Exchange. The solvency rating for each insurer  
1626 shall be based on methodology established by the [~~Insurance Department~~] department by  
1627 administrative rule and shall be updated each calendar year.

1628 (8) (a) The commissioner may request information from an insurer under Section  
1629 31A-22-613.5 to verify the data submitted to the [~~Insurance Department~~] department and to the  
1630 Health Insurance Exchange.

1631 (b) The commissioner shall regulate any fees charged by insurers to an enrollee for a  
1632 uniform application form or electronic submission of the application forms.

1633 Section 7. Section **31A-23a-101** is amended to read:

1634 **31A-23a-101. Purposes.**

1635 The purposes of this chapter include:

1636 (1) promoting the professional competence of insurance producers, surplus lines  
1637 producers, limited line producers, customer service representatives, consultants, managing  
1638 general agents, and reinsurance intermediaries;

1639 (2) providing maximum freedom of marketing methods for insurance, consistent with

1640 the interests of the Utah public;

1641 (3) preserving and encouraging competition at the consumer level;

1642 (4) regulating insurance marketing practices in conformity with the general purposes of  
1643 this title;

1644 (5) governing the qualifications and procedures for the licensing of insurance  
1645 producers, surplus lines producers, limited line producers, customer service representatives,  
1646 consultants, managing general agents, and reinsurance intermediaries; and

1647 (6) promoting uniform licensing requirements between the several states.

1648 Section 8. Section **31A-23a-102** is amended to read:

1649 **31A-23a-102. Definitions.**

1650 As used in this chapter:

1651 (1) "Bail bond producer" [~~means a person who:~~] is as defined in Section 31A-35-102.

1652 [~~(a) is appointed by:~~]

1653 [~~(i) a surety insurer that issues bail bonds; or~~]

1654 [~~(ii) a bail bond surety company licensed under Chapter 35, Bail Bond Act;~~]

1655 [~~(b) is designated to execute or countersign undertakings of bail in connection with a~~  
1656 ~~judicial proceeding; and]~~

1657 [~~(c) receives or is promised money or other things of value for engaging in an act~~  
1658 ~~described in Subsection (1)(b).]~~

1659 (2) "Escrow" means a license subline of authority in conjunction with the title  
1660 insurance line of authority that allows a person to conduct escrow as defined in Section  
1661 31A-1-301.

1662 (3) "Home state" means a state or territory of the United States or the District of  
1663 Columbia in which an insurance producer:

1664 (a) maintains the insurance producer's principal:

1665 (i) place of residence; or

1666 (ii) place of business; and

1667 (b) is licensed to act as an insurance producer.

1668 (4) "Insurer" is as defined in Section 31A-1-301, except that the following persons or  
1669 similar persons are not insurers for purposes of Part 7, Producer Controlled Insurers:

1670 (a) a risk retention group as defined in:

- 1671 (i) the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499;  
1672 (ii) the Risk Retention Act, 15 U.S.C. Sec. 3901 et seq.; and  
1673 (iii) Chapter 15, Part 2, Risk Retention Groups Act;
- 1674 (b) a residual market pool;  
1675 (c) a joint underwriting authority or association; and  
1676 (d) a captive insurer.
- 1677 (5) "License" is defined in Section 31A-1-301.
- 1678 (6) (a) "Managing general agent" means a person that:
- 1679 (i) manages all or part of the insurance business of an insurer, including the  
1680 management of a separate division, department, or underwriting office;
- 1681 (ii) acts as an agent for the insurer whether it is known as a managing general agent,  
1682 manager, or other similar term;
- 1683 (iii) produces and underwrites an amount of gross direct written premium equal to, or  
1684 more than 5% of, the policyholder surplus as reported in the last annual statement of the insurer  
1685 in any one quarter or year:
- 1686 (A) with or without the authority;  
1687 (B) separately or together with an affiliate; and  
1688 (C) directly or indirectly; and
- 1689 (iv) (A) adjusts or pays claims in excess of an amount determined by the  
1690 commissioner; or  
1691 (B) negotiates reinsurance on behalf of the insurer.
- 1692 (b) Notwithstanding Subsection (6)(a), the following persons may not be considered as  
1693 managing general agent for the purposes of this chapter:
- 1694 (i) an employee of the insurer;  
1695 (ii) a United States manager of the United States branch of an alien insurer;  
1696 (iii) an underwriting manager that, pursuant to contract:
- 1697 (A) manages all the insurance operations of the insurer;  
1698 (B) is under common control with the insurer;  
1699 (C) is subject to Chapter 16, Insurance Holding Companies; and  
1700 (D) is not compensated based on the volume of premiums written; and  
1701 (iv) the attorney-in-fact authorized by and acting for the subscribers of a reciprocal

1702 insurer or inter-insurance exchange under powers of attorney.

1703 (7) "Negotiate" means the act of conferring directly with or offering advice directly to a  
1704 purchaser or prospective purchaser of a particular contract of insurance concerning a  
1705 substantive benefit, term, or condition of the contract if the person engaged in that act:

1706 (a) sells insurance; or

1707 (b) obtains insurance from insurers for purchasers.

1708 (8) "Reinsurance intermediary" means:

1709 (a) a reinsurance intermediary-broker; or

1710 (b) a reinsurance intermediary-manager.

1711 (9) "Reinsurance intermediary-broker" means a person other than an officer or  
1712 employee of the ceding insurer, firm, association, or corporation who solicits, negotiates, or  
1713 places reinsurance cessions or retrocessions on behalf of a ceding insurer without the authority  
1714 or power to bind reinsurance on behalf of the insurer.

1715 (10) (a) "Reinsurance intermediary-manager" means a person who:

1716 (i) has authority to bind or who manages all or part of the assumed reinsurance  
1717 business of a reinsurer, including the management of a separate division, department, or  
1718 underwriting office; and

1719 (ii) acts as an agent for the reinsurer whether the person is known as a reinsurance  
1720 intermediary-manager, manager, or other similar term.

1721 (b) Notwithstanding Subsection (10)(a), the following persons may not be considered  
1722 reinsurance intermediary-managers for the purpose of this chapter with respect to the reinsurer:

1723 (i) an employee of the reinsurer;

1724 (ii) a United States manager of the United States branch of an alien reinsurer;

1725 (iii) an underwriting manager that, pursuant to contract:

1726 (A) manages all the reinsurance operations of the reinsurer;

1727 (B) is under common control with the reinsurer;

1728 (C) is subject to Chapter 16, Insurance Holding Companies; and

1729 (D) is not compensated based on the volume of premiums written; and

1730 (iv) the manager of a group, association, pool, or organization of insurers that:

1731 (A) engage in joint underwriting or joint reinsurance; and

1732 (B) are subject to examination by the insurance commissioner of the state in which the

1733 manager's principal business office is located.

1734 (11) "Search" means a license subline of authority in conjunction with the title  
1735 insurance line of authority that allows a person to issue title insurance commitments or policies  
1736 on behalf of a title insurer.

1737 (12) "Sell" means to exchange a contract of insurance:

1738 (a) by any means;

1739 (b) for money or its equivalent; and

1740 (c) on behalf of an insurance company.

1741 (13) "Solicit" means:

1742 (a) attempting to sell insurance;

1743 (b) asking or urging a person to apply for:

1744 (i) a particular kind of insurance; and

1745 (ii) insurance from a particular insurance company;

1746 (c) advertising insurance, including advertising for the purpose of obtaining leads for  
1747 the sale of insurance; or

1748 (d) holding oneself out as being in the insurance business.

1749 (14) "Terminate" means:

1750 (a) the cancellation of the relationship between:

1751 (i) an individual licensee or agency licensee and a particular insurer; or

1752 (ii) an individual licensee and a particular agency licensee; or

1753 (b) the termination of:

1754 (i) an individual licensee's or agency licensee's authority to transact insurance on behalf  
1755 of a particular insurance company; or

1756 (ii) an individual licensee's authority to transact insurance on behalf of a particular  
1757 agency licensee.

1758 (15) "Title marketing representative" means a person who:

1759 (a) represents a title insurer in soliciting, requesting, or negotiating the placing of:

1760 (i) title insurance; or

1761 (ii) escrow services; and

1762 (b) does not have a search or escrow license as provided in Section 31A-23a-106.

1763 (16) "Uniform application" means the version of the National Association of Insurance

1764 Commissioners' uniform application for resident and nonresident producer licensing at the time  
1765 the application is filed.

1766 (17) "Uniform business entity application" means the version of the National  
1767 Association of Insurance Commissioners' uniform business entity application for resident and  
1768 nonresident business entities at the time the application is filed.

1769 Section 9. Section **31A-23a-103** is amended to read:

1770 **31A-23a-103. Requirement of license.**

1771 (1) (a) Unless exempted from the licensing requirement under Section 31A-23a-201 or  
1772 31A-23a-207, a person may not perform, offer to perform, or advertise any service as a  
1773 producer, surplus lines producer, limited line producer, customer service representative,  
1774 consultant, managing general agent, or reinsurance intermediary in Utah, without a valid  
1775 individual or agency license issued under this chapter.

1776 (b) A valid license includes at least one license type and one line of authority  
1777 pertaining to that license type.

1778 (c) A person may not utilize the services of another as a producer, surplus lines  
1779 producer, limited line producer, customer service representative, consultant, managing general  
1780 agent, or reinsurance intermediary if that person knows or should know that the other does not  
1781 have a license as required by law.

1782 (2) This part may not be construed to require an insurer to obtain an insurance producer  
1783 license.

1784 (3) An insurance contract is not invalid as a result of a violation of this section.

1785 Section 10. Section **31A-23a-104** is amended to read:

1786 **31A-23a-104. Application for individual license -- Application for agency license.**

1787 (1) This section applies to an initial or renewal license as a:

1788 (a) producer;

1789 (b) surplus lines producer;

1790 [~~(b)~~] (c) limited line producer;

1791 [~~(c)~~] (d) customer service representative;

1792 [~~(d)~~] (e) consultant;

1793 [~~(e)~~] (f) managing general agent; or

1794 [~~(f)~~] (g) reinsurance intermediary.

1795 (2) (a) Subject to Subsection (2)(b), to obtain or renew an individual license, an  
1796 individual shall:

1797 (i) file an application for an initial or renewal individual license with the commissioner  
1798 on forms and in a manner the commissioner prescribes; and

1799 (ii) pay a license fee that is not refunded if the application:

1800 (A) is denied; or

1801 (B) is incomplete when filed and is never completed by the applicant.

1802 (b) An application described in this Subsection (2) shall provide:

1803 (i) information about the applicant's identity;

1804 (ii) the applicant's Social Security number;

1805 (iii) the applicant's personal history, experience, education, and business record;

1806 (iv) whether the applicant is 18 years of age or older;

1807 (v) whether the applicant has committed an act that is a ground for denial, suspension,  
1808 or revocation as set forth in Section 31A-23a-105 or 31A-23a-111;

1809 (vi) if the application is for a resident individual producer license, certification that the  
1810 applicant complies with Section 31A-23a-203.5; and

1811 (vii) any other information the commissioner reasonably requires.

1812 (3) The commissioner may require a document reasonably necessary to verify the  
1813 information contained in an application filed under this section.

1814 (4) An applicant's Social Security number contained in an application filed under this  
1815 section is a private record under Section 63G-2-302.

1816 (5) (a) Subject to Subsection (5)(b), to obtain or renew an agency license, a person  
1817 shall:

1818 (i) file an application for an initial or renewal agency license with the commissioner on  
1819 forms and in a manner the commissioner prescribes; and

1820 (ii) pay a license fee that is not refunded if the application:

1821 (A) is denied; or

1822 (B) is incomplete when filed and is never completed by the applicant.

1823 (b) An application described in Subsection (5)(a) shall provide:

1824 (i) information about the applicant's identity;

1825 (ii) the applicant's federal employer identification number;

- 1826 (iii) the designated responsible licensed producer;
- 1827 (iv) the identity of ~~all~~ the owners, partners, officers, and directors;
- 1828 (v) whether the applicant has committed an act that is a ground for denial, suspension,
- 1829 or revocation as set forth in Section 31A-23a-105 or 31A-23a-111; and
- 1830 (vi) any other information the commissioner reasonably requires.

1831 Section 11. Section **31A-23a-105** is amended to read:

1832 **31A-23a-105. General requirements for individual and agency license issuance**  
1833 **and renewal.**

1834 (1) (a) The commissioner shall issue or renew a license to a person described in  
1835 Subsection (1)(b) to act as:

- 1836 (i) a producer;
- 1837 (ii) a surplus lines producer;
- 1838 ~~[(ii)]~~ (iii) a limited line producer;
- 1839 ~~[(iii)]~~ (iv) a customer service representative;
- 1840 ~~[(iv)]~~ (v) a consultant;
- 1841 ~~[(v)]~~ (vi) a managing general agent; or
- 1842 ~~[(vi)]~~ (vii) a reinsurance intermediary.

1843 (b) The commissioner shall issue or renew a license under Subsection (1)(a) to a  
1844 person who, as to the license type and line of authority classification applied for under Section  
1845 31A-23a-106:

- 1846 (i) satisfies the application requirements under Section 31A-23a-104;
- 1847 (ii) satisfies the character requirements under Section 31A-23a-107;
- 1848 (iii) satisfies any applicable continuing education requirements under Section  
1849 31A-23a-202;
- 1850 (iv) satisfies any applicable examination requirements under Section 31A-23a-108;
- 1851 (v) satisfies any applicable training period requirements under Section 31A-23a-203;
- 1852 (vi) if an applicant for a resident individual producer license, certifies that, to the extent  
1853 applicable, the applicant:
- 1854 (A) is in compliance with Section 31A-23a-203.5; and
- 1855 (B) will maintain compliance with Section 31A-23a-203.5 during the period for which  
1856 the license is issued or renewed;

- 1857 (vii) has not committed an act that is a ground for denial, suspension, or revocation as  
 1858 provided in Section 31A-23a-111;
- 1859 (viii) if a nonresident:
- 1860 (A) complies with Section 31A-23a-109; and
- 1861 (B) holds an active similar license in that person's state of residence;
- 1862 (ix) if an applicant for a title insurance producer license, satisfies the requirements of  
 1863 ~~[Sections 31A-23a-203 and]~~ Section 31A-23a-204;
- 1864 (x) if an applicant for a license to act as a life settlement provider or life settlement  
 1865 producer, satisfies the requirements of Section 31A-23a-117; and
- 1866 (xi) pays the applicable fees under Section 31A-3-103.
- 1867 (2) (a) This Subsection (2) applies to the following persons:
- 1868 (i) an applicant for a pending:
- 1869 (A) individual or agency producer license;
- 1870 (B) surplus lines producer license;
- 1871 ~~[(B)]~~ (C) limited line producer license;
- 1872 ~~[(C)]~~ (D) customer service representative license;
- 1873 ~~[(D)]~~ (E) consultant license;
- 1874 ~~[(E)]~~ (F) managing general agent license; or
- 1875 ~~[(F)]~~ (G) reinsurance intermediary license; or
- 1876 (ii) a licensed:
- 1877 (A) individual or agency producer;
- 1878 (B) surplus lines producer;
- 1879 ~~[(B)]~~ (C) limited line producer;
- 1880 ~~[(C)]~~ (D) customer service representative;
- 1881 ~~[(D)]~~ (E) consultant;
- 1882 ~~[(E)]~~ (F) managing general agent; or
- 1883 ~~[(F)]~~ (G) reinsurance intermediary.
- 1884 (b) A person described in Subsection (2)(a) shall report to the commissioner:
- 1885 (i) an administrative action taken against the person, including a denial of a new or  
 1886 renewal license application;
- 1887 (A) in another jurisdiction; or

1888 (B) by another regulatory agency in this state; and  
1889 (ii) a criminal prosecution taken against the person in any jurisdiction.  
1890 (c) The report required by Subsection (2)(b) shall:  
1891 (i) be filed:  
1892 (A) at the time the person files the application for an individual or agency license; and  
1893 (B) for an action or prosecution that occurs on or after the day on which the person  
1894 files the application:  
1895 (I) for an administrative action, within 30 days of the final disposition of the  
1896 administrative action; or  
1897 (II) for a criminal prosecution, within 30 days of the initial appearance before a court;  
1898 and  
1899 (ii) include a copy of the complaint or other relevant legal documents related to the  
1900 action or prosecution described in Subsection (2)(b).  
1901 (3) (a) The department may require a person applying for a license or for consent to  
1902 engage in the business of insurance to submit to a criminal background check as a condition of  
1903 receiving a license or consent.  
1904 (b) A person, if required to submit to a criminal background check under Subsection  
1905 (3)(a), shall:  
1906 (i) submit a fingerprint card in a form acceptable to the department; and  
1907 (ii) consent to a fingerprint background check by:  
1908 (A) the Utah Bureau of Criminal Identification; and  
1909 (B) the Federal Bureau of Investigation.  
1910 (c) For a person who submits a fingerprint card and consents to a fingerprint  
1911 background check under Subsection (3)(b), the department may request:  
1912 (i) criminal background information maintained pursuant to Title 53, Chapter 10, Part  
1913 2, Bureau of Criminal Identification, from the Bureau of Criminal Identification; and  
1914 (ii) complete Federal Bureau of Investigation criminal background checks through the  
1915 national criminal history system.  
1916 (d) Information obtained by the department from the review of criminal history records  
1917 received under this Subsection (3) shall be used by the department for the purposes of:  
1918 (i) determining if a person satisfies the character requirements under Section

- 1919 31A-23a-107 for issuance or renewal of a license;
- 1920 (ii) determining if a person has failed to maintain the character requirements under
- 1921 Section 31A-23a-107; and
- 1922 (iii) preventing a person who violates the federal Violent Crime Control and Law
- 1923 Enforcement Act of 1994, 18 U.S.C. Sec. 1033 [~~and 1034~~], from engaging in the business of
- 1924 insurance in the state.
- 1925 (e) If the department requests the criminal background information, the department
- 1926 shall:
- 1927 (i) pay to the Department of Public Safety the costs incurred by the Department of
- 1928 Public Safety in providing the department criminal background information under Subsection
- 1929 (3)(c)(i);
- 1930 (ii) pay to the Federal Bureau of Investigation the costs incurred by the Federal Bureau
- 1931 of Investigation in providing the department criminal background information under
- 1932 Subsection (3)(c)(ii); and
- 1933 (iii) charge the person applying for a license or for consent to engage in the business of
- 1934 insurance a fee equal to the aggregate of Subsections (3)(e)(i) and (ii).
- 1935 (4) To become a resident licensee in accordance with Section 31A-23a-104 and this
- 1936 section, a person licensed as one of the following in another state who moves to this state shall
- 1937 apply within 90 days of establishing legal residence in this state:
- 1938 (a) insurance producer;
- 1939 (b) surplus lines producer;
- 1940 [~~(b)~~] (c) limited line producer;
- 1941 [~~(c)~~] (d) customer service representative;
- 1942 [~~(d)~~] (e) consultant;
- 1943 [~~(e)~~] (f) managing general agent; or
- 1944 [~~(f)~~] (g) reinsurance intermediary.
- 1945 (5) (a) The commissioner may deny a license application for a license listed in
- 1946 Subsection (5)(b) if the person applying for the license, as to the license type and line of
- 1947 authority classification applied for under Section 31A-23a-106:
- 1948 (i) fails to satisfy the requirements as set forth in this section; or
- 1949 (ii) commits an act that is grounds for denial, suspension, or revocation as set forth in

1950 Section 31A-23a-111.

1951 (b) This Subsection (5) applies to the following licenses:

1952 (i) producer;

1953 (ii) surplus lines producer;

1954 [~~(ii)~~] (iii) limited line producer;

1955 [~~(iii)~~] (iv) customer service representative;

1956 [~~(iv)~~] (v) consultant;

1957 [~~(v)~~] (vi) managing general agent; or

1958 [~~(vi)~~] (vii) reinsurance intermediary.

1959 (6) Notwithstanding the other provisions of this section, the commissioner may:

1960 (a) issue a license to an applicant for a license for a title insurance line of authority only  
1961 with the concurrence of the Title and Escrow Commission; and

1962 (b) renew a license for a title insurance line of authority only with the concurrence of  
1963 the Title and Escrow Commission.

1964 Section 12. Section **31A-23a-106** is amended to read:

1965 **31A-23a-106. License types.**

1966 (1) (a) A resident or nonresident license issued under this chapter shall be issued under  
1967 the license types described under Subsection (2).

1968 (b) A license type and a line of authority pertaining to a license type describe the type  
1969 of licensee and the lines of business that a licensee may sell, solicit, or negotiate. A license  
1970 type is intended to describe the matters to be considered under any education, examination, and  
1971 training required of a license applicant under Sections 31A-23a-108, 31A-23a-202, and  
1972 31A-23a-203.

1973 (2) (a) A producer license type includes the following lines of authority:

1974 (i) life insurance, including a nonvariable contract;

1975 (ii) variable contracts, including variable life and annuity, if the producer has the life  
1976 insurance line of authority;

1977 (iii) accident and health insurance, including a contract issued to a policyholder under  
1978 Chapter 7, Nonprofit Health Service Insurance Corporations, or Chapter 8, Health Maintenance  
1979 Organizations and Limited Health Plans;

1980 (iv) property insurance;

- 1981 (v) casualty insurance, including a surety or other bond;
- 1982 (vi) title insurance under one or more of the following categories:
- 1983 (A) search, including authority to act as a title marketing representative;
- 1984 (B) escrow, including authority to act as a title marketing representative; and
- 1985 (C) title marketing representative only; and
- 1986 (vii) personal lines insurance[~~;~~and].
- 1987 [~~(viii) surplus lines, if the producer has the property or casualty or both lines of~~
- 1988 ~~authority.~~]
- 1989 (b) A surplus lines producer license type includes the following lines of authority:
- 1990 (i) property insurance, if the person holds an underlying producer license with the
- 1991 property line of insurance; and
- 1992 (ii) casualty insurance, if the person holds an underlying producer license with the
- 1993 casualty line of authority.
- 1994 [~~(b)~~ (c)] A limited line producer license type includes the following limited lines of
- 1995 authority:
- 1996 (i) limited line credit insurance;
- 1997 (ii) travel insurance;
- 1998 (iii) motor club insurance;
- 1999 (iv) car rental related insurance;
- 2000 (v) legal expense insurance;
- 2001 (vi) crop insurance;
- 2002 (vii) self-service storage insurance;
- 2003 (viii) bail bond producer; and
- 2004 (ix) guaranteed asset protection waiver.
- 2005 [~~(c)~~ (d)] A customer service representative license type includes the following lines of
- 2006 authority, if held by the customer service representative's licensed producer, surplus lines
- 2007 producer, or consultant employer [~~producer~~]:
- 2008 (i) life insurance, including a nonvariable contract;
- 2009 (ii) accident and health insurance, including a contract issued to a policyholder under
- 2010 Chapter 7, Nonprofit Health Service Insurance Corporations, or Chapter 8, Health Maintenance
- 2011 Organizations and Limited Health Plans;

2012 (iii) property insurance;

2013 (iv) casualty insurance, including a surety or other bond; and

2014 (v) personal lines insurance[~~;~~and].

2015 [~~(vi) surplus lines, if the employer producer has the property or casualty or both lines of~~

2016 ~~authority.~~]

2017 [~~(d)~~ (e) A consultant license type includes the following lines of authority:

2018 (i) life insurance, including a nonvariable contract;

2019 (ii) variable contracts, including variable life and annuity, if the consultant has the life

2020 insurance line of authority;

2021 (iii) accident and health insurance, including a contract issued to a policyholder under

2022 Chapter 7, Nonprofit Health Service Insurance Corporations, or Chapter 8, Health Maintenance

2023 Organizations and Limited Health Plans;

2024 (iv) property insurance;

2025 (v) casualty insurance, including a surety or other bond; and

2026 (vi) personal lines insurance.

2027 [~~(e)~~ (f) A managing general agent license type includes the following lines of

2028 authority:

2029 (i) life insurance, including a nonvariable contract;

2030 (ii) variable contracts, including variable life and annuity, if the managing general

2031 agent has the life insurance line of authority;

2032 (iii) accident and health insurance, including a contract issued to a policyholder under

2033 Chapter 7, Nonprofit Health Service Insurance Corporations, or Chapter 8, Health Maintenance

2034 Organizations and Limited Health Plans;

2035 (iv) property insurance;

2036 (v) casualty insurance, including a surety or other bond; and

2037 (vi) personal lines insurance.

2038 [~~(f)~~ (g) A reinsurance intermediary license type includes the following lines of

2039 authority:

2040 (i) life insurance, including a nonvariable contract;

2041 (ii) variable contracts, including variable life and annuity, if the reinsurance

2042 intermediary has the life insurance line of authority;

2043 (iii) accident and health insurance, including a contract issued to a policyholder under  
 2044 Chapter 7, Nonprofit Health Service Insurance Corporations, or Chapter 8, Health Maintenance  
 2045 Organizations and Limited Health Plans;

2046 (iv) property insurance;

2047 (v) casualty insurance, including a surety or other bond; and

2048 (vi) personal lines insurance.

2049 ~~[(g)]~~ (h) A person who holds a license under Subsection (2)(a), ~~[(d);~~ (e), ~~[or]~~ (f), or (g)  
 2050 has the qualifications necessary to act as a holder of a license under Subsections (2)~~[(b)-and]~~ (c)  
 2051 and (d), except that the person may not act under Subsection (2)~~[(b)]~~(c)(viii) or (ix).

2052 (3) (a) The commissioner may by rule recognize other producer, surplus lines producer,  
 2053 limited line producer, customer service representative, consultant, managing general agent, or  
 2054 reinsurance intermediary lines of authority as to kinds of insurance not listed under Subsections  
 2055 (2)(a) through ~~[(f)]~~ (g).

2056 (b) Notwithstanding Subsection (3)(a), for purposes of title insurance the Title and  
 2057 Escrow Commission may by rule, with the concurrence of the commissioner and subject to  
 2058 Section 31A-2-404, recognize other categories for a title insurance producer line of authority  
 2059 not listed under Subsection (2)(a)(vi).

2060 (4) The variable contracts~~[-including variable life and annuity]~~ line of authority  
 2061 requires:

2062 ~~[(a) licensure as a registered agent or broker by the Financial Industry Regulatory~~  
 2063 ~~Authority; and]~~

2064 ~~[(b) current registration with a securities broker-dealer.]~~

2065 (a) for a producer,

2066 (i) licensure by the Financial Industry Regulatory Authority as a:

2067 (A) registered securities broker-dealer; or

2068 (B) securities agent; and

2069 (ii) for a securities agent, current registration with a securities broker-dealer; and

2070 (b) for a consultant:

2071 (i) registration with the Securities and Exchange Commission or licensure by the Utah  
 2072 Division of Securities as a:

2073 (A) securities investment advisor; or

2074 (B) securities investment advisor representative; and  
 2075 (ii) for a securities investment advisor representative, current association with a  
 2076 securities investment advisor.

2077 (5) A surplus lines producer is a producer who has a surplus lines [~~line of authority~~]  
 2078 license.

2079 Section 13. Section **31A-23a-107** is amended to read:

2080 **31A-23a-107. Character requirements.**

2081 [~~Each~~] An applicant for a license under this chapter shall show to the commissioner  
 2082 that:

2083 (1) the applicant has the intent in good faith, to engage in the type of business that the  
 2084 license applied for would permit;

2085 (2) (a) if a natural person, the applicant is competent and trustworthy; or~~;~~

2086 (b) if the applicant is an agency~~;~~~~aff~~;

2087 (i) the partners, directors, or principal officers or persons having comparable powers  
 2088 are trustworthy~~;~~; and

2089 (ii) that it will transact business in such a way that ~~aff~~ the acts that may only be  
 2090 performed by a licensed producer, surplus lines producer, limited line producer, customer  
 2091 service representative, consultant, managing general agent, or reinsurance intermediary are  
 2092 performed exclusively by natural persons who are licensed under this chapter to transact that  
 2093 type of business and designated on the agency's license;

2094 (3) the applicant intends to comply with Section 31A-23a-502; and

2095 (4) if a natural person, the applicant is at least 18 years of age.

2096 Section 14. Section **31A-23a-108** is amended to read:

2097 **31A-23a-108. Examination requirements.**

2098 (1) (a) The commissioner may require applicants for any particular license type under  
 2099 Section 31A-23a-106 to pass a line of authority examination as a requirement for a license,  
 2100 except that an examination may not be required of applicants for:

2101 (i) licenses under Subsections 31A-23a-106(2)~~(b)~~(c) and ~~(c)~~ (d); or

2102 (ii) other limited line license lines of authority recognized by the commissioner or the  
 2103 Title and Escrow Commission by rule as provided in Subsection 31A-23a-106(3).

2104 (b) The examination described in Subsection (1)(a):

- 2105 (i) shall reasonably relate to the line of authority for which it is prescribed; and  
2106 (ii) may be administered by the commissioner or as otherwise specified by rule.
- 2107 (2) The commissioner shall waive the requirement of an examination for a nonresident  
2108 applicant who:
- 2109 (a) applies for an insurance producer license in this state;  
2110 (b) has been licensed for the same line of authority in another state; and  
2111 (c) (i) is licensed in the state described in Subsection (2)(b) at the time the applicant  
2112 applies for an insurance producer license in this state; or  
2113 (ii) if the application is received within 90 days of the cancellation of the applicant's  
2114 previous license:
- 2115 (A) the prior state certifies that at the time of cancellation, the applicant was in good  
2116 standing in that state; or  
2117 (B) the state's producer database records maintained by the National Association of  
2118 Insurance Commissioners or the National Association of Insurance Commissioner's affiliates or  
2119 subsidiaries, indicates that the producer is or was licensed in good standing for the line of  
2120 authority requested.
- 2121 (3) A nonresident producer licensee who moves to this state and applies for a resident  
2122 license within 90 days of establishing legal residence in this state shall be exempt from any line  
2123 of authority examination that the producer was authorized on the producer's nonresident  
2124 producer license, except where the commissioner determines otherwise by rule.
- 2125 (4) This section's requirement may only be applied to applicants who are natural  
2126 persons.
- 2127 Section 15. Section **31A-23a-109** is amended to read:  
2128 **31A-23a-109. Nonresident jurisdictional agreement.**
- 2129 (1) (a) If a nonresident license applicant has a valid producer, surplus lines producer,  
2130 limited line producer, customer service representative, consultant, managing general agent, or  
2131 reinsurance intermediary license from the nonresident license applicant's home state and the  
2132 conditions of Subsection (1)(b) are met, the commissioner shall:
- 2133 (i) waive ~~all~~ the license requirements for a license under this chapter; and  
2134 (ii) issue the nonresident license applicant a nonresident license.  
2135 (b) Subsection (1)(a) applies if:

2136 (i) the nonresident license applicant:  
2137 (A) is licensed as a resident in the nonresident license applicant's home state at the time  
2138 the nonresident license applicant applies for a nonresident producer, surplus lines producer,  
2139 limited line producer, customer service representative, consultant, managing general agent, or  
2140 reinsurance intermediary license;  
2141 (B) has submitted the proper request for licensure;  
2142 (C) has submitted to the commissioner:  
2143 (I) the application for licensure that the nonresident license applicant submitted to the  
2144 applicant's home state; or  
2145 (II) a completed uniform application; and  
2146 (D) has paid the applicable fees under Section 31A-3-103; and  
2147 (ii) the nonresident license applicant's license in the applicant's home state is in good  
2148 standing.  
2149 (2) A nonresident applicant applying under Subsection (1) shall in addition to  
2150 complying with all license requirements for a license under this chapter execute, in a form  
2151 acceptable to the commissioner, an agreement to be subject to the jurisdiction of the Utah  
2152 commissioner and courts on any matter related to the applicant's insurance activities in this  
2153 state, on the basis of:  
2154 (a) service of process under Sections 31A-2-309 and 31A-2-310; or  
2155 (b) service authorized:  
2156 (i) in the Utah Rules of Civil Procedure; or  
2157 (ii) under Section 78B-3-206.  
2158 (3) The commissioner may verify a producer's licensing status through the producer  
2159 database maintained by:  
2160 (a) the National Association of Insurance Commissioners; or  
2161 (b) an affiliate or subsidiary of the National Association of Insurance Commissioners.  
2162 (4) The commissioner may not assess a greater fee for an insurance license or related  
2163 service to a person not residing in this state solely on the fact that the person does not reside in  
2164 this state.  
2165 Section 16. Section **31A-23a-111** is amended to read:  
2166 **31A-23a-111. Revocation, suspension, surrender, lapsing, limiting, or otherwise**

2167 **terminating a license -- Rulemaking for renewal or reinstatement.**

2168 (1) A license type issued under this chapter remains in force until:

2169 (a) revoked or suspended under Subsection (5);

2170 (b) surrendered to the commissioner and accepted by the commissioner in lieu of

2171 administrative action;

2172 (c) the licensee dies or is adjudicated incompetent as defined under:

2173 (i) Title 75, Chapter 5, Part 3, Guardians of Incapacitated Persons; or

2174 (ii) Title 75, Chapter 5, Part 4, Protection of Property of Persons Under Disability and

2175 Minors;

2176 (d) lapsed under Section 31A-23a-113; or

2177 (e) voluntarily surrendered.

2178 (2) The following may be reinstated within one year after the day on which the license

2179 is no longer in force:

2180 (a) a lapsed license; or

2181 (b) a voluntarily surrendered license, except that a voluntarily surrendered license may

2182 not be reinstated after the license period in which the license is voluntarily surrendered.

2183 (3) Unless otherwise stated in a written agreement for the voluntary surrender of a

2184 license, submission and acceptance of a voluntary surrender of a license does not prevent the

2185 department from pursuing additional disciplinary or other action authorized under:

2186 (a) this title; or

2187 (b) rules made under this title in accordance with Title 63G, Chapter 3, Utah

2188 Administrative Rulemaking Act.

2189 (4) A line of authority issued under this chapter remains in force until:

2190 (a) the qualifications pertaining to a line of authority are no longer met by the licensee;

2191 or

2192 (b) the supporting license type:

2193 (i) is revoked or suspended under Subsection (5);

2194 (ii) is surrendered to the commissioner and accepted by the commissioner in lieu of

2195 administrative action;

2196 [~~(iii) the licensee dies or is adjudicated incompetent as defined under:~~]2197 [~~(A) Title 75, Chapter 5, Part 3, Guardians of Incapacitated Persons; or~~]

2198 ~~[(B) Title 75, Chapter 5, Part 4, Protection of Property of Persons Under Disability and~~  
2199 ~~Minors;]~~

2200 ~~[(iv) lapsed] (iii) lapses~~ under Section 31A-23a-113; or

2201 ~~[(v)] (iv) is~~ voluntarily surrendered[-]; or

2202 (c) the licensee dies or is adjudicated incompetent as defined under:

2203 (i) Title 75, Chapter 5, Part 3, Guardians of Incapacitated Persons; or

2204 (ii) Title 75, Chapter 5, Part 4, Protection of Property of Persons Under Disability and  
2205 Minors.

2206 (5) (a) If the commissioner makes a finding under Subsection (5)(b), as part of an  
2207 adjudicative proceeding under Title 63G, Chapter 4, Administrative Procedures Act, the  
2208 commissioner may:

2209 (i) revoke:

2210 (A) a license; or

2211 (B) a line of authority;

2212 (ii) suspend for a specified period of 12 months or less:

2213 (A) a license; or

2214 (B) a line of authority;

2215 (iii) limit in whole or in part:

2216 (A) a license; or

2217 (B) a line of authority; or

2218 (iv) deny a license application.

2219 (b) The commissioner may take an action described in Subsection (5)(a) if the  
2220 commissioner finds that the licensee:

2221 (i) is unqualified for a license or line of authority under Section 31A-23a-104,  
2222 31A-23a-105, or 31A-23a-107;

2223 (ii) violates:

2224 (A) an insurance statute;

2225 (B) a rule that is valid under Subsection 31A-2-201(3); or

2226 (C) an order that is valid under Subsection 31A-2-201(4);

2227 (iii) is insolvent or the subject of receivership, conservatorship, rehabilitation, or other  
2228 delinquency proceedings in any state;

- 2229 (iv) fails to pay a final judgment rendered against the person in this state within 60  
2230 days after the day on which the judgment became final;
- 2231 (v) fails to meet the same good faith obligations in claims settlement that is required of  
2232 admitted insurers;
- 2233 (vi) is affiliated with and under the same general management or interlocking  
2234 directorate or ownership as another insurance producer that transacts business in this state  
2235 without a license;
- 2236 (vii) refuses:
- 2237 (A) to be examined; or
- 2238 (B) to produce its accounts, records, and files for examination;
- 2239 (viii) has an officer who refuses to:
- 2240 (A) give information with respect to the insurance producer's affairs; or
- 2241 (B) perform any other legal obligation as to an examination;
- 2242 (ix) provides information in the license application that is:
- 2243 (A) incorrect;
- 2244 (B) misleading;
- 2245 (C) incomplete; or
- 2246 (D) materially untrue;
- 2247 (x) violates an insurance law, valid rule, or valid order of another state's insurance  
2248 department;
- 2249 (xi) obtains or attempts to obtain a license through misrepresentation or fraud;
- 2250 (xii) improperly withholds, misappropriates, or converts money or properties received  
2251 in the course of doing insurance business;
- 2252 (xiii) intentionally misrepresents the terms of an actual or proposed:
- 2253 (A) insurance contract;
- 2254 (B) application for insurance; or
- 2255 (C) life settlement;
- 2256 (xiv) is convicted of a felony;
- 2257 (xv) admits or is found to have committed an insurance unfair trade practice or fraud;
- 2258 (xvi) in the conduct of business in this state or elsewhere:
- 2259 (A) uses fraudulent, coercive, or dishonest practices; or

2260 (B) demonstrates incompetence, untrustworthiness, or financial irresponsibility;  
2261 (xvii) has an insurance license, or its equivalent, denied, suspended, or revoked in  
2262 another state, province, district, or territory;  
2263 (xviii) forges another's name to:  
2264 (A) an application for insurance; or  
2265 (B) a document related to an insurance transaction;  
2266 (xix) improperly uses notes or another reference material to complete an examination  
2267 for an insurance license;  
2268 (xx) knowingly accepts insurance business from an individual who is not licensed;  
2269 (xxi) fails to comply with an administrative or court order imposing a child support  
2270 obligation;  
2271 (xxii) fails to:  
2272 (A) pay state income tax; or  
2273 (B) comply with an administrative or court order directing payment of state income  
2274 tax;  
2275 (xxiii) violates or permits others to violate the federal Violent Crime Control and Law  
2276 Enforcement Act of 1994, 18 U.S.C. Sec. 1033 [~~and 1034~~] and therefore under 18 U.S.C. Sec.  
2277 1033 is prohibited from engaging in the business of insurance; or  
2278 (xxiv) engages in a method or practice in the conduct of business that endangers the  
2279 legitimate interests of customers and the public.  
2280 (c) For purposes of this section, if a license is held by an agency, both the agency itself  
2281 and any individual designated under the license are considered to be the holders of the license.  
2282 (d) If an individual designated under the agency license commits an act or fails to  
2283 perform a duty that is a ground for suspending, revoking, or limiting the individual's license,  
2284 the commissioner may suspend, revoke, or limit the license of:  
2285 (i) the individual;  
2286 (ii) the agency, if the agency:  
2287 (A) is reckless or negligent in its supervision of the individual; or  
2288 (B) knowingly participates in the act or failure to act that is the ground for suspending,  
2289 revoking, or limiting the license; or  
2290 (iii) (A) the individual; and

- 2291 (B) the agency if the agency meets the requirements of Subsection (5)(d)(ii).
- 2292 (6) A licensee under this chapter is subject to the penalties for acting as a licensee
- 2293 without a license if:
- 2294 (a) the licensee's license is:
- 2295 (i) revoked;
- 2296 (ii) suspended;
- 2297 (iii) limited;
- 2298 (iv) surrendered in lieu of administrative action;
- 2299 (v) lapsed; or
- 2300 (vi) voluntarily surrendered; and
- 2301 (b) the licensee:
- 2302 (i) continues to act as a licensee; or
- 2303 (ii) violates the terms of the license limitation.
- 2304 (7) A licensee under this chapter shall immediately report to the commissioner:
- 2305 (a) a revocation, suspension, or limitation of the person's license in another state, the
- 2306 District of Columbia, or a territory of the United States;
- 2307 (b) the imposition of a disciplinary sanction imposed on that person by another state,
- 2308 the District of Columbia, or a territory of the United States; or
- 2309 (c) a judgment or injunction entered against that person on the basis of conduct
- 2310 involving:
- 2311 (i) fraud;
- 2312 (ii) deceit;
- 2313 (iii) misrepresentation; or
- 2314 (iv) a violation of an insurance law or rule.
- 2315 (8) (a) An order revoking a license under Subsection (5) or an agreement to surrender a
- 2316 license in lieu of administrative action may specify a time, not to exceed five years, within
- 2317 which the former licensee may not apply for a new license.
- 2318 (b) If no time is specified in an order or agreement described in Subsection (8)(a), the
- 2319 former licensee may not apply for a new license for five years from the day on which the order
- 2320 or agreement is made without the express approval by the commissioner.
- 2321 (9) The commissioner shall promptly withhold, suspend, restrict, or reinstate the use of

2322 a license issued under this part if so ordered by a court.

2323 (10) The commissioner shall by rule prescribe the license renewal and reinstatement  
2324 procedures in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

2325 Section 17. Section **31A-23a-113** is amended to read:

2326 **31A-23a-113. License lapse and voluntary surrender.**

2327 (1) (a) A license issued under this chapter shall lapse if the licensee fails to:

2328 (i) pay when due a fee under Section 31A-3-103;

2329 (ii) complete continuing education requirements under Section 31A-23a-202 before  
2330 submitting the license renewal application;

2331 (iii) submit a completed renewal application as required by Section 31A-23a-104;

2332 (iv) submit additional documentation required to complete the licensing process as  
2333 related to a specific license type or line of authority; or

2334 (v) maintain an active license in a resident state if the licensee is a nonresident  
2335 licensee.

2336 (b) (i) A licensee whose license lapses due to the following may request an action  
2337 described in Subsection (1)(b)(ii):

2338 (A) military service;

2339 (B) voluntary service for a period of time designated by the person for whom the  
2340 licensee provides voluntary service; or

2341 (C) some other extenuating circumstances, such as long-term medical disability.

2342 (ii) A licensee described in Subsection (1)(b)(i) may request:

2343 (A) reinstatement of the license no later than one year after the day on which the  
2344 license lapses; and

2345 (B) waiver of any of the following imposed for failure to comply with renewal  
2346 procedures:

2347 (I) an examination requirement;

2348 (II) reinstatement fees set under Section 31A-3-103;

2349 (III) continuing education requirements; or

2350 (IV) other sanction imposed for failure to comply with renewal procedures.

2351 (2) If a license issued under this chapter is voluntarily surrendered, the license or line  
2352 of authority may be reinstated:

- 2353 (a) during the license period in which the license is voluntarily surrendered; and  
2354 (b) no later than one year after the day on which the license is voluntarily surrendered.

2355 (3) A voluntarily surrendered license that is reinstated during the license period set  
2356 forth in Subsection (2) may not be reinstated until the person who voluntarily surrendered the  
2357 license complies with any applicable continuing education requirements for the period during  
2358 which the license was voluntarily surrendered.

2359 Section 18. Section **31A-23a-115.5** is amended to read:

2360 **31A-23a-115.5. Use of customer service representative.**

2361 A customer service representative licensed under this chapter:

2362 (1) may not maintain an office independent of the customer service representative's  
2363 licensed producer, surplus lines producer, or consultant employer for the purpose of conducting  
2364 insurance activities;

2365 (2) except as provided in Subsection (3), may not sell, solicit, negotiate, or bind  
2366 coverage; and

2367 (3) may provide a customer a quote on behalf of the customer service representative's  
2368 licensed producer, surplus lines producer, or consultant employer.

2369 Section 19. Section **31A-23a-203** is amended to read:

2370 **31A-23a-203. Training period requirements.**

2371 (1) A producer is eligible to [~~add the surplus lines of authority to the person's~~  
2372 ~~producer's license~~] become a surplus lines producer only if the producer:

2373 (a) has passed the applicable surplus lines producer examination;

2374 (b) has been a producer with property and casualty lines of authority for at least three  
2375 years during the four years immediately preceding the date of application; and

2376 (c) has paid the applicable fee under Section 31A-3-103.

2377 (2) A person is eligible to become a consultant only if the person has acted in a  
2378 capacity that would provide the person with preparation to act as an insurance consultant for a  
2379 period aggregating not less than three years during the four years immediately preceding the  
2380 date of application.

2381 (3) (a) A resident producer with an accident and health line of authority may only sell  
2382 long-term care insurance if the producer:

2383 (i) initially completes a minimum of three hours of long-term care training before

2384 selling long-term care coverage; and

2385 (ii) after completing the training required by Subsection (3)(a)(i), completes a  
2386 minimum of three hours of long-term care training during each subsequent two-year licensing  
2387 period.

2388 (b) A course taken to satisfy a long-term care training requirement may be used toward  
2389 satisfying a producer continuing education requirement.

2390 (c) Long-term care training is not a continuing education requirement to renew a  
2391 producer license.

2392 (d) An insurer that issues long-term care insurance shall demonstrate to the  
2393 commissioner, upon request, that a producer who is appointed by the insurer and who sells  
2394 long-term care insurance coverage is in compliance with this Subsection (3).

2395 (4) The training periods required under this section apply only to an individual  
2396 applying for a license under this chapter.

2397 Section 20. Section 31A-23a-205 is amended to read:

2398 **31A-23a-205. Special requirements for bail bond producers and bail bond**  
2399 **enforcement agents.**

2400 (1) As used in this section[, "bail"]:

2401 (a) "Bail bond producer" [~~and "bail"~~] is as defined in Section 31A-35-102.

2402 (b) "Bail enforcement agent" [~~have the same definitions as in Section 31A-35-102]~~ is  
2403 as defined in Section 53-11-102.

2404 (2) A bail bond producer may not operate in this state without:

2405 (a) an appointment from [~~one or more~~] an authorized bail bond surety [insurers or]  
2406 insurer and a designation from a licensed bail bond [surety companies:] agency, if the bail bond  
2407 producer submits bail bond business through an agency using a surety insurer; or

2408 (b) designation from a licensed bail bond agency, if the bail bond producer submits bail  
2409 bond business through an agency using real property or personal property or letter of credit  
2410 backing.

2411 (3) A bail bond enforcement agent may [~~not~~] only operate in this state [~~without an~~  
2412 ~~appointment from one or more~~] through a licensed bail bond [producers] agency.

2413 Section 21. Section 31A-23a-206 is amended to read:

2414 **31A-23a-206. Special requirements for variable contracts line of authority.**

- 2415 (1) Before applying for a variable contracts line of authority[;];  
 2416 (a) a producer [~~or consultant~~] shall be licensed under Section 61-1-3 as a:  
 2417 [~~(a)~~] (i) securities broker-dealer; or  
 2418 [~~(b)~~] (ii) securities agent[-]; and  
 2419 (b) a consultant shall be licensed under Section 61-1-3 as a:  
 2420 (i) securities investment advisor; or  
 2421 (ii) securities investment advisor representative.

2422 (2) A producer's or consultant's variable contracts line of authority is revoked on the day  
 2423 the producer's or consultant's securities related license under Section 61-1-3 is no longer valid.

2424 Section 22. Section **31A-23a-301** is amended to read:

2425 **31A-23a-301. Agency license.**

2426 An insurance organization shall be licensed as an agency if the insurance organization  
 2427 acts as:

- 2428 (1) a producer;  
 2429 (2) a surplus lines producer;  
 2430 [~~(2)~~] (3) a limited line producer;  
 2431 [~~(3)~~] (4) a consultant;  
 2432 [~~(4)~~] (5) a managing general agent; or  
 2433 [~~(5)~~] (6) a reinsurance intermediary.

2434 Section 23. Section **31A-23a-302** is amended to read:

2435 **31A-23a-302. Agency designations.**

2436 (1) An agency shall designate an individual that has an individual producer, surplus  
 2437 lines producer, limited line producer, customer service representative, consultant, managing  
 2438 general agent, or reinsurance intermediary license to act on the agency's behalf in order for the  
 2439 licensee to do business for the agency in this state.

2440 (2) An agency shall report to the commissioner, at intervals and in the form the  
 2441 commissioner establishes by rule:

- 2442 (a) a new designation; and  
 2443 (b) a terminated designation.

2444 (3) (a) An agency licensed under this chapter shall report to the commissioner the  
 2445 cause of termination of a designation if:

2446 (i) the reason for termination is a reason described in Subsection 31A-23a-111(5)(b);  
2447 or

2448 (ii) the agency has knowledge that the individual licensee is found to have engaged in  
2449 an activity described in Subsection 31A-23a-111(5)(b) by:

2450 (A) a court;

2451 (B) a government body; or

2452 (C) a self-regulatory organization, which the commissioner may define by rule made in  
2453 accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

2454 (b) The information provided the commissioner under Subsection (3)(a) is a private  
2455 record under Title 63G, Chapter 2, Government Records Access and Management Act.

2456 (c) An agency is immune from civil action, civil penalty, or damages if the agency  
2457 complies in good faith with this Subsection (3) in reporting to the commissioner the cause of  
2458 termination of a designation.

2459 (d) Notwithstanding any other provision in this section, an agency is not immune from  
2460 an action or resulting penalty imposed on the reporting agency as a result of proceedings  
2461 brought by or on behalf of the department if the action is based on evidence other than the  
2462 report submitted in compliance with this Subsection (3).

2463 (4) An agency licensed under this chapter may act in a capacity for which it is licensed  
2464 only through an individual who is licensed under this chapter to act in the same capacity.

2465 (5) An agency licensed under this chapter shall designate and report to the  
2466 commissioner in accordance with any rule made by the commissioner the name of the  
2467 designated responsible licensed individual who has authority to act on behalf of the agency in  
2468 [aH] the matters pertaining to compliance with this title and orders of the commissioner.

2469 (6) If an agency designates a licensee in reports submitted under Subsection (2) or (5),  
2470 there is a rebuttable presumption that the designated licensee acts on behalf of the agency.

2471 (7) (a) When a license is held by an agency, both the agency itself and any individual  
2472 designated under the agency license shall be considered to be the holder of the agency license  
2473 for purposes of this section.

2474 (b) If an individual designated under the agency license commits an act or fails to  
2475 perform a duty that is a ground for suspending, revoking, or limiting the agency license, the  
2476 commissioner may suspend, revoke, or limit the license of:

- 2477 (i) the individual;
- 2478 (ii) the agency, if the agency:
  - 2479 (A) is reckless or negligent in its supervision of the individual; or
  - 2480 (B) knowingly participates in the act or failure to act that is the ground for suspending,
  - 2481 revoking, or limiting the license; or
- 2482 (iii) (A) the individual; and
- 2483 (B) the agency if the agency meets the requirements of Subsection (7)(b)(ii).
- 2484 Section 24. Section **31A-23a-406** is amended to read:
- 2485 **31A-23a-406. Title insurance producer's business.**
- 2486 (1) A title insurance producer may do escrow involving real property transactions if all
- 2487 of the following exist:
  - 2488 (a) the title insurance producer is licensed with:
    - 2489 (i) the title line of authority; and
    - 2490 (ii) the escrow subline of authority;
  - 2491 (b) the title insurance producer is appointed by a title insurer authorized to do business
  - 2492 in the state;
  - 2493 (c) the title insurance producer issues one or more of the following as part of the
  - 2494 transaction:
    - 2495 (i) an owner's policy of title insurance; or
    - 2496 (ii) a lender's policy of title insurance;
    - 2497 (d) money deposited with the title insurance producer in connection with any escrow:
      - 2498 (i) is deposited:
        - 2499 (A) in a federally insured financial institution; and
        - 2500 (B) in a trust account that is separate from all other trust account money that is not
        - 2501 related to real estate transactions;
        - 2502 (ii) is the property of the one or more persons entitled to the money under the
        - 2503 provisions of the escrow; and
        - 2504 (iii) is segregated escrow by escrow in the records of the title insurance producer;
      - 2505 (e) earnings on money held in escrow may be paid out of the escrow account to any
      - 2506 person in accordance with the conditions of the escrow;
      - 2507 (f) the escrow does not require the title insurance producer to hold:

2508 (i) construction money; or  
2509 (ii) money held for exchange under Section 1031, Internal Revenue Code; and  
2510 (g) the title insurance producer shall maintain a physical office in Utah staffed by a  
2511 person with an escrow subline of authority who processes the escrow.  
2512 (2) Notwithstanding Subsection (1), a title insurance producer may engage in the  
2513 escrow business if:  
2514 (a) the escrow involves:  
2515 (i) a mobile home;  
2516 (ii) a grazing right;  
2517 (iii) a water right; or  
2518 (iv) other personal property authorized by the commissioner; and  
2519 (b) the title insurance producer complies with this section except for Subsection (1)(c).  
2520 (3) Money held in escrow:  
2521 (a) is not subject to any debts of the title insurance producer;  
2522 (b) may only be used to fulfill the terms of the individual escrow under which the  
2523 money is accepted; and  
2524 (c) may not be used until the conditions of the escrow are met.  
2525 (4) Assets or property other than escrow money received by a title insurance producer  
2526 in accordance with an escrow shall be maintained in a manner that will:  
2527 (a) reasonably preserve and protect the asset or property from loss, theft, or damages;  
2528 and  
2529 (b) otherwise comply with the general duties and responsibilities of a fiduciary or  
2530 bailee.  
2531 (5) (a) A check from the trust account described in Subsection (1)(d) may not be  
2532 drawn, executed, or dated, or money otherwise disbursed unless the segregated escrow account  
2533 from which money is to be disbursed contains a sufficient credit balance consisting of collected  
2534 and cleared money at the time the check is drawn, executed, or dated, or money is otherwise  
2535 disbursed.  
2536 (b) As used in this Subsection (5), money is considered to be "collected and cleared,"  
2537 and may be disbursed as follows:  
2538 (i) cash may be disbursed on the same day the cash is deposited;

2539 (ii) a wire transfer may be disbursed on the same day the wire transfer is deposited; and

2540 (iii) the proceeds of one or more of the following financial instruments may be  
2541 disbursed on the same day the financial instruments are deposited if received from a single  
2542 party to the real estate transaction and if the aggregate of the financial instruments for the real  
2543 estate transaction is less than \$10,000:

2544 (A) a cashier's check, certified check, or official check that is drawn on an existing  
2545 account at a federally insured financial institution;

2546 (B) a check drawn on the trust account of a principal broker or associate broker  
2547 licensed under Title 61, Chapter 2f, Real Estate Licensing and Practices Act, if the title  
2548 producer has reasonable and prudent grounds to believe sufficient money will be available  
2549 from the trust account on which the check is drawn at the time of disbursement of proceeds  
2550 from the title producer's escrow account;

2551 (C) a personal check not to exceed \$500 per closing; or

2552 (D) a check drawn on the escrow account of another title producer, if the title producer  
2553 in the escrow transaction has reasonable and prudent grounds to believe that sufficient money  
2554 will be available for withdrawal from the account upon which the check is drawn at the time of  
2555 disbursement of money from the escrow account of the title producer in the escrow  
2556 transaction[~~;~~or].

2557 [~~(E) a check issued by a farm credit service authorized under the Farm Credit Act of~~  
2558 ~~1971, 12 U.S.C. Sec. 2001 et seq., as amended.]~~

2559 (c) [~~Money received from a financial instrument described in Subsection (5)(b)(iii)(B)~~  
2560 ~~or (E)] A check or deposit not described in Subsection (5)(b) may be disbursed:~~

2561 (i) within the time limits provided under the Expedited Funds Availability Act, 12  
2562 U.S.C. Sec. 4001 et seq., as amended, and related regulations of the Federal Reserve System; or

2563 (ii) upon notification from the financial institution to which the money has been  
2564 deposited that final settlement has occurred on the deposited financial instrument.

2565 (6) A title insurance producer shall maintain a record of a receipt or disbursement of  
2566 escrow money.

2567 (7) A title insurance producer shall comply with:

2568 (a) Section 31A-23a-409;

2569 (b) Title 46, Chapter 1, Notaries Public Reform Act; and

2570 (c) any rules adopted by the Title and Escrow Commission, subject to Section  
2571 31A-2-404, that govern escrows.

2572 (8) If a title insurance producer conducts a search for real estate located in the state, the  
2573 title insurance producer shall conduct a minimum mandatory search, as defined by rule made  
2574 by the Title and Escrow Commission, subject to Section 31A-2-404.

2575 Section 25. Section **31A-23a-409** is amended to read:

2576 **31A-23a-409. Trust obligation for money collected.**

2577 (1) (a) Subject to Subsection (7), a licensee is a trustee for money that is paid to,  
2578 received by, or collected by a licensee for forwarding to insurers or to insureds.

2579 (b) (i) Except as provided in Subsection (1)(b)(ii), a licensee may not commingle trust  
2580 funds with:

2581 (A) the licensee's own money; or

2582 (B) money held in any other capacity.

2583 (ii) This Subsection (1)(b) does not apply to:

2584 (A) amounts necessary to pay bank charges; and

2585 (B) money paid by insureds and belonging in part to the licensee as a fee or  
2586 commission.

2587 (c) Except as provided under Subsection (4), a licensee owes to insureds and insurers  
2588 the fiduciary duties of a trustee with respect to money to be forwarded to insurers or insureds  
2589 through the licensee.

2590 (d) (i) Unless money is sent to the appropriate payee by the close of the next business  
2591 day after their receipt, the licensee shall deposit them in an account authorized under  
2592 Subsection (2).

2593 (ii) Money deposited under this Subsection (1)(d) shall remain in an account  
2594 authorized under Subsection (2) until sent to the appropriate payee.

2595 (2) Money required to be deposited under Subsection (1) shall be deposited:

2596 (a) in a federally insured trust account in a depository institution, as defined in Section  
2597 7-1-103, which:

2598 (i) has an office in this state, if the licensee depositing the money is a resident licensee;

2599 (ii) has federal deposit insurance; and

2600 (iii) is authorized by its primary regulator to engage in the trust business, as defined by

2601 Section 7-5-1, in this state; or

2602 (b) in some other account, approved by the commissioner by rule or order, providing  
2603 safety comparable to federally insured trust accounts.

2604 (3) It is not a violation of Subsection (2)(a) if the amounts in the accounts exceed the  
2605 amount of the federal insurance on the accounts.

2606 (4) A trust account into which money is deposited may be interest bearing. The  
2607 interest accrued on the account may be paid to the licensee, so long as the licensee otherwise  
2608 complies with this section and with the contract with the insurer.

2609 (5) A depository institution or other organization holding trust funds under this section  
2610 may not offset or impound trust account funds against debts and obligations incurred by the  
2611 licensee.

2612 (6) A licensee who, not being lawfully entitled to do so, diverts or appropriates any  
2613 portion of the money held under Subsection (1) to the licensee's own use, is guilty of theft  
2614 under Title 76, Chapter 6, Part 4, Theft. Section 76-6-412 applies in determining the  
2615 classification of the offense. Sanctions under Section 31A-2-308 also apply.

2616 (7) A nonresident licensee:

2617 (a) shall comply with Subsection (1)(a) by complying with the trust account  
2618 requirements of the nonresident licensee's home state; and

2619 (b) is not required to comply with the other provisions of this section.

2620 Section 26. Section **31A-23a-412** is amended to read:

2621 **31A-23a-412. Place of business and residence address -- Records.**

2622 (1) (a) A licensee under this chapter shall register and maintain with the commissioner:

2623 (i) the address and telephone numbers of the licensee's principal place of business; and

2624 (ii) a valid business email address at which the commissioner may contact the licensee.

2625 (b) If a licensee is an individual, in addition to complying with Subsection (1)(a) the  
2626 individual shall register and maintain with the commissioner the individual's residence address  
2627 and telephone number.

2628 (c) A licensee shall notify the commissioner within 30 days of a change of any of the  
2629 following required to be registered with the commissioner under this section:

2630 (i) an address;

2631 (ii) a telephone number; or

2632 (iii) a business email address.

2633 (2) (a) Except as provided under Subsection (3), a licensee under this chapter shall  
2634 keep at the principal place of business address registered under Subsection (1), separate and  
2635 distinct books and records of the transactions consummated under the Utah license.

2636 (b) The books and records described in Subsection (2)(a) shall:

2637 (i) be in an organized form;

2638 (ii) be available to the commissioner for inspection upon reasonable notice; and

2639 (iii) include all of the following:

2640 (A) if the licensee is a producer, surplus lines producer, limited line producer,  
2641 consultant, managing general agent, or reinsurance intermediary:

2642 (I) a record of each insurance contract procured by or issued through the licensee, with  
2643 the names of insurers and insureds, the amount of premium and commissions or other  
2644 compensation, and the subject of the insurance;

2645 (II) the names of any other producers, surplus lines producers, limited line producers,  
2646 consultants, managing general agents, or reinsurance intermediaries from whom business is  
2647 accepted, and of persons to whom commissions or allowances of any kind are promised or  
2648 paid; and

2649 (III) a record of the consumer complaints forwarded to the licensee by an insurance  
2650 regulator;

2651 (B) if the licensee is a consultant, a record of each agreement outlining the work  
2652 performed and the fee for the work; and

2653 (C) any additional information which:

2654 (I) is customary for a similar business; or

2655 (II) may reasonably be required by the commissioner by rule.

2656 (3) Subsection (2) is satisfied if the books and records specified in Subsection (2) can  
2657 be obtained immediately from a central storage place or elsewhere by on-line computer  
2658 terminals located at the registered address.

2659 (4) A licensee who represents only a single insurer satisfies Subsection (2) if the  
2660 insurer maintains the books and records pursuant to Subsection (2) at a place satisfying  
2661 Subsections (1) and (5).

2662 (5) (a) The books and records maintained under Subsection (2) or Section

2663 31A-23a-413 shall be available for the inspection of the commissioner during [aH] the business  
2664 hours for a period of time after the date of the transaction as specified by the commissioner by  
2665 rule, but in no case for less than the current calendar year plus three years.

2666 (b) Discarding books and records after the applicable record retention period has  
2667 expired does not place the licensee in violation of a later-adopted longer record retention  
2668 period.

2669 Section 27. Section **31A-25-203** is amended to read:

2670 **31A-25-203. General requirements for license issuance.**

2671 (1) The commissioner shall issue a license to act as a third party administrator to a  
2672 person who:

2673 (a) satisfies the character requirements under Section 31A-25-204;

2674 (b) satisfies the financial responsibility requirement under Section 31A-25-205;

2675 (c) has not committed an act that is a ground for denial, suspension, or revocation  
2676 provided in Section 31A-25-208;

2677 (d) if a nonresident, complies with Section 31A-25-206; and

2678 (e) pays the applicable fees under Section 31A-3-103.

2679 (2) (a) This Subsection (2) applies to the following persons:

2680 (i) an applicant for a third party administrator's license; or

2681 (ii) a licensed third party administrator.

2682 (b) A person described in Subsection (2)(a) shall report to the commissioner:

2683 (i) an administrative action taken against the person, including a denial of a new or  
2684 renewal license application:

2685 (A) in another jurisdiction; or

2686 (B) by another regulatory agency in this state; and

2687 (ii) a criminal prosecution taken against the person in any jurisdiction.

2688 (c) The report required by Subsection (2)(b) shall:

2689 (i) be filed:

2690 (A) at the time the person applies for a third party administrator's license; and

2691 (B) if an action or prosecution occurs on or after the day on which the person applies  
2692 for a third party administrator license:

2693 (I) for an administrative action, within 30 days of the final disposition of the

2694 administrative action; or  
2695 (II) for a criminal prosecution, within 30 days of the initial appearance before a court;  
2696 and  
2697 (ii) include a copy of the complaint or other relevant legal documents related to the  
2698 action or prosecution described in Subsection (2)(b).  
2699 (3) (a) The department may require a person applying for a license or for consent to  
2700 engage in the business of insurance to submit to a criminal background check as a condition of  
2701 receiving a license or consent.  
2702 (b) A person, if required to submit to a criminal background check under Subsection  
2703 (3)(a), shall:  
2704 (i) submit a fingerprint card in a form acceptable to the department; and  
2705 (ii) consent to a fingerprint background check by:  
2706 (A) the Utah Bureau of Criminal Identification; and  
2707 (B) the Federal Bureau of Investigation.  
2708 (c) For a person who submits a fingerprint card and consents to a fingerprint  
2709 background check under Subsection (3)(b), the department may request concerning a person  
2710 applying for a third party administrator's license:  
2711 (i) criminal background information maintained pursuant to Title 53, Chapter 10, Part  
2712 2, Bureau of Criminal Identification, from the Bureau of Criminal Identification; and  
2713 (ii) complete Federal Bureau of Investigation criminal background checks through the  
2714 national criminal history system.  
2715 (d) Information obtained by the department from the review of criminal history records  
2716 received under this Subsection (3) shall be used by the department for the purposes of:  
2717 (i) determining if a person satisfies the character requirements under Section  
2718 31A-25-204 for issuance or renewal of a license;  
2719 (ii) determining if a person has failed to maintain the character requirements under  
2720 Section 31A-25-204; and  
2721 (iii) preventing a person who violates the federal Violent Crime Control and Law  
2722 Enforcement Act of 1994, 18 U.S.C. [~~Secs.~~ Sec. 1033 [~~and 1034~~], from engaging in the  
2723 business of insurance in the state.  
2724 (e) If the department requests the criminal background information, the department

2725 shall:

2726 (i) pay to the Department of Public Safety the costs incurred by the Department of  
2727 Public Safety in providing the department criminal background information under Subsection  
2728 (3)(c)(i);

2729 (ii) pay to the Federal Bureau of Investigation the costs incurred by the Federal Bureau  
2730 of Investigation in providing the department criminal background information under  
2731 Subsection (3)(c)(ii); and

2732 (iii) charge the person applying for a license or for consent to engage in the business of  
2733 insurance a fee equal to the aggregate of Subsections (3)(e)(i) and (ii).

2734 (4) The commissioner may deny a license application to act as a third party  
2735 administrator to a person who:

2736 (a) fails to satisfy the requirements of this section; or

2737 (b) commits an act that is a ground for denial, suspension, or revocation provided in  
2738 Section 31A-25-208.

2739 Section 28. Section **31A-25-306** is amended to read:

2740 **31A-25-306. Payments by administrator.**

2741 ~~[All claims paid by the]~~ An administrator shall pay a claim from ~~[funds]~~ money  
2742 collected on behalf of the insurer ~~[shall be paid]~~ on drafts or checks as authorized by the  
2743 insurer.

2744 Section 29. Section **31A-26-203** is amended to read:

2745 **31A-26-203. Adjuster's license required.**

2746 (1) The commissioner shall issue a license to act as an independent adjuster or public  
2747 adjuster to a person who, as to the license classification applied for under Section 31A-26-204:

2748 (a) satisfies the character requirements under Section 31A-26-205;

2749 (b) satisfies the applicable continuing education requirements under Section  
2750 31A-26-206;

2751 (c) satisfies the applicable examination requirements under Section 31A-26-207;

2752 (d) has not committed an act that is a ground for denial, suspension, or revocation  
2753 provided for in Section 31A-26-213;

2754 (e) if a nonresident, complies with Section 31A-26-208; and

2755 (f) pays the applicable fees under Section 31A-3-103.

2756 (2) (a) This Subsection (2) applies to the following persons:  
2757 (i) an applicant for:  
2758 (A) an independent adjuster's license; or  
2759 (B) a public adjuster's license;  
2760 (ii) a licensed independent adjuster; or  
2761 (iii) a licensed public adjuster.  
2762 (b) A person described in Subsection (2)(a) shall report to the commissioner:  
2763 (i) an administrative action taken against the person, including a denial of a new or  
2764 renewal license application:  
2765 (A) in another jurisdiction; or  
2766 (B) by another regulatory agency in this state; and  
2767 (ii) a criminal prosecution taken against the person in any jurisdiction.  
2768 (c) The report required by Subsection (2)(b) shall:  
2769 (i) be filed:  
2770 (A) at the time the person applies for an adjustor's license; and  
2771 (B) if an action or prosecution occurs on or after the day on which the person applies  
2772 for an adjustor's license:  
2773 (I) for an administrative action, within 30 days of the final disposition of the  
2774 administrative action; or  
2775 (II) for a criminal prosecution, within 30 days of the initial appearance before a court;  
2776 and  
2777 (ii) include a copy of the complaint or other relevant legal documents related to the  
2778 action or prosecution described in Subsection (2)(b).  
2779 (3) (a) The department may require a person applying for a license or for consent to  
2780 engage in the business of insurance to submit to a criminal background check as a condition of  
2781 receiving a license or consent.  
2782 (b) A person, if required to submit to a criminal background check under Subsection  
2783 (3)(a), shall:  
2784 (i) submit a fingerprint card in a form acceptable to the department; and  
2785 (ii) consent to a fingerprint background check by:  
2786 (A) the Utah Bureau of Criminal Identification; and

- 2787 (B) the Federal Bureau of Investigation.
- 2788 (c) For a person who submits a fingerprint card and consents to a fingerprint  
2789 background check under Subsection (3)(b), the department may request concerning a person  
2790 applying for an independent or public adjuster's license:
- 2791 (i) criminal background information maintained pursuant to Title 53, Chapter 10, Part  
2792 2, Bureau of Criminal Identification, from the Bureau of Criminal Identification; and
- 2793 (ii) complete Federal Bureau of Investigation criminal background checks through the  
2794 national criminal history system.
- 2795 (d) Information obtained by the department from the review of criminal history records  
2796 received under this Subsection (3) shall be used by the department for the purposes of:
- 2797 (i) determining if a person satisfies the character requirements under Section  
2798 31A-26-205 for issuance or renewal of a license;
- 2799 (ii) determining if a person has failed to maintain the character requirements under  
2800 Section 31A-26-205; and
- 2801 (iii) preventing a person who violates the federal Violent Crime Control and Law  
2802 Enforcement Act of 1994, 18 U.S.C. [~~Secs.~~] Sec. 1033 [~~and 1034~~], from engaging in the  
2803 business of insurance in the state.
- 2804 (e) If the department requests the criminal background information, the department  
2805 shall:
- 2806 (i) pay to the Department of Public Safety the costs incurred by the Department of  
2807 Public Safety in providing the department criminal background information under Subsection  
2808 (3)(c)(i);
- 2809 (ii) pay to the Federal Bureau of Investigation the costs incurred by the Federal Bureau  
2810 of Investigation in providing the department criminal background information under  
2811 Subsection (3)(c)(ii); and
- 2812 (iii) charge the person applying for a license or for consent to engage in the business of  
2813 insurance a fee equal to the aggregate of Subsections (3)(e)(i) and (ii).
- 2814 (4) The commissioner may deny a license application to act as an independent adjuster  
2815 or public adjuster to a person who, as to the license classification applied for under Section  
2816 31A-26-204:
- 2817 (a) fails to satisfy the requirements in this section; or

2818 (b) commits an act that is a ground for denial, suspension, or revocation provided for in  
2819 Section 31A-26-213.

2820 (5) Notwithstanding the other provisions of this section, the commissioner may:

2821 (a) issue a license to an applicant for a license for a title insurance classification only  
2822 with the concurrence of the Title and Escrow Commission; or

2823 (b) renew a license for a title insurance classification only with the concurrence of the  
2824 Title and Escrow Commission.

2825 Section 30. Section 31A-27-503 is amended to read:

2826 **31A-27-503. Commissioner's administrative actions.**

2827 (1) (a) The commissioner may take an action described in Subsection (1)(b) whenever  
2828 the commissioner has reasonable cause to believe, and determines after a hearing that an  
2829 insurer:

2830 (i) has committed or engaged in an act, practice, or transaction that would subject the  
2831 insurer to a formal delinquency proceeding under Chapter 27a, Insurer Receivership Act;

2832 (ii) is committing or engaging in an act, practice, or transaction that would subject the  
2833 insurer to a formal delinquency proceeding under Chapter 27a, Insurer Receivership Act;

2834 (iii) is about to commit or engage in an act, practice, or transaction that would subject  
2835 the insurer to a formal delinquency proceeding under Chapter 27a, Insurer Receivership Act;

2836 [or]

2837 (iv) is in or is about to be in a condition that would subject the insurer to a formal  
2838 delinquency proceeding under Chapter 27a, Insurer Receivership Act[-]; or

2839 (v) is in hazardous financial condition or potentially hazardous financial condition, as  
2840 defined by rule made under Subsection 31A-27a-101(3)(c).

2841 (b) If the conditions of Subsection (1)(a) are met, the commissioner may make and  
2842 serve upon the insurer and any other persons whose action or forbearance from action is  
2843 reasonably necessary, those orders, other than a seizure order under Section 31A-27a-201, that  
2844 are reasonably necessary to correct, eliminate, or remedy the act, practice, transaction, or  
2845 condition described in Subsection (1)(a).

2846 (c) The commissioner may issue an order for the insurer to submit to supervision by a  
2847 supervisor appointed by the commissioner until the act, practice, transaction, or condition that  
2848 is the ground for the order has been halted or corrected.

2849 (2) (a) The commissioner may make and serve an order issued under Subsection (1)  
2850 without notice and before a hearing if:

2851 (i) the conditions of Subsection (1) are satisfied; and

2852 (ii) it appears to the commissioner that irreparable harm to the property or business of  
2853 the insurer or to the interests of its policyholders, creditors, or the public may occur unless the  
2854 commissioner issues, with immediate effect, the order.

2855 (b) The commissioner shall serve the insurer with an order described in this Subsection  
2856 (2) and a notice of agency action, containing a statement of the reasons why irreparable harm is  
2857 threatened unless the order is issued with immediate effect.

2858 (3) (a) If the commissioner issues an order for supervision of an insurer under  
2859 Subsection (1) or (2), the commissioner shall:

2860 (i) notify the insurer that the insurer is under the supervision of the commissioner; and

2861 (ii) explain the reasons for that supervision.

2862 (b) During the period of supervision, the commissioner may prohibit the insurer from  
2863 doing any of the following, without the prior approval of the commissioner or a supervisor  
2864 appointed by the commissioner:

2865 (i) transferring any of its assets or its business in force;

2866 (ii) withdrawing funds from any of its bank accounts;

2867 (iii) lending any of its funds;

2868 (iv) investing any of its funds;

2869 (v) transferring any of its property;

2870 (vi) incurring any debt, obligation, or liability other than in the ordinary and usual  
2871 course of business; or

2872 (vii) entering into any new reinsurance contract or treaty.

2873 (4) (a) If the commissioner issues a summary order before a hearing under Subsection  
2874 (2), the insurer may waive the commissioner's hearing and apply for immediate judicial relief  
2875 by any remedy afforded by law, without first exhausting the insurer's administrative remedies.

2876 (b) If the insurer has a hearing before the commissioner, the insurer and any person  
2877 whose interests are substantially affected are entitled to judicial review of any order issued by  
2878 the commissioner.

2879 Section 31. Section **31A-27a-101** is amended to read:

2880           **31A-27a-101. Title -- Construction -- Commissioner's powers.**  
2881           (1) This chapter is known as the "Insurer Receivership Act."  
2882           (2) The proceedings authorized by this chapter may be applied to:  
2883           (a) all insurers and reinsurers:  
2884           (i) who are doing, or have done, an insurance business in this state; and  
2885           (ii) against whom claims arising from that business may exist;  
2886           (b) all insurers who have the appearance of or claim they do an insurance business in  
2887 this state;  
2888           (c) all insurers who have insureds resident in this state; and  
2889           (d) all other persons organized or in the process of organizing to do an insurance  
2890 business as an insurer in this state.  
2891           (3) This chapter shall be liberally construed to protect the interests of insureds,  
2892 claimants, creditors, and the public generally through:  
2893           (a) early detection of any potentially hazardous condition in an insurer;  
2894           (b) prompt application of appropriate corrective measures;  
2895           (c) the commissioner making rules pertaining to Subsections (3)(a) and (b):  
2896           (i) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and  
2897           (ii) that are similar to those set forth in the Model Regulation to Define Standards and  
2898 Commissioner's Authority for Companies Deemed to be in Hazardous Financial Condition of  
2899 the National Association of Insurance Commissioners;  
2900           ~~(d)~~ (d) improved methods for conserving and rehabilitating insurers;  
2901           ~~(e)~~ (e) enhanced efficiency and economy of liquidation, through clarification of the  
2902 law, to minimize legal uncertainty and litigation;  
2903           ~~(f)~~ (f) apportionment of any unavoidable loss in accordance with the statutory  
2904 priorities set out in this chapter;  
2905           ~~(g)~~ (g) lessening the problems of interstate receivership by:  
2906           (i) facilitating cooperation among states in delinquency proceedings; and  
2907           (ii) extending the scope of personal jurisdiction over debtors of the insurer outside this  
2908 state;  
2909           ~~(h)~~ (h) regulation of the business of insurance by the impact of the law relating to  
2910 delinquency procedures and by substantive rules; and

2911           ~~(h)~~ (i) providing for a comprehensive scheme for the receivership of insurance  
2912 companies and those subject to this chapter as part of the regulation of the business of  
2913 insurance in this state.

2914           (4) A proceeding in the case of insurer insolvency and delinquency are integral aspects  
2915 of the business of insurance and are of vital public interest and concern.

2916           (5) This chapter does not limit the powers granted the commissioner by other  
2917 provisions of law.

2918           (6) ~~AH~~ The powers and authority of a receiver under this chapter are:

2919           (a) cumulative; and

2920           (b) in addition to any power or authority available to a receiver under a law other than  
2921 this chapter.

2922           Section 32. Section **31A-29-112** is amended to read:

2923           **31A-29-112. Medicaid recipients.**

2924           (1) If authorized by federal statutes or rules, an individual receiving Medicaid benefits  
2925 may continue to receive those benefits while satisfying the preexisting condition requirements  
2926 established by Section 31A-29-113 and the terms of the pool policy issued under this chapter.

2927           (2) If allowed by federal statute, federal regulation, state statute, or rule, the  
2928 Department of Health shall allocate premiums paid to the pool by an individual receiving  
2929 Medicaid benefits to that individual's spenddown for purposes of the Medicaid program.

2930           (3) (a) If an individual continues to receive Medicaid benefits after the requirements for  
2931 a preexisting condition are satisfied, the pool administrator may not issue a pool policy or  
2932 allow that individual to receive any benefit from the pool.

2933           (b) If an individual continues to receive Medicaid benefits when the requirements for a  
2934 preexisting condition are satisfied, the pool administrator shall give any premiums collected by  
2935 it during the preexisting conditions period to the Medicaid program.

2936           (4) (a) If an enrollee becomes eligible to receive Medicaid benefits, the enrollee's  
2937 coverage by the pool terminates as of the effective date of Medicaid coverage.

2938           (b) The pool administrator shall:

2939           (i) include a provision in the pool policy requiring an enrollee to provide written notice  
2940 to the pool administration if the enrollee becomes covered by Medicaid; and

2941           (ii) terminate an enrollee's coverage by the pool as of the effective date of the enrollee's

2942 Medicaid coverage when the pool administrator becomes aware that the enrollee is covered by  
2943 Medicaid.

2944 (5) If an individual terminates coverage under Medicaid and applies for coverage under  
2945 a pool policy within ~~[45]~~ 62 days after terminating the coverage, the individual may begin  
2946 coverage under a pool policy as of the date that Medicaid coverage terminated, if an individual  
2947 meets the other eligibility requirements of the chapter and pays the required premium.

2948 (6) Notwithstanding Subsections 31A-29-111(1)(b)(i) and (2)(b)(i), an individual is  
2949 eligible for coverage by the pool if the requirements of Section 31A-29-111 are met and if:

2950 (a) the individual's eligibility for Medicaid requires a spenddown, as defined by rule,  
2951 that exceeds the premium for a pool policy; or

2952 (b) the individual is eligible for the Primary Care Network program administered by  
2953 the Department of Health.

2954 Section 33. Section **31A-30-103** is amended to read:

2955 **31A-30-103. Definitions.**

2956 As used in this chapter:

2957 (1) "Actuarial certification" means a written statement by a member of the American  
2958 Academy of Actuaries or other individual approved by the commissioner that a covered carrier  
2959 is in compliance with Sections 31A-30-106 and 31A-30-106.1, based upon the examination of  
2960 the covered carrier, including review of the appropriate records and of the actuarial  
2961 assumptions and methods used by the covered carrier in establishing premium rates for  
2962 applicable health benefit plans.

2963 (2) "Affiliate" or "affiliated" means any entity or person who directly or indirectly  
2964 through one or more intermediaries, controls or is controlled by, or is under common control  
2965 with, a specified entity or person.

2966 (3) "Base premium rate" means, for each class of business as to a rating period, the  
2967 lowest premium rate charged or that could have been charged under a rating system for that  
2968 class of business by the covered carrier to covered insureds with similar case characteristics for  
2969 health benefit plans with the same or similar coverage.

2970 ~~[(4) "Basic benefit plan" or "basic coverage" means a health benefit plan that:]~~

2971 ~~[(a) until January 1, 2012:]~~

2972 ~~[(i) is a federally qualified high deductible health plan;]~~

2973           ~~[(ii) has a deductible that has the lowest deductible that qualifies as a federally~~  
2974 ~~qualified high deductible health plan as adjusted by federal law; and]~~

2975           ~~[(iii) does not exceed an annual out-of-pocket maximum equal to three times the~~  
2976 ~~amount of the deductible; and]~~

2977           ~~[(b) on or after January 1, 2012, is actuarially equivalent to the NetCare plan with the~~  
2978 ~~highest actuarial value, as provided in Section 31A-22-724.]~~

2979           ~~[(5)] (4) "Carrier" means any person or entity that provides health insurance in this~~  
2980 ~~state including:~~

2981           (a) an insurance company;

2982           (b) a prepaid hospital or medical care plan;

2983           (c) a health maintenance organization;

2984           (d) a multiple employer welfare arrangement; and

2985           (e) any other person or entity providing a health insurance plan under this title.

2986           ~~[(6)] (5) (a) Except as provided in Subsection ~~[(6)] (5)(b)~~, "case characteristics" means~~  
2987 ~~demographic or other objective characteristics of a covered insured that are considered by the~~  
2988 ~~carrier in determining premium rates for the covered insured.~~

2989           (b) "Case characteristics" do not include:

2990           (i) duration of coverage since the policy was issued;

2991           (ii) claim experience; and

2992           (iii) health status.

2993           ~~[(7)] (6) "Class of business" means all or a separate grouping of covered insureds that~~  
2994 ~~is permitted by the commissioner in accordance with Section 31A-30-105.~~

2995           ~~[(8)] (7) "Conversion policy" means a policy providing coverage under the conversion~~  
2996 ~~provisions required in Chapter 22, Part 7, Group Accident and Health Insurance.~~

2997           ~~[(9)] (8) "Covered carrier" means any individual carrier or small employer carrier~~  
2998 ~~subject to this chapter.~~

2999           ~~[(10)] (9) "Covered individual" means any individual who is covered under a health~~  
3000 ~~benefit plan subject to this chapter.~~

3001           ~~[(11)] (10) "Covered insureds" means small employers and individuals who are issued~~  
3002 ~~a health benefit plan that is subject to this chapter.~~

3003           ~~[(12)] (11) "Dependent" means an individual to the extent that the individual is defined~~

3004 to be a dependent by:

3005 (a) the health benefit plan covering the covered individual; and

3006 (b) Chapter 22, Part 6, Accident and Health Insurance.

3007 [~~13~~] (12) "Established geographic service area" means a geographical area approved  
3008 by the commissioner within which the carrier is authorized to provide coverage.

3009 [~~14~~] (13) "Index rate" means, for each class of business as to a rating period for  
3010 covered insureds with similar case characteristics, the arithmetic average of the applicable base  
3011 premium rate and the corresponding highest premium rate.

3012 [~~15~~] (14) "Individual carrier" means a carrier that provides coverage on an individual  
3013 basis through a health benefit plan regardless of whether:

3014 (a) coverage is offered through:

3015 (i) an association;

3016 (ii) a trust;

3017 (iii) a discretionary group; or

3018 (iv) other similar groups; or

3019 (b) the policy or contract is situated out-of-state.

3020 [~~16~~] (15) "Individual conversion policy" means a conversion policy issued to:

3021 (a) an individual; or

3022 (b) an individual with a family.

3023 [~~17~~] (16) "Individual coverage count" means the number of natural persons covered  
3024 under a carrier's health benefit products that are individual policies.

3025 [~~18~~] (17) "Individual enrollment cap" means the percentage set by the commissioner  
3026 in accordance with Section 31A-30-110.

3027 [~~19~~] (18) "New business premium rate" means, for each class of business as to a  
3028 rating period, the lowest premium rate charged or offered, or that could have been charged or  
3029 offered, by the carrier to covered insureds with similar case characteristics for newly issued  
3030 health benefit plans with the same or similar coverage.

3031 [~~20~~] (19) "Premium" means money paid by covered insureds and covered individuals  
3032 as a condition of receiving coverage from a covered carrier, including any fees or other  
3033 contributions associated with the health benefit plan.

3034 [~~21~~] (20) (a) "Rating period" means the calendar period for which premium rates

3035 established by a covered carrier are assumed to be in effect, as determined by the carrier.

3036 (b) A covered carrier may not have:

3037 (i) more than one rating period in any calendar month; and

3038 (ii) no more than 12 rating periods in any calendar year.

3039 [~~22~~] (21) "Resident" means an individual who has resided in this state for at least 12  
3040 consecutive months immediately preceding the date of application.

3041 [~~23~~] (22) "Short-term limited duration insurance" means a health benefit product that:

3042 (a) is not renewable; and

3043 (b) has an expiration date specified in the contract that is less than 364 days after the  
3044 date the plan became effective.

3045 [~~24~~] (23) "Small employer carrier" means a carrier that provides health benefit plans  
3046 covering eligible employees of one or more small employers in this state, regardless of  
3047 whether:

3048 (a) coverage is offered through:

3049 (i) an association;

3050 (ii) a trust;

3051 (iii) a discretionary group; or

3052 (iv) other similar grouping; or

3053 (b) the policy or contract is situated out-of-state.

3054 [~~25~~] (24) "Uninsurable" means an individual who:

3055 (a) is eligible for the Comprehensive Health Insurance Pool coverage under the  
3056 underwriting criteria established in Subsection 31A-29-111(5); or

3057 (b) (i) is issued a certificate for coverage under Subsection 31A-30-108(3); and

3058 (ii) has a condition of health that does not meet consistently applied underwriting  
3059 criteria as established by the commissioner in accordance with Subsections 31A-30-106(1)(g)  
3060 and (h) for which coverage the applicant is applying.

3061 [~~26~~] (25) "Uninsurable percentage" for a given calendar year equals UC/CI where, for  
3062 purposes of this formula:

3063 (a) "CI" means the carrier's individual coverage count as of December 31 of the  
3064 preceding year; and

3065 (b) "UC" means the number of uninsurable individuals who were issued an individual

3066 policy on or after July 1, 1997.

3067 Section 34. Section **31A-30-109** is amended to read:

3068 **31A-30-109. Health benefit plan choices.**

3069 (1) An individual carrier who offers individual coverage pursuant to Section

3070 31A-30-108:

3071 (a) shall offer in the individual market under this chapter[: (i) a choice of coverage that  
3072 is at least equal to or greater than basic coverage; and (ii) beginning January 1, 2010;] the Utah  
3073 NetCare Plan with the highest actuarial value as described in Subsection 31A-22-724(2); and

3074 (b) may offer a choice of coverage that:

3075 (i) costs less than or equal to the plan described in Subsection (1)(a)[(ii)]; and

3076 (ii) excludes some or all of the mandates described in Subsection 31A-22-724(3).

3077 (2) Beginning January 1, 2010, a small employer group carrier who offers small

3078 employer group coverage pursuant to Section 31A-30-108:

3079 (a) shall offer in the small employer group market under this part[: (i) a choice of  
3080 coverage that is at least equal to or greater than basic coverage; and (ii) coverage under] the  
3081 Utah NetCare Plan with the highest actuarial value as described in Section 31A-22-724; and

3082 (b) may offer in the small employer group market under this part, a choice of coverage  
3083 that:

3084 (i) costs less than or equal to the coverage in Subsection (2)(a); and

3085 (ii) excludes some or all of the mandates described in Subsection 31A-22-724(3).

3086 (3) Nothing in this section limits the number of health benefit plans an insurer may  
3087 offer.

3088 Section 35. Section **31A-30-112** is amended to read:

3089 **31A-30-112. Employee participation levels.**

3090 (1) (a) Except as provided in Subsection (2) and Section 31A-30-206, a requirement  
3091 used by a covered carrier in determining whether to provide coverage to a small employer,  
3092 including a requirement for minimum participation of eligible employees and minimum  
3093 employer contributions, shall be applied uniformly among all small employers with the same  
3094 number of eligible employees applying for coverage or receiving coverage from the covered  
3095 carrier.

3096 (b) In addition to applying Subsection 31A-1-301[~~(123)~~] (124), a covered carrier may

3097 require that a small employer have a minimum of two eligible employees to meet participation  
3098 requirements.

3099 (2) A covered carrier may not increase a requirement for minimum employee  
3100 participation or a requirement for minimum employer contribution applicable to a small  
3101 employer at any time after the small employer is accepted for coverage.

3102 Section 36. Section **31A-31-105** is amended to read:

3103 **31A-31-105. Immunity.**

3104 (1) (a) A person, insurer, or authorized agency is immune from civil action, civil  
3105 penalty, or damages when in good faith that person, insurer, or authorized agency:

3106 (i) cooperates with an agency described in Subsection (1)(b);

3107 (ii) furnishes evidence to an agency described in Subsection (1)(b);

3108 (iii) provides information regarding a suspected fraudulent insurance act to an agency  
3109 described in Subsection (1)(b);

3110 (iv) receives information regarding a suspected fraudulent insurance act from an  
3111 agency described in Subsection (1)(b); or

3112 (v) submits a required report to the department under Section 31A-31-110.

3113 (b) An agency referred to in Subsection (1)(a) is one or more of the following:

3114 (i) the department or a division of the department;

3115 (ii) a federal, state, or government agency established to detect and prevent insurance  
3116 fraud;

3117 (iii) a nonprofit organization established to detect and prevent insurance fraud; or

3118 (iv) an agent, employee, or designee of an agency listed in this Subsection (1)(b).

3119 (2) An insurer, or person employed by an insurer, is immune from civil action, civil  
3120 penalty, or damages when in good faith the insurer or person employed by an insurer provides  
3121 or shares information with another insurer or insurer's employee in a good faith effort to  
3122 discover or prevent a fraudulent insurance act or other criminal conduct.

3123 [~~(2)~~] (3) A person, insurer, or authorized agency is immune from civil action, civil  
3124 penalty, or damages if that person, insurer, or authorized agency complies in good faith with a  
3125 court order to provide evidence or testimony requested by an agency described in Subsection  
3126 (1)(b).

3127 [~~(3)~~] (4) This section does not abrogate or modify a common law or statutory right,

3128 privilege, or immunity enjoyed by a person.

3129        [~~(4)~~] (5) Notwithstanding any other provision in this section, a person, insurer, or  
3130 service provider is not immune from civil action, civil penalty or damages under this section if  
3131 that person commits the fraudulent insurance act that is the subject of the information.

3132        Section 37. Section **31A-41-301** is amended to read:

3133        **31A-41-301. Procedure for making a claim against the fund.**

3134        (1) (a) To bring a claim against the fund a person shall notify the department within 30  
3135 business days of the day on which the person files an action against a title insurance licensee  
3136 alleging the following related to a title insurance transaction:

3137            (i) fraud;

3138            (ii) misrepresentation; or

3139            (iii) deceit.

3140        (b) The notification required by Subsection (1)(a) shall be:

3141            (i) in writing; and

3142            (ii) signed by the person who provides the notice.

3143        (c) Within 30 days of the day on which the department receives a notice under  
3144 Subsection (1)(a), the department may intervene in the action described in Subsection (1)(a).

3145        (2) (a) Subject to the other provisions in this section, a person who provides the notice  
3146 required under Subsection (1) may maintain a claim against the fund if:

3147            (i) in an action described in Subsection (1), the person obtains a final judgment in a  
3148 court of competent jurisdiction in this state against a title insurance licensee;

3149            (ii) all proceedings including appeals related to the final judgment described in  
3150 Subsection (2)(a)(i) are at an end; and

3151            (iii) the person files a verified petition in the court where the judgment is entered for an  
3152 order directing payment from the fund for the uncollected actual damages included in the  
3153 judgment and unpaid.

3154        (b) A court may not direct the payment from the fund of:

3155            (i) punitive damages;

3156            (ii) attorney fees;

3157            (iii) interest; or

3158            (iv) court costs.

3159 (c) Regardless of the number of claimants or parcels of real estate involved in a single  
3160 real estate transaction, the liability of the fund may not exceed:

3161 (i) \$15,000 for a single real estate transaction; or

3162 (ii) \$50,000 for all transactions of a title insurance license.

3163 (d) A person shall:

3164 (i) serve the verified petition required by Subsection (2)(a) on the department; and

3165 (ii) file an affidavit of service with the court.

3166 (3) (a) A court shall conduct a hearing on a petition filed with the court within 30 days  
3167 after the day on which the department is served.

3168 (b) The person who files the petition may recover from the fund only if the person  
3169 shows all of the following:

3170 (i) the person is not a spouse of the judgment debtor or the personal representative of  
3171 the spouse;

3172 (ii) the person complied with this chapter;

3173 (iii) the person has obtained a final judgment in accordance with this section indicating  
3174 the amount of the judgment awarded;

3175 (iv) the amount still owing on the judgment at the date of the petition;

3176 (v) [~~A~~] the person has had a writ of execution issued under the judgment, and the  
3177 officer executing the writ has returned showing that:

3178 (A) no property subject to execution in satisfaction of the judgment could be found; or

3179 (B) that the amount realized upon the execution levied against the property of the  
3180 judgment debtor is insufficient to satisfy the judgement;

3181 (vi) the person has made reasonable searches and inquiries to ascertain whether the  
3182 judgment debtor has any interest in property, real or personal, that may satisfy the judgment;  
3183 and

3184 (vii) the person has exercised reasonable diligence to secure payment of the judgment  
3185 from the assets of the judgment debtor.

3186 (4) If the person described in Subsection (3) satisfies the court that it is not practicable  
3187 for the person to comply with one or more of the requirements in Subsections (3)(b)(v) through  
3188 (vii), the court may waive those requirements.

3189 (5) (a) A judgment that is the basis for a claim against the fund may not have been

3190 discharged in bankruptcy.

3191 (b) If a bankruptcy proceeding is still open or is commenced during the pendency of the  
3192 claim, the person bringing a claim against the fund shall obtain an order from the bankruptcy  
3193 court declaring the judgement and debt to be nondischargeable.

3194 Section 38. Section **31A-42-203** is amended to read:

3195 **31A-42-203. Powers and duties of board.**

3196 (1) The board shall have the power to:

3197 (a) enter into contracts to carry out the provisions and purposes of this chapter,  
3198 including, with the approval of the commissioner, contracts with persons or other organizations  
3199 for the performance of administrative functions;

3200 (b) sue or be sued, including taking legal action necessary to implement and enforce  
3201 the plan for risk adjustment adopted pursuant to this chapter; and

3202 (c) establish appropriate rate adjustments, underwriting policies, and other actuarial  
3203 functions appropriate to the operation of the defined contribution arrangement market in  
3204 accordance with Section 31A-42-202.

3205 (2) (a) The board shall prepare and submit an annual report no later than July 1, each  
3206 year to the department for inclusion in the department's annual market report, which shall  
3207 include:

3208 (i) the expenses of administration of the risk adjuster for the defined contribution  
3209 arrangement market;

3210 (ii) a description of the types of policies sold in the defined contribution arrangement  
3211 market;

3212 (iii) the number of insured lives in the defined contribution arrangement market; and

3213 (iv) the number of insured lives in health benefit plans that do not include state  
3214 mandates.

3215 (b) The budget for operation of the risk adjuster is subject to the approval of the board.

3216 (c) The administrative budget of the board and the commissioner under this chapter  
3217 shall comply with the requirements of Title 63J, Chapter 1, Budgetary Procedures Act, and is  
3218 subject to review and approval by the Legislature.

3219 ~~[(3) The board shall report to the Health Reform Task Force and to the Legislative~~  
3220 ~~Management Committee prior to October 1, 2009 and again prior to October 1, 2010~~

3221 regarding:]  
3222            [~~(a) the board's progress in developing the plan required by this chapter; and]~~  
3223            [~~(b) the board's progress in:]~~  
3224            [~~(i) expanding choice of plans in the defined contribution market; and]~~  
3225            [~~(ii) expanding access to the defined contribution market in the Internet portal for large~~  
3226 employer groups.]

---

---

**Legislative Review Note**  
as of 11-17-11 10:26 AM

**Office of Legislative Research and General Counsel**