

**Representative James A. Dunnigan** proposes the following substitute bill:

**INSURANCE LAW AMENDMENTS**

2013 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: James A. Dunnigan**

Senate Sponsor: Curtis S. Bramble

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**LONG TITLE**

**General Description:**

This bill modifies the Insurance Code.

**Highlighted Provisions:**

This bill:

- ▶ amends the definition provision;
- ▶ clarifies provision related to coordination with other states;
- ▶ addresses rules related to title and escrow examinations;
- ▶ modifies the provision related to the Title and Escrow Commission and its members;
- ▶ modifies language regarding restrictions on foreign title insurers;
- ▶ enacts provision related to closing or settlement protections;
- ▶ modifies the cap on appropriations from the Captive Insurance Restricted Account effective July 1, 2015;
- ▶ amends provisions related to company action level events;
- ▶ enacts a provision regarding producer's duties related to replacement of life insurance;
- ▶ addresses death pending conversion of group life insurance policy;
- ▶ modifies preferred provider contract provisions;



- 26 ▶ amends provisions related to health benefit plan offerings;
- 27 ▶ modifies provisions related to alternative coverage;
- 28 ▶ amends provisions related to inducements;
- 29 ▶ creates the concept of a "qualifying licensee" for purposes of title and escrow
- 30 licenses;
- 31 ▶ clarifies terminology of individual and agency title insurance producers;
- 32 ▶ modifies the requirement that a title insurance producer conduct a minimum
- 33 mandatory search to be a requirement of a reasonable search;
- 34 ▶ establishes who shall conduct an escrow as provided in statute;
- 35 ▶ clarifies reference to a title insurance agency's reserve account;
- 36 ▶ addresses powers of the board related to the Utah Comprehensive Health Insurance
- 37 Pool Act;
- 38 ▶ addresses money deposited into the Insurance Fraud Investigation Restricted
- 39 Account and the Insurance Fraud Victim Restitution Account;
- 40 ▶ amends lifetime maximum for covered benefits from the Comprehensive Health
- 41 Insurance Pool;
- 42 ▶ creates the Insurance Fraud Victim Restitution Account; and
- 43 ▶ makes technical and conforming amendments.

**44 Money Appropriated in this Bill:**

45 None

**46 Other Special Clauses:**

47 This bill has an effective date.

**48 Utah Code Sections Affected:**

49 AMENDS:

50 **31A-1-301**, as last amended by Laws of Utah 2012, Chapters 151 and 253

51 **31A-2-217**, as last amended by Laws of Utah 2008, Chapter 382

52 **31A-2-402**, as last amended by Laws of Utah 2011, Chapter 289

53 **31A-2-403**, as last amended by Laws of Utah 2010, Chapters 10 and 286

54 **31A-2-404**, as last amended by Laws of Utah 2012, Chapter 253

55 **31A-3-304 (Effective 07/01/13)**, as last amended by Laws of Utah 2011, Chapter 284

56 **31A-8-301**, as last amended by Laws of Utah 2005, Chapter 123

- 57           **31A-14-211**, as last amended by Laws of Utah 2011, Chapter 284
- 58           **31A-17-603**, as last amended by Laws of Utah 2001, Chapter 116
- 59           **31A-19a-209**, as last amended by Laws of Utah 2007, Chapter 325
- 60           **31A-20-110**, as last amended by Laws of Utah 2003, Chapter 298
- 61           **31A-22-519**, as enacted by Laws of Utah 1985, Chapter 242
- 62           **31A-22-617**, as last amended by Laws of Utah 2009, Chapter 12
- 63           **31A-22-618.5**, as last amended by Laws of Utah 2011, Chapters 284 and 297
- 64           **31A-22-724**, as last amended by Laws of Utah 2011, Chapter 400
- 65           **31A-23a-102**, as last amended by Laws of Utah 2012, Chapter 253
- 66           **31A-23a-105**, as last amended by Laws of Utah 2012, Chapter 253
- 67           **31A-23a-106**, as last amended by Laws of Utah 2012, Chapters 151 and 253
- 68           **31A-23a-202**, as last amended by Laws of Utah 2011, Chapter 284
- 69           **31A-23a-203.5**, as enacted by Laws of Utah 2011, Chapter 337
- 70           **31A-23a-204**, as last amended by Laws of Utah 2011, Chapters 284 and 342
- 71           **31A-23a-402**, as last amended by Laws of Utah 2011, Second Special Session, Chapter
- 72   5
- 73           **31A-23a-402.5**, as last amended by Laws of Utah 2012, Chapters 253 and 279
- 74           **31A-23a-406**, as last amended by Laws of Utah 2012, Chapter 253
- 75           **31A-23a-407**, as renumbered and amended by Laws of Utah 2003, Chapter 298
- 76           **31A-23a-413**, as renumbered and amended by Laws of Utah 2003, Chapter 298
- 77           **31A-23a-415**, as last amended by Laws of Utah 2011, Chapter 284
- 78           **31A-23a-503**, as last amended by Laws of Utah 2005, Chapter 185
- 79           **31A-27a-104**, as last amended by Laws of Utah 2012, Chapter 253
- 80           **31A-29-106**, as last amended by Laws of Utah 2011, Chapter 284
- 81           **31A-29-113**, as last amended by Laws of Utah 2007, Chapter 40
- 82           **31A-31-108**, as last amended by Laws of Utah 2012, Chapter 253
- 83           **31A-41-102**, as enacted by Laws of Utah 2008, Chapter 220
- 84           **31A-41-201**, as enacted by Laws of Utah 2008, Chapter 220
- 85           **31A-41-202**, as enacted by Laws of Utah 2008, Chapter 220
- 86   ENACTS:
- 87           **31A-4-117**, Utah Code Annotated 1953

88           **31A-22-429**, Utah Code Annotated 1953  
89           **31A-23a-406.5**, Utah Code Annotated 1953  
90           **31A-31-108.5**, Utah Code Annotated 1953



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

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

94           **31A-1-301. Definitions.**

95           As used in this title, unless otherwise specified:

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

98           (i) a medical condition including:

99           (A) a medical care expense; or

100           (B) the risk of disability;

101           (ii) accident; or

102           (iii) sickness.

103           (b) "Accident and health insurance":

104           (i) includes a contract with disability contingencies including:

105           (A) an income replacement contract;

106           (B) a health care contract;

107           (C) an expense reimbursement contract;

108           (D) a credit accident and health contract;

109           (E) a continuing care contract; and

110           (F) a long-term care contract; and

111           (ii) may provide:

112           (A) hospital coverage;

113           (B) surgical coverage;

114           (C) medical coverage;

115           (D) loss of income coverage;

116           (E) prescription drug coverage;

117           (F) dental coverage; or

118           (G) vision coverage.

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

120 (2) "Actuary" is as defined by the commissioner by rule, made in accordance with Title  
121 63G, Chapter 3, Utah Administrative Rulemaking Act.

122 (3) "Administrator" is defined in Subsection [~~(162)~~] (163).

123 (4) "Adult" means an individual who has attained the age of at least 18 years.

124 (5) "Affiliate" means a person who controls, is controlled by, or is under common  
125 control with, another person. A corporation is an affiliate of another corporation, regardless of  
126 ownership, if substantially the same group of individuals manage the corporations.

127 (6) "Agency" means:

128 (a) a person other than an individual, including a sole proprietorship by which an  
129 individual does business under an assumed name; and

130 (b) an insurance organization licensed or required to be licensed under Section  
131 31A-23a-301, 31A-25-207, or 31A-26-209.

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

133 (8) "Amendment" means an endorsement to an insurance policy or certificate.

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

138 (10) "Application" means a document:

139 (a) (i) completed by an applicant to provide information about the risk to be insured;  
140 and

141 (ii) that contains information that is used by the insurer to evaluate risk and decide  
142 whether to:

143 (A) insure the risk under:

144 (I) the coverage as originally offered; or

145 (II) a modification of the coverage as originally offered; or

146 (B) decline to insure the risk; or

147 (b) used by the insurer to gather information from the applicant before issuance of an  
148 annuity contract.

149 (11) "Articles" or "articles of incorporation" means:

- 150 (a) the original articles;
- 151 (b) a special law;
- 152 (c) a charter;
- 153 (d) an amendment;
- 154 (e) restated articles;
- 155 (f) articles of merger or consolidation;
- 156 (g) a trust instrument;
- 157 (h) another constitutive document for a trust or other entity that is not a corporation;
- 158 and
- 159 (i) an amendment to an item listed in Subsections (11)(a) through (h).
- 160 (12) "Bail bond insurance" means a guarantee that a person will attend court when
- 161 required, up to and including surrender of the person in execution of a sentence imposed under
- 162 Subsection 77-20-7(1), as a condition to the release of that person from confinement.
- 163 (13) "Binder" is defined in Section 31A-21-102.
- 164 (14) "Blanket insurance policy" means a group policy covering a defined class of
- 165 persons:
- 166 (a) without individual underwriting or application; and
- 167 (b) that is determined by definition without designating each person covered.
- 168 (15) "Board," "board of trustees," or "board of directors" means the group of persons
- 169 with responsibility over, or management of, a corporation, however designated.
- 170 (16) "Bona fide office" means a physical office in this state:
- 171 (a) that is open to the public;
- 172 (b) that is staffed during regular business hours on regular business days; and
- 173 (c) at which the public may appear in person to obtain services.
- 174 (17) "Business entity" means:
- 175 (a) a corporation;
- 176 (b) an association;
- 177 (c) a partnership;
- 178 (d) a limited liability company;
- 179 (e) a limited liability partnership; or
- 180 (f) another legal entity.

- 181 (18) "Business of insurance" is defined in Subsection (88).
- 182 (19) "Business plan" means the information required to be supplied to the  
183 commissioner under Subsections 31A-5-204(2)(i) and (j), including the information required  
184 when these subsections apply by reference under:
- 185 (a) Section 31A-7-201;
  - 186 (b) Section 31A-8-205; or
  - 187 (c) Subsection 31A-9-205(2).
- 188 (20) (a) "Bylaws" means the rules adopted for the regulation or management of a  
189 corporation's affairs, however designated.
- 190 (b) "Bylaws" includes comparable rules for a trust or other entity that is not a  
191 corporation.
- 192 (21) "Captive insurance company" means:
- 193 (a) an insurer:
    - 194 (i) owned by another organization; and
    - 195 (ii) whose exclusive purpose is to insure risks of the parent organization and an  
196 affiliated company; or
  - 197 (b) in the case of a group or association, an insurer:
    - 198 (i) owned by the insureds; and
    - 199 (ii) whose exclusive purpose is to insure risks of:
      - 200 (A) a member organization;
      - 201 (B) a group member; or
      - 202 (C) an affiliate of:
        - 203 (I) a member organization; or
        - 204 (II) a group member.
  - 205 (22) "Casualty insurance" means liability insurance.
  - 206 (23) "Certificate" means evidence of insurance given to:
    - 207 (a) an insured under a group insurance policy; or
    - 208 (b) a third party.
  - 209 (24) "Certificate of authority" is included within the term "license."
  - 210 (25) "Claim," unless the context otherwise requires, means a request or demand on an  
211 insurer for payment of a benefit according to the terms of an insurance policy.

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

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

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

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

220 (i) provides board and lodging;

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

222 (A) a personal service;

223 (B) a nursing service;

224 (C) a medical service; or

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

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

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

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

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

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

235 (i) by contract;

236 (ii) by common management;

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

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

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

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



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

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

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

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

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

254 (i) a corporation doing business:

255 (A) as:

256 (I) an insurance producer;

257 (II) a surplus lines producer;

258 (III) a limited line producer;

259 (IV) a consultant;

260 (V) a managing general agent;

261 (VI) a reinsurance intermediary;

262 (VII) a third party administrator; or

263 (VIII) an adjuster; and

264 (B) under:

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

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

268 (III) Chapter 26, Insurance Adjusters; or

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

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

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

273 (34) (a) "Creditable coverage" has the same meaning as provided in federal regulations

274 adopted pursuant to the Health Insurance Portability and Accountability Act.

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

277 (i) the Primary Care Network Program under a Medicaid primary care network  
278 demonstration waiver obtained subject to Section 26-18-3;

279 (ii) the Children's Health Insurance Program under Section 26-40-106; or

280 (iii) the Ryan White Program Comprehensive AIDS Resources Emergency Act, Pub. L.  
281 101-381, and Ryan White HIV/AIDS Treatment Modernization Act of 2006, Pub. L. 109-415.

282 (35) "Credit accident and health insurance" means insurance on a debtor to provide  
283 indemnity for payments coming due on a specific loan or other credit transaction while the  
284 debtor has a disability.

285 (36) (a) "Credit insurance" means insurance offered in connection with an extension of  
286 credit that is limited to partially or wholly extinguishing that credit obligation.

287 (b) "Credit insurance" includes:

288 (i) credit accident and health insurance;

289 (ii) credit life insurance;

290 (iii) credit property insurance;

291 (iv) credit unemployment insurance;

292 (v) guaranteed automobile protection insurance;

293 (vi) involuntary unemployment insurance;

294 (vii) mortgage accident and health insurance;

295 (viii) mortgage guaranty insurance; and

296 (ix) mortgage life insurance.

297 (37) "Credit life insurance" means insurance on the life of a debtor in connection with  
298 an extension of credit that pays a person if the debtor dies.

299 (38) "Credit property insurance" means insurance:

300 (a) offered in connection with an extension of credit; and

301 (b) that protects the property until the debt is paid.

302 (39) "Credit unemployment insurance" means insurance:

303 (a) offered in connection with an extension of credit; and

304 (b) that provides indemnity if the debtor is unemployed for payments coming due on a:

305 (i) specific loan; or

306 (ii) credit transaction.

307 (40) "Creditor" means a person, including an insured, having a claim, whether:

308 (a) matured;

309 (b) unmatured;

310 (c) liquidated;

311 (d) unliquidated;

312 (e) secured;

313 (f) unsecured;

314 (g) absolute;

315 (h) fixed; or

316 (i) contingent.

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

320 (i) provided by the private insurance market; or

321 (ii) subsidized by the Federal Crop Insurance Corporation.

322 (b) "Crop insurance" includes multiperil crop insurance.

323 (42) (a) "Customer service representative" means a person that provides an insurance  
324 service and insurance product information:

325 (i) for the customer service representative's:

326 (A) producer;

327 (B) surplus lines producer; or

328 (C) consultant employer; and

329 (ii) to the customer service representative's employer's:

330 (A) customer;

331 (B) client; or

332 (C) organization.

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

335 (43) "Deadline" means a final date or time:

336 (a) imposed by:

337 (i) statute;

338 (ii) rule; or

339 (iii) order; and

340 (b) by which a required filing or payment must be received by the department.

341 (44) "Deemer clause" means a provision under this title under which upon the  
342 occurrence of a condition precedent, the commissioner is considered to have taken a specific  
343 action. If the statute so provides, a condition precedent may be the commissioner's failure to  
344 take a specific action.

345 (45) "Degree of relationship" means the number of steps between two persons  
346 determined by counting the generations separating one person from a common ancestor and  
347 then counting the generations to the other person.

348 (46) "Department" means the Insurance Department.

349 (47) "Director" means a member of the board of directors of a corporation.

350 (48) "Disability" means a physiological or psychological condition that partially or  
351 totally limits an individual's ability to:

352 (a) perform the duties of:

353 (i) that individual's occupation; or

354 (ii) any occupation for which the individual is reasonably suited by education, training,  
355 or experience; or

356 (b) perform two or more of the following basic activities of daily living:

357 (i) eating;

358 (ii) toileting;

359 (iii) transferring;

360 (iv) bathing; or

361 (v) dressing.

362 (49) "Disability income insurance" is defined in Subsection (79).

363 (50) "Domestic insurer" means an insurer organized under the laws of this state.

364 (51) "Domiciliary state" means the state in which an insurer:

365 (a) is incorporated;

366 (b) is organized; or

- 367 (c) in the case of an alien insurer, enters into the United States.
- 368 (52) (a) "Eligible employee" means:
- 369 (i) an employee who:
- 370 (A) works on a full-time basis; and
- 371 (B) has a normal work week of 30 or more hours; or
- 372 (ii) a person described in Subsection (52)(b).
- 373 (b) "Eligible employee" includes, if the individual is included under a health benefit
- 374 plan of a small employer:
- 375 (i) a sole proprietor;
- 376 (ii) a partner in a partnership; or
- 377 (iii) an independent contractor.
- 378 (c) "Eligible employee" does not include, unless eligible under Subsection (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 (53) "Employee" means an individual employed by an employer.
- 383 (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 (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 (56) "Endorsement" means a written agreement attached to a policy or certificate to

398 modify the policy or certificate coverage.

399 (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 (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 (i) a transaction that effects the sale, transfer, encumbering, or leasing of real property,  
406 when a person not a party to the transaction, and neither having nor acquiring an interest in the  
407 title, performs, in accordance with the written instructions or terms of the written agreement  
408 between the parties to the transaction, any of the following actions:

409 (A) the explanation, holding, or creation of a document; or

410 (B) the receipt, deposit, and disbursement of money;

411 (ii) a settlement or closing involving:

412 (A) a mobile home;

413 (B) a grazing right;

414 (C) a water right; or

415 (D) other personal property authorized by the commissioner.

416 ~~[(b) "Escrow" includes the act of conducting a:]~~

417 ~~[(i) real estate settlement; or]~~

418 ~~[(ii) real estate closing.]~~

419 (b) "Escrow" does not include:

420 (i) the following notarial acts performed by a notary within the state:

421 (A) an acknowledgment;

422 (B) a copy certification;

423 (C) jurat; and

424 (D) an oath or affirmation;

425 (ii) the receipt or delivery of a document; or

426 (iii) the receipt of money for delivery to the escrow agent.

427 (59) "Escrow agent" means ~~[(a)]~~ an agency title insurance producer ~~[with:]~~ meeting

428 the requirements of Sections 31A-4-107, 31A-14-211, and 31A-23a-204, who is acting through

429 an individual title insurance producer licensed with an escrow subline of authority.

430 [~~(i) a title insurance line of authority; and]~~

431 [~~(ii) an escrow subline of authority; or]~~

432 [~~(b) a person defined as an escrow agent in Section 7-22-101.]~~

433 (60) (a) "Excludes" is not exhaustive and does not mean that another thing is not also  
434 excluded.

435 (b) The items listed in a list using the term "excludes" are representative examples for  
436 use in interpretation of this title.

437 (61) "Exclusion" means for the purposes of accident and health insurance that an  
438 insurer does not provide insurance coverage, for whatever reason, for one of the following:

439 (a) a specific physical condition;

440 (b) a specific medical procedure;

441 (c) a specific disease or disorder; or

442 (d) a specific prescription drug or class of prescription drugs.

443 (62) "Expense reimbursement insurance" means insurance:

444 (a) written to provide a payment for an expense relating to hospital confinement  
445 resulting from illness or injury; and

446 (b) written:

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

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

449 (63) "Fidelity insurance" means insurance guaranteeing the fidelity of a person holding  
450 a position of public or private trust.

451 (64) (a) "Filed" means that a filing is:

452 (i) submitted to the department as required by and in accordance with applicable  
453 statute, rule, or filing order;

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

456 (iii) accompanied by the appropriate fee in accordance with:

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

458 (B) rule.

459 (b) "Filed" does not include a filing that is rejected by the department because it is not

460 submitted in accordance with Subsection (64)(a).

461 (65) "Filing," when used as a noun, means an item required to be filed with the  
462 department including:

463 (a) a policy;

464 (b) a rate;

465 (c) a form;

466 (d) a document;

467 (e) a plan;

468 (f) a manual;

469 (g) an application;

470 (h) a report;

471 (i) a certificate;

472 (j) an endorsement;

473 (k) an actuarial certification;

474 (l) a licensee annual statement;

475 (m) a licensee renewal application;

476 (n) an advertisement; or

477 (o) an outline of coverage.

478 (66) "First party insurance" means an insurance policy or contract in which the insurer  
479 agrees to pay a claim submitted to it by the insured for the insured's losses.

480 (67) "Foreign insurer" means an insurer domiciled outside of this state, including an  
481 alien insurer.

482 (68) (a) "Form" means one of the following prepared for general use:

483 (i) a policy;

484 (ii) a certificate;

485 (iii) an application;

486 (iv) an outline of coverage; or

487 (v) an endorsement.

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

490 (69) "Franchise insurance" means an individual insurance policy provided through a



491 mass marketing arrangement involving a defined class of persons related in some way other  
492 than through the purchase of insurance.

493 (70) "General lines of authority" include:

494 (a) the general lines of insurance in Subsection (71);

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

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

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

498 (iii) title marketing representative only;

499 (c) surplus lines;

500 (d) workers' compensation; and

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

503 (71) "General lines of insurance" include:

504 (a) accident and health;

505 (b) casualty;

506 (c) life;

507 (d) personal lines;

508 (e) property; and

509 (f) variable contracts, including variable life and annuity.

510 (72) "Group health plan" means an employee welfare benefit plan to the extent that the  
511 plan provides medical care:

512 (a) (i) to an employee; or

513 (ii) to a dependent of an employee; and

514 (b) (i) directly;

515 (ii) through insurance reimbursement; or

516 (iii) through another method.

517 (73) (a) "Group insurance policy" means a policy covering a group of persons that is  
518 issued:

519 (i) to a policyholder on behalf of the group; and

520 (ii) for the benefit of a member of the group who is selected under a procedure defined

521 in:

522 (A) the policy; or

523 (B) an agreement that is collateral to the policy.

524 (b) A group insurance policy may include a member of the policyholder's family or a  
525 dependent.

526 (74) "Guaranteed automobile protection insurance" means insurance offered in  
527 connection with an extension of credit that pays the difference in amount between the  
528 insurance settlement and the balance of the loan if the insured automobile is a total loss.

529 (75) (a) Except as provided in Subsection (75)(b), "health benefit plan" means a policy  
530 or certificate that:

531 (i) provides health care insurance;

532 (ii) provides major medical expense insurance; or

533 (iii) is offered as a substitute for hospital or medical expense insurance, such as:

534 (A) a hospital confinement indemnity; or

535 (B) a limited benefit plan.

536 (b) "Health benefit plan" does not include a policy or certificate that:

537 (i) provides benefits solely for:

538 (A) accident;

539 (B) dental;

540 (C) income replacement;

541 (D) long-term care;

542 (E) a Medicare supplement;

543 (F) a specified disease;

544 (G) vision; or

545 (H) a short-term limited duration; or

546 (ii) is offered and marketed as supplemental health insurance.

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

549 (a) a professional service;

550 (b) a personal service;

551 (c) a facility;

552 (d) equipment;

- 553 (e) a device;
- 554 (f) supplies; or
- 555 (g) medicine.
- 556 (77) (a) "Health care insurance" or "health insurance" means insurance providing:
- 557 (i) a health care benefit; or
- 558 (ii) payment of an incurred health care expense.
- 559 (b) "Health care insurance" or "health insurance" does not include accident and health
- 560 insurance providing a benefit for:
- 561 (i) replacement of income;
- 562 (ii) short-term accident;
- 563 (iii) fixed indemnity;
- 564 (iv) credit accident and health;
- 565 (v) supplements to liability;
- 566 (vi) workers' compensation;
- 567 (vii) automobile medical payment;
- 568 (viii) no-fault automobile;
- 569 (ix) equivalent self-insurance; or
- 570 (x) a type of accident and health insurance coverage that is a part of or attached to
- 571 another type of policy.
- 572 (78) "Health Insurance Portability and Accountability Act" means the Health Insurance
- 573 Portability and Accountability Act of 1996, Pub. L. 104-191, 110 Stat. 1936, as amended.
- 574 (79) "Income replacement insurance" or "disability income insurance" means insurance
- 575 written to provide payments to replace income lost from accident or sickness.
- 576 (80) "Indemnity" means the payment of an amount to offset all or part of an insured
- 577 loss.
- 578 (81) "Independent adjuster" means an insurance adjuster required to be licensed under
- 579 Section 31A-26-201 who engages in insurance adjusting as a representative of an insurer.
- 580 (82) "Independently procured insurance" means insurance procured under Section
- 581 31A-15-104.
- 582 (83) "Individual" means a natural person.
- 583 (84) "Inland marine insurance" includes insurance covering:

- 584 (a) property in transit on or over land;
- 585 (b) property in transit over water by means other than boat or ship;
- 586 (c) bailee liability;
- 587 (d) fixed transportation property such as bridges, electric transmission systems, radio
- 588 and television transmission towers and tunnels; and
- 589 (e) personal and commercial property floaters.
- 590 (85) "Insolvency" means that:
- 591 (a) an insurer is unable to pay its debts or meet its obligations as the debts and
- 592 obligations mature;
- 593 (b) an insurer's total adjusted capital is less than the insurer's mandatory control level
- 594 RBC under Subsection 31A-17-601(8)(c); or
- 595 (c) an insurer is determined to be hazardous under this title.
- 596 (86) (a) "Insurance" means:
- 597 (i) an arrangement, contract, or plan for the transfer of a risk or risks from one or more
- 598 persons to one or more other persons; or
- 599 (ii) an arrangement, contract, or plan for the distribution of a risk or risks among a
- 600 group of persons that includes the person seeking to distribute that person's risk.
- 601 (b) "Insurance" includes:
- 602 (i) a risk distributing arrangement providing for compensation or replacement for
- 603 damages or loss through the provision of a service or a benefit in kind;
- 604 (ii) a contract of guaranty or suretyship entered into by the guarantor or surety as a
- 605 business and not as merely incidental to a business transaction; and
- 606 (iii) a plan in which the risk does not rest upon the person who makes an arrangement,
- 607 but with a class of persons who have agreed to share the risk.
- 608 (87) "Insurance adjuster" means a person who directs the investigation, negotiation, or
- 609 settlement of a claim under an insurance policy other than life insurance or an annuity, on
- 610 behalf of an insurer, policyholder, or a claimant under an insurance policy.
- 611 (88) "Insurance business" or "business of insurance" includes:
- 612 (a) providing health care insurance by an organization that is or is required to be
- 613 licensed under this title;
- 614 (b) providing a benefit to an employee in the event of a contingency not within the

615 control of the employee, in which the employee is entitled to the benefit as a right, which  
616 benefit may be provided either:

- 617 (i) by a single employer or by multiple employer groups; or
- 618 (ii) through one or more trusts, associations, or other entities;
- 619 (c) providing an annuity:
  - 620 (i) including an annuity issued in return for a gift; and
  - 621 (ii) except an annuity provided by a person specified in Subsections 31A-22-1305(2)
- 622 and (3);
- 623 (d) providing the characteristic services of a motor club as outlined in Subsection  
624 (116);
- 625 (e) providing another person with insurance;
- 626 (f) making as insurer, guarantor, or surety, or proposing to make as insurer, guarantor,  
627 or surety, a contract or policy of title insurance;
- 628 (g) transacting or proposing to transact any phase of title insurance, including:
  - 629 (i) solicitation;
  - 630 (ii) negotiation preliminary to execution;
  - 631 (iii) execution of a contract of title insurance;
  - 632 (iv) insuring; and
  - 633 (v) transacting matters subsequent to the execution of the contract and arising out of  
634 the contract, including reinsurance;
  - 635 (h) transacting or proposing a life settlement; and
  - 636 (i) doing, or proposing to do, any business in substance equivalent to Subsections  
637 (88)(a) through (h) in a manner designed to evade this title.
- 638 (89) "Insurance consultant" or "consultant" means a person who:
  - 639 (a) advises another person about insurance needs and coverages;
  - 640 (b) is compensated by the person advised on a basis not directly related to the insurance  
641 placed; and
  - 642 (c) except as provided in Section 31A-23a-501, is not compensated directly or  
643 indirectly by an insurer or producer for advice given.
- 644 (90) "Insurance holding company system" means a group of two or more affiliated  
645 persons, at least one of whom is an insurer.

646 (91) (a) "Insurance producer" or "producer" means a person licensed or required to be  
647 licensed under the laws of this state to sell, solicit, or negotiate insurance.

648 (b) (i) "Producer for the insurer" means a producer who is compensated directly or  
649 indirectly by an insurer for selling, soliciting, or negotiating an insurance product of that  
650 insurer.

651 (ii) "Producer for the insurer" may be referred to as an "agent."

652 (c) (i) "Producer for the insured" means a producer who:

653 (A) is compensated directly and only by an insurance customer or an insured; and

654 (B) receives no compensation directly or indirectly from an insurer for selling,  
655 soliciting, or negotiating an insurance product of that insurer to an insurance customer or  
656 insured.

657 (ii) "Producer for the insured" may be referred to as a "broker."

658 (92) (a) "Insured" means a person to whom or for whose benefit an insurer makes a  
659 promise in an insurance policy and includes:

660 (i) a policyholder;

661 (ii) a subscriber;

662 (iii) a member; and

663 (iv) a beneficiary.

664 (b) The definition in Subsection (92)(a):

665 (i) applies only to this title; and

666 (ii) does not define the meaning of this word as used in an insurance policy or  
667 certificate.

668 (93) (a) "Insurer" means a person doing an insurance business as a principal including:

669 (i) a fraternal benefit society;

670 (ii) an issuer of a gift annuity other than an annuity specified in Subsections  
671 31A-22-1305(2) and (3);

672 (iii) a motor club;

673 (iv) an employee welfare plan; and

674 (v) a person purporting or intending to do an insurance business as a principal on that  
675 person's own account.

676 (b) "Insurer" does not include a governmental entity to the extent the governmental

677 entity is engaged in an activity described in Section 31A-12-107.

678 (94) "Interinsurance exchange" is defined in Subsection [~~(145)~~] (146).

679 (95) "Involuntary unemployment insurance" means insurance:

680 (a) offered in connection with an extension of credit; and

681 (b) that provides indemnity if the debtor is involuntarily unemployed for payments  
682 coming due on a:

683 (i) specific loan; or

684 (ii) credit transaction.

685 (96) "Large employer," in connection with a health benefit plan, means an employer  
686 who, with respect to a calendar year and to a plan year:

687 (a) employed an average of at least 51 eligible employees on each business day during  
688 the preceding calendar year; and

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

690 (97) "Late enrollee," with respect to an employer health benefit plan, means an  
691 individual whose enrollment is a late enrollment.

692 (98) "Late enrollment," with respect to an employer health benefit plan, means  
693 enrollment of an individual other than:

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

696 (b) through special enrollment.

697 (99) (a) Except for a retainer contract or legal assistance described in Section  
698 31A-1-103, "legal expense insurance" means insurance written to indemnify or pay for a  
699 specified legal expense.

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

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

704 (100) (a) "Liability insurance" means insurance against liability:

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

707 (A) Subsection (110) for medical malpractice insurance;

- 708 (B) Subsection [~~(137)~~] (138) for professional liability insurance; and  
709 (C) Subsection [~~(171)~~] (172) for workers' compensation insurance;  
710 (ii) for a medical, hospital, surgical, and funeral benefit to a person other than the  
711 insured who is injured, irrespective of legal liability of the insured, when issued with or  
712 supplemental to insurance against legal liability for the death, injury, or disability of a human  
713 being, exclusive of the coverages under:
- 714 (A) Subsection (110) for medical malpractice insurance;
  - 715 (B) Subsection [~~(137)~~] (138) for professional liability insurance; and
  - 716 (C) Subsection [~~(171)~~] (172) for workers' compensation insurance;
- 717 (iii) for loss or damage to property resulting from an accident to or explosion of a  
718 boiler, pipe, pressure container, machinery, or apparatus;
- 719 (iv) for loss or damage to property caused by:
    - 720 (A) the breakage or leakage of a sprinkler, water pipe, or water container; or
    - 721 (B) water entering through a leak or opening in a building; or
  - 722 (v) for other loss or damage properly the subject of insurance not within another kind  
723 of insurance as defined in this chapter, if the insurance is not contrary to law or public policy.
- 724 (b) "Liability insurance" includes:
- 725 (i) vehicle liability insurance;
  - 726 (ii) residential dwelling liability insurance; and
  - 727 (iii) making inspection of, and issuing a certificate of inspection upon, an elevator,  
728 boiler, machinery, or apparatus of any kind when done in connection with insurance on the  
729 elevator, boiler, machinery, or apparatus.
- 730 (101) (a) "License" means authorization issued by the commissioner to engage in an  
731 activity that is part of or related to the insurance business.
- 732 (b) "License" includes a certificate of authority issued to an insurer.
- 733 (102) (a) "Life insurance" means:
- 734 (i) insurance on a human life; and
  - 735 (ii) insurance pertaining to or connected with human life.
- 736 (b) The business of life insurance includes:
- 737 (i) granting a death benefit;
  - 738 (ii) granting an annuity benefit;



- 739 (iii) granting an endowment benefit;
- 740 (iv) granting an additional benefit in the event of death by accident;
- 741 (v) granting an additional benefit to safeguard the policy against lapse; and
- 742 (vi) providing an optional method of settlement of proceeds.
- 743 (103) "Limited license" means a license that:
- 744 (a) is issued for a specific product of insurance; and
- 745 (b) limits an individual or agency to transact only for that product or insurance.
- 746 (104) "Limited line credit insurance" includes the following forms of insurance:
- 747 (a) credit life;
- 748 (b) credit accident and health;
- 749 (c) credit property;
- 750 (d) credit unemployment;
- 751 (e) involuntary unemployment;
- 752 (f) mortgage life;
- 753 (g) mortgage guaranty;
- 754 (h) mortgage accident and health;
- 755 (i) guaranteed automobile protection; and
- 756 (j) another form of insurance offered in connection with an extension of credit that:
- 757 (i) is limited to partially or wholly extinguishing the credit obligation; and
- 758 (ii) the commissioner determines by rule should be designated as a form of limited line
- 759 credit insurance.
- 760 (105) "Limited line credit insurance producer" means a person who sells, solicits, or
- 761 negotiates one or more forms of limited line credit insurance coverage to an individual through
- 762 a master, corporate, group, or individual policy.
- 763 (106) "Limited line insurance" includes:
- 764 (a) bail bond;
- 765 (b) limited line credit insurance;
- 766 (c) legal expense insurance;
- 767 (d) motor club insurance;
- 768 (e) car rental related insurance;
- 769 (f) travel insurance;

770 (g) crop insurance;  
771 (h) self-service storage insurance;  
772 (i) guaranteed asset protection waiver;  
773 (j) portable electronics insurance; and  
774 (k) another form of limited insurance that the commissioner determines by rule should  
775 be designated a form of limited line insurance.

776 (107) "Limited lines authority" includes:  
777 (a) the lines of insurance listed in Subsection (106); and  
778 (b) a customer service representative.

779 (108) "Limited lines producer" means a person who sells, solicits, or negotiates limited  
780 lines insurance.

781 (109) (a) "Long-term care insurance" means an insurance policy or rider advertised,  
782 marketed, offered, or designated to provide coverage:

783 (i) in a setting other than an acute care unit of a hospital;  
784 (ii) for not less than 12 consecutive months for a covered person on the basis of:

785 (A) expenses incurred;  
786 (B) indemnity;  
787 (C) prepayment; or  
788 (D) another method;

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

790 (A) diagnostic;  
791 (B) preventative;  
792 (C) therapeutic;  
793 (D) rehabilitative;  
794 (E) maintenance; or  
795 (F) personal care; and

796 (iv) that may be issued by:  
797 (A) an insurer;  
798 (B) a fraternal benefit society;  
799 (C) (I) a nonprofit health hospital; and  
800 (II) a medical service corporation;

- 801 (D) a prepaid health plan;
- 802 (E) a health maintenance organization; or
- 803 (F) an entity similar to the entities described in Subsections (109)(a)(iv)(A) through (E)
- 804 to the extent that the entity is otherwise authorized to issue life or health care insurance.
- 805 (b) "Long-term care insurance" includes:
- 806 (i) any of the following that provide directly or supplement long-term care insurance:
- 807 (A) a group or individual annuity or rider; or
- 808 (B) a life insurance policy or rider;
- 809 (ii) a policy or rider that provides for payment of benefits on the basis of:
- 810 (A) cognitive impairment; or
- 811 (B) functional capacity; or
- 812 (iii) a qualified long-term care insurance contract.
- 813 (c) "Long-term care insurance" does not include:
- 814 (i) a policy that is offered primarily to provide basic Medicare supplement coverage;
- 815 (ii) basic hospital expense coverage;
- 816 (iii) basic medical/surgical expense coverage;
- 817 (iv) hospital confinement indemnity coverage;
- 818 (v) major medical expense coverage;
- 819 (vi) income replacement or related asset-protection coverage;
- 820 (vii) accident only coverage;
- 821 (viii) coverage for a specified:
- 822 (A) disease; or
- 823 (B) accident;
- 824 (ix) limited benefit health coverage; or
- 825 (x) a life insurance policy that accelerates the death benefit to provide the option of a
- 826 lump sum payment:
- 827 (A) if the following are not conditioned on the receipt of long-term care:
- 828 (I) benefits; or
- 829 (II) eligibility; and
- 830 (B) the coverage is for one or more the following qualifying events:
- 831 (I) terminal illness;

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

833 (III) permanent institutional confinement.

834 (110) "Medical malpractice insurance" means insurance against legal liability incident  
835 to the practice and provision of a medical service other than the practice and provision of a  
836 dental service.

837 (111) "Member" means a person having membership rights in an insurance  
838 corporation.

839 (112) "Minimum capital" or "minimum required capital" means the capital that must be  
840 constantly maintained by a stock insurance corporation as required by statute.

841 (113) "Mortgage accident and health insurance" means insurance offered in connection  
842 with an extension of credit that provides indemnity for payments coming due on a mortgage  
843 while the debtor has a disability.

844 (114) "Mortgage guaranty insurance" means surety insurance under which a mortgagee  
845 or other creditor is indemnified against losses caused by the default of a debtor.

846 (115) "Mortgage life insurance" means insurance on the life of a debtor in connection  
847 with an extension of credit that pays if the debtor dies.

848 (116) "Motor club" means a person:

849 (a) licensed under:

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

851 (ii) Chapter 11, Motor Clubs; or

852 (iii) Chapter 14, Foreign Insurers; and

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

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

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

857 (iii) (A) trip reimbursement;

858 (B) towing services;

859 (C) emergency road services;

860 (D) stolen automobile services;

861 (E) a combination of the services listed in Subsections (116)(b)(iii)(A) through (D); or

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

863 (117) "Mutual" means a mutual insurance corporation.

864 (118) "Network plan" means health care insurance:

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

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

869 (119) "Nonparticipating" means a plan of insurance under which the insured is not  
870 entitled to receive a dividend representing a share of the surplus of the insurer.

871 (120) "Ocean marine insurance" means insurance against loss of or damage to:

872 (a) ships or hulls of ships;

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

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

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

881 (121) "Order" means an order of the commissioner.

882 (122) "Outline of coverage" means a summary that explains an accident and health  
883 insurance policy.

884 (123) "Participating" means a plan of insurance under which the insured is entitled to  
885 receive a dividend representing a share of the surplus of the insurer.

886 (124) "Participation," as used in a health benefit plan, means a requirement relating to  
887 the minimum percentage of eligible employees that must be enrolled in relation to the total  
888 number of eligible employees of an employer reduced by each eligible employee who  
889 voluntarily declines coverage under the plan because the employee:

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

891 (b) receives:

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

894 (ii) another government health benefit.

895 (125) "Person" includes:

896 (a) an individual;

897 (b) a partnership;

898 (c) a corporation;

899 (d) an incorporated or unincorporated association;

900 (e) a joint stock company;

901 (f) a trust;

902 (g) a limited liability company;

903 (h) a reciprocal;

904 (i) a syndicate; or

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

906 (126) "Personal lines insurance" means property and casualty insurance coverage sold  
907 for primarily noncommercial purposes to:

908 (a) an individual; or

909 (b) a family.

910 (127) "Plan sponsor" is as defined in 29 U.S.C. Sec. 1002(16)(B).

911 (128) "Plan year" means:

912 (a) the year that is designated as the plan year in:

913 (i) the plan document of a group health plan; or

914 (ii) a summary plan description of a group health plan;

915 (b) if the plan document or summary plan description does not designate a plan year or  
916 there is no plan document or summary plan description:

917 (i) the year used to determine deductibles or limits;

918 (ii) the policy year, if the plan does not impose deductibles or limits on a yearly basis;

919 or

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

921 (A) the plan does not impose deductibles or limits on a yearly basis; and

922 (B) (I) the plan is not insured; or

923 (II) the insurance policy is not renewed on an annual basis; or

924 (c) in a case not described in Subsection (128)(a) or (b), the calendar year.

925 (129) (a) "Policy" means a document, including an attached endorsement or application  
926 that:

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

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

- 930 (i) a motor club under Chapter 11, Motor Clubs;
- 931 (ii) a service contract provided under Chapter 6a, Service Contracts; and
- 932 (iii) a corporation licensed under:

933 (A) Chapter 7, Nonprofit Health Service Insurance Corporations; or

934 (B) Chapter 8, Health Maintenance Organizations and Limited Health Plans.

935 (c) "Policy" does not include:

- 936 (i) a certificate under a group insurance contract; or
- 937 (ii) a document that does not purport to have legal effect.

938 (130) "Policyholder" means a person who controls a policy, binder, or oral contract by  
939 ownership, premium payment, or otherwise.

940 (131) "Policy illustration" means a presentation or depiction that includes  
941 nonguaranteed elements of a policy of life insurance over a period of years.

942 (132) "Policy summary" means a synopsis describing the elements of a life insurance  
943 policy.

944 (133) "PPACA" means the Patient Protection and Affordable Care Act, Pub. L. No.  
945 111-148 and the Health Care Education Reconciliation Act of 2010, Pub. L. No. 111-152, and  
946 related federal regulations and guidance.

947 [~~133~~] (134) "Preexisting condition," with respect to a health benefit plan:

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

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

953 [~~134~~] (135) (a) "Premium" means the monetary consideration for an insurance policy.

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

- 955 (i) an assessment;

956 (ii) a membership fee;

957 (iii) a required contribution; or

958 (iv) monetary consideration.

959 (c) (i) "Premium" does not include consideration paid to a third party administrator for

960 the third party administrator's services.

961 (ii) "Premium" includes an amount paid by a third party administrator to an insurer for

962 insurance on the risks administered by the third party administrator.

963 [~~(135)~~] (136) "Principal officers" for a corporation means the officers designated under

964 Subsection 31A-5-203(3).

965 [~~(136)~~] (137) "Proceeding" includes an action or special statutory proceeding.

966 [~~(137)~~] (138) "Professional liability insurance" means insurance against legal liability

967 incident to the practice of a profession and provision of a professional service.

968 [~~(138)~~] (139) (a) Except as provided in Subsection [~~(138)~~] (139)(b), "property

969 insurance" means insurance against loss or damage to real or personal property of every kind

970 and any interest in that property:

971 (i) from all hazards or causes; and

972 (ii) against loss consequential upon the loss or damage including vehicle

973 comprehensive and vehicle physical damage coverages.

974 (b) "Property insurance" does not include:

975 (i) inland marine insurance; and

976 (ii) ocean marine insurance.

977 [~~(139)~~] (140) "Qualified long-term care insurance contract" or "federally tax qualified

978 long-term care insurance contract" means:

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

980 7702B(b), Internal Revenue Code; or

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

982 (i) (A) by rider; or

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

984 (ii) that satisfies the requirements of Sections 7702B(b) and (e), Internal Revenue

985 Code.

986 [~~(140)~~] (141) "Qualified United States financial institution" means an institution that:



- 987 (a) is:
- 988 (i) organized under the laws of the United States or any state; or
- 989 (ii) in the case of a United States office of a foreign banking organization, licensed
- 990 under the laws of the United States or any state;
- 991 (b) is regulated, supervised, and examined by a United States federal or state authority
- 992 having regulatory authority over a bank or trust company; and
- 993 (c) meets the standards of financial condition and standing that are considered
- 994 necessary and appropriate to regulate the quality of a financial institution whose letters of credit
- 995 will be acceptable to the commissioner as determined by:
- 996 (i) the commissioner by rule; or
- 997 (ii) the Securities Valuation Office of the National Association of Insurance
- 998 Commissioners.

999 [~~(141)~~] (142) (a) "Rate" means:

- 1000 (i) the cost of a given unit of insurance; or
- 1001 (ii) for property or casualty insurance, that cost of insurance per exposure unit either
- 1002 expressed as:
- 1003 (A) a single number; or
- 1004 (B) a pure premium rate, adjusted before the application of individual risk variations
- 1005 based on loss or expense considerations to account for the treatment of:
- 1006 (I) expenses;
- 1007 (II) profit; and
- 1008 (III) individual insurer variation in loss experience.

1009 (b) "Rate" does not include a minimum premium.

1010 [~~(142)~~] (143) (a) Except as provided in Subsection [~~(142)~~] (143)(b), "rate service

1011 organization" means a person who assists an insurer in rate making or filing by:

- 1012 (i) collecting, compiling, and furnishing loss or expense statistics;
- 1013 (ii) recommending, making, or filing rates or supplementary rate information; or
- 1014 (iii) advising about rate questions, except as an attorney giving legal advice.

1015 (b) "Rate service organization" does not mean:

- 1016 (i) an employee of an insurer;
- 1017 (ii) a single insurer or group of insurers under common control;

- 1018 (iii) a joint underwriting group; or  
1019 (iv) an individual serving as an actuarial or legal consultant.
- 1020 [~~(143)~~] (144) "Rating manual" means any of the following used to determine initial and  
1021 renewal policy premiums:
- 1022 (a) a manual of rates;
  - 1023 (b) a classification;
  - 1024 (c) a rate-related underwriting rule; and
  - 1025 (d) a rating formula that describes steps, policies, and procedures for determining  
1026 initial and renewal policy premiums.
- 1027 [~~(144)~~] (145) "Received by the department" means:
- 1028 (a) the date delivered to and stamped received by the department, if delivered in  
1029 person;
  - 1030 (b) the post mark date, if delivered by mail;
  - 1031 (c) the delivery service's post mark or pickup date, if delivered by a delivery service;
  - 1032 (d) the received date recorded on an item delivered, if delivered by:
    - 1033 (i) facsimile;
    - 1034 (ii) email; or
    - 1035 (iii) another electronic method; or
  - 1036 (e) a date specified in:
    - 1037 (i) a statute;
    - 1038 (ii) a rule; or
    - 1039 (iii) an order.
- 1040 [~~(145)~~] (146) "Reciprocal" or "interinsurance exchange" means an unincorporated  
1041 association of persons:
- 1042 (a) operating through an attorney-in-fact common to all of the persons; and
  - 1043 (b) exchanging insurance contracts with one another that provide insurance coverage  
1044 on each other.
- 1045 [~~(146)~~] (147) "Reinsurance" means an insurance transaction where an insurer, for  
1046 consideration, transfers any portion of the risk it has assumed to another insurer. In referring to  
1047 reinsurance transactions, this title sometimes refers to:
- 1048 (a) the insurer transferring the risk as the "ceding insurer"; and

1049 (b) the insurer assuming the risk as the:

1050 (i) "assuming insurer"; or

1051 (ii) "assuming reinsurer."

1052 [~~(147)~~] (148) "Reinsurer" means a person licensed in this state as an insurer with the  
1053 authority to assume reinsurance.

1054 [~~(148)~~] (149) "Residential dwelling liability insurance" means insurance against  
1055 liability resulting from or incident to the ownership, maintenance, or use of a residential  
1056 dwelling that is a detached single family residence or multifamily residence up to four units.

1057 [~~(149)~~] (150) (a) "Retrocession" means reinsurance with another insurer of a liability  
1058 assumed under a reinsurance contract.

1059 (b) A reinsurer "retrocedes" when the reinsurer reinsures with another insurer part of a  
1060 liability assumed under a reinsurance contract.

1061 [~~(150)~~] (151) "Rider" means an endorsement to:

1062 (a) an insurance policy; or

1063 (b) an insurance certificate.

1064 [~~(151)~~] (152) (a) "Security" means a:

1065 (i) note;

1066 (ii) stock;

1067 (iii) bond;

1068 (iv) debenture;

1069 (v) evidence of indebtedness;

1070 (vi) certificate of interest or participation in a profit-sharing agreement;

1071 (vii) collateral-trust certificate;

1072 (viii) preorganization certificate or subscription;

1073 (ix) transferable share;

1074 (x) investment contract;

1075 (xi) voting trust certificate;

1076 (xii) certificate of deposit for a security;

1077 (xiii) certificate of interest of participation in an oil, gas, or mining title or lease or in  
1078 payments out of production under such a title or lease;

1079 (xiv) commodity contract or commodity option;

1080 (xv) certificate of interest or participation in, temporary or interim certificate for,  
1081 receipt for, guarantee of, or warrant or right to subscribe to or purchase any of the items listed  
1082 in Subsections [~~(151)~~] (152)(a)(i) through (xiv); or

1083 (xvi) another interest or instrument commonly known as a security.

1084 (b) "Security" does not include:

1085 (i) any of the following under which an insurance company promises to pay money in a  
1086 specific lump sum or periodically for life or some other specified period:

1087 (A) insurance;

1088 (B) an endowment policy; or

1089 (C) an annuity contract; or

1090 (ii) a burial certificate or burial contract.

1091 [~~(152)~~] (153) "Secondary medical condition" means a complication related to an  
1092 exclusion from coverage in accident and health insurance.

1093 [~~(153)~~] (154) (a) "Self-insurance" means an arrangement under which a person  
1094 provides for spreading its own risks by a systematic plan.

1095 (b) Except as provided in this Subsection [~~(153)~~] (154), "self-insurance" does not  
1096 include an arrangement under which a number of persons spread their risks among themselves.

1097 (c) "Self-insurance" includes:

1098 (i) an arrangement by which a governmental entity undertakes to indemnify an  
1099 employee for liability arising out of the employee's employment; and

1100 (ii) an arrangement by which a person with a managed program of self-insurance and  
1101 risk management undertakes to indemnify its affiliates, subsidiaries, directors, officers, or  
1102 employees for liability or risk that is related to the relationship or employment.

1103 (d) "Self-insurance" does not include an arrangement with an independent contractor.

1104 [~~(154)~~] (155) "Sell" means to exchange a contract of insurance:

1105 (a) by any means;

1106 (b) for money or its equivalent; and

1107 (c) on behalf of an insurance company.

1108 [~~(155)~~] (156) "Short-term care insurance" means an insurance policy or rider  
1109 advertised, marketed, offered, or designed to provide coverage that is similar to long-term care  
1110 insurance, but that provides coverage for less than 12 consecutive months for each covered

1111 person.

1112           ~~[(156)]~~ (157) "Significant break in coverage" means a period of 63 consecutive days  
1113 during each of which an individual does not have creditable coverage.

1114           ~~[(157)]~~ (158) "Small employer," in connection with a health benefit plan, means an  
1115 employer who, with respect to a calendar year and to a plan year:

1116           (a) employed an average of at least two employees but not more than 50 eligible  
1117 employees on each business day during the preceding calendar year; and

1118           (b) employs at least two employees on the first day of the plan year.

1119           ~~[(158)]~~ (159) "Special enrollment period," in connection with a health benefit plan, has  
1120 the same meaning as provided in federal regulations adopted pursuant to the Health Insurance  
1121 Portability and Accountability Act.

1122           ~~[(159)]~~ (160) (a) "Subsidiary" of a person means an affiliate controlled by that person  
1123 either directly or indirectly through one or more affiliates or intermediaries.

1124           (b) "Wholly owned subsidiary" of a person is a subsidiary of which all of the voting  
1125 shares are owned by that person either alone or with its affiliates, except for the minimum  
1126 number of shares the law of the subsidiary's domicile requires to be owned by directors or  
1127 others.

1128           ~~[(160)]~~ (161) Subject to Subsection (86)(b), "surety insurance" includes:

1129           (a) a guarantee against loss or damage resulting from the failure of a principal to pay or  
1130 perform the principal's obligations to a creditor or other obligee;

1131           (b) bail bond insurance; and

1132           (c) fidelity insurance.

1133           ~~[(161)]~~ (162) (a) "Surplus" means the excess of assets over the sum of paid-in capital  
1134 and liabilities.

1135           (b) (i) "Permanent surplus" means the surplus of ~~[a mutual]~~ an insurer or organization  
1136 that is designated by the insurer or organization as permanent.

1137           (ii) Sections 31A-5-211, 31A-7-201, 31A-8-209, 31A-9-209, and ~~[31A-14-209]~~  
1138 31A-14-205 require that ~~[mutuals]~~ insurers or organizations doing business in this state  
1139 maintain specified minimum levels of permanent surplus.

1140           (iii) Except for assessable mutuals, the minimum permanent surplus requirement is the  
1141 same as the minimum required capital requirement that applies to stock insurers.

- 1142 (c) "Excess surplus" means:
- 1143 (i) for a life insurer, accident and health insurer, health organization, or property and
- 1144 casualty insurer as defined in Section 31A-17-601, the lesser of:
- 1145 (A) that amount of an insurer's or health organization's total adjusted capital that
- 1146 exceeds the product of:
- 1147 (I) 2.5; and
- 1148 (II) the sum of the insurer's or health organization's minimum capital or permanent
- 1149 surplus required under Section 31A-5-211, 31A-9-209, or 31A-14-205; or
- 1150 (B) that amount of an insurer's or health organization's total adjusted capital that
- 1151 exceeds the product of:
- 1152 (I) 3.0; and
- 1153 (II) the authorized control level RBC as defined in Subsection 31A-17-601(8)(a); and
- 1154 (ii) for a monoline mortgage guaranty insurer, financial guaranty insurer, or title insurer
- 1155 that amount of an insurer's paid-in-capital and surplus that exceeds the product of:
- 1156 (A) 1.5; and
- 1157 (B) the insurer's total adjusted capital required by Subsection 31A-17-609(1).
- 1158 [~~162~~] (163) "Third party administrator" or "administrator" means a person who
- 1159 collects charges or premiums from, or who, for consideration, adjusts or settles claims of
- 1160 residents of the state in connection with insurance coverage, annuities, or service insurance
- 1161 coverage, except:
- 1162 (a) a union on behalf of its members;
- 1163 (b) a person administering a:
- 1164 (i) pension plan subject to the federal Employee Retirement Income Security Act of
- 1165 1974;
- 1166 (ii) governmental plan as defined in Section 414(d), Internal Revenue Code; or
- 1167 (iii) nonelecting church plan as described in Section 410(d), Internal Revenue Code;
- 1168 (c) an employer on behalf of the employer's employees or the employees of one or
- 1169 more of the subsidiary or affiliated corporations of the employer;
- 1170 (d) an insurer licensed under the following, but only for a line of insurance for which
- 1171 the insurer holds a license in this state:
- 1172 (i) Chapter 5, Domestic Stock and Mutual Insurance Corporations;

- 1173 (ii) Chapter 7, Nonprofit Health Service Insurance Corporations;
- 1174 (iii) Chapter 8, Health Maintenance Organizations and Limited Health Plans;
- 1175 (iv) Chapter 9, Insurance Fraternal; or
- 1176 (v) Chapter 14, Foreign Insurers;
- 1177 (e) a person:
- 1178 (i) licensed or exempt from licensing under:
- 1179 (A) Chapter 23a, Insurance Marketing - Licensing Producers, Consultants, and
- 1180 Reinsurance Intermediaries; or
- 1181 (B) Chapter 26, Insurance Adjusters; and
- 1182 (ii) whose activities are limited to those authorized under the license the person holds
- 1183 or for which the person is exempt; or
- 1184 (f) an institution, bank, or financial institution:
- 1185 (i) that is:
- 1186 (A) an institution whose deposits and accounts are to any extent insured by a federal
- 1187 deposit insurance agency, including the Federal Deposit Insurance Corporation or National
- 1188 Credit Union Administration; or
- 1189 (B) a bank or other financial institution that is subject to supervision or examination by
- 1190 a federal or state banking authority; and
- 1191 (ii) that does not adjust claims without a third party administrator license.
- 1192 [~~(163)~~] (164) "Title insurance" means the insuring, guaranteeing, or indemnifying of an
- 1193 owner of real or personal property or the holder of liens or encumbrances on that property, or
- 1194 others interested in the property against loss or damage suffered by reason of liens or
- 1195 encumbrances upon, defects in, or the unmarketability of the title to the property, or invalidity
- 1196 or unenforceability of any liens or encumbrances on the property.
- 1197 [~~(164)~~] (165) "Total adjusted capital" means the sum of an insurer's or health
- 1198 organization's statutory capital and surplus as determined in accordance with:
- 1199 (a) the statutory accounting applicable to the annual financial statements required to be
- 1200 filed under Section 31A-4-113; and
- 1201 (b) another item provided by the RBC instructions, as RBC instructions is defined in
- 1202 Section 31A-17-601.
- 1203 [~~(165)~~] (166) (a) "Trustee" means "director" when referring to the board of directors of

1204 a corporation.

1205 (b) "Trustee," when used in reference to an employee welfare fund, means an  
1206 individual, firm, association, organization, joint stock company, or corporation, whether acting  
1207 individually or jointly and whether designated by that name or any other, that is charged with  
1208 or has the overall management of an employee welfare fund.

1209 ~~[(166)]~~ (167) (a) "Unauthorized insurer," "unadmitted insurer," or "nonadmitted  
1210 insurer" means an insurer:

1211 (i) not holding a valid certificate of authority to do an insurance business in this state;

1212 or

1213 (ii) transacting business not authorized by a valid certificate.

1214 (b) "Admitted insurer" or "authorized insurer" means an insurer:

1215 (i) holding a valid certificate of authority to do an insurance business in this state; and

1216 (ii) transacting business as authorized by a valid certificate.

1217 ~~[(167)]~~ (168) "Underwrite" means the authority to accept or reject risk on behalf of the  
1218 insurer.

1219 ~~[(168)]~~ (169) "Vehicle liability insurance" means insurance against liability resulting  
1220 from or incident to ownership, maintenance, or use of a land vehicle or aircraft, exclusive of a  
1221 vehicle comprehensive or vehicle physical damage coverage under Subsection ~~[(138)]~~ (139).

1222 ~~[(169)]~~ (170) "Voting security" means a security with voting rights, and includes a  
1223 security convertible into a security with a voting right associated with the security.

1224 ~~[(170)]~~ (171) "Waiting period" for a health benefit plan means the period that must  
1225 pass before coverage for an individual, who is otherwise eligible to enroll under the terms of  
1226 the health benefit plan, can become effective.

1227 ~~[(171)]~~ (172) "Workers' compensation insurance" means:

1228 (a) insurance for indemnification of an employer against liability for compensation  
1229 based on:

1230 (i) a compensable accidental injury; and

1231 (ii) occupational disease disability;

1232 (b) employer's liability insurance incidental to workers' compensation insurance and  
1233 written in connection with workers' compensation insurance; and

1234 (c) insurance assuring to a person entitled to workers' compensation benefits the



1235 compensation provided by law.

1236 Section 2. Section **31A-2-217** is amended to read:

1237 **31A-2-217. Coordination with other states.**

1238 (1) (a) Subject to Subsection (1)(b), the commissioner, by rule, may adopt one or more  
1239 agreements with [~~another~~] a state governmental regulatory agency, within and outside of this  
1240 state, or with the National Association of Insurance Commissioners to address state regulatory  
1241 issues limited to:

1242 (i) licensing of insurance companies;

1243 (ii) licensing of agents;

1244 (iii) regulation of premium rates and policy forms; and

1245 (iv) regulation of insurer insolvency and insurance receiverships.

1246 (b) An agreement described in Subsection (1)(a), may authorize the commissioner to  
1247 modify a requirement of this title if the commissioner determines that the requirements under  
1248 the agreement provide protections similar to or greater than the requirements under this title.

1249 (2) (a) The commissioner may negotiate an interstate compact that addresses issuing  
1250 certificates of authority, if the commissioner determines that:

1251 (i) each state participating in the compact has requirements for issuing certificates of  
1252 authority that provide protections similar to or greater than the requirements of this title; or

1253 (ii) the interstate compact contains requirements for issuing certificates of authority  
1254 that provide protections similar to or greater than the requirements of this title.

1255 (b) If an interstate compact described in Subsection (2)(a) is adopted by the  
1256 Legislature, the commissioner may issue certificates of authority to insurers in accordance with  
1257 the terms of the interstate compact.

1258 (3) If any provision of this title conflicts with a provision of the annual statement  
1259 instructions or the National Association of Insurance Commissioners Accounting Practices and  
1260 Procedures Manual, the commissioner may, by rule, resolve the conflict in favor of the annual  
1261 statement instructions or the National Association of Insurance Commissioners Accounting  
1262 Practices and Procedures Manual.

1263 (4) The commissioner may, by rule, accept the information prescribed by the National  
1264 Association of Insurance Commissioners instead of the documents required to be filed with an  
1265 application for a certificate of authority under:

- 1266 (a) Section 31A-4-103, 31A-5-204, 31A-8-205, or 31A-14-201; or  
1267 (b) rules made by the commissioner.  
1268 (5) Before November 30, 2001, the commissioner shall report to the Business and  
1269 Labor Interim Committee regarding the status of:  
1270 (a) any agreements entered into under Subsection (1);  
1271 (b) any interstate compact entered into under Subsection (2); and  
1272 (c) any rule made under Subsections (3) and (4).  
1273 (6) This section shall be repealed in accordance with Section 63I-1-231.  
1274 Section 3. Section **31A-2-402** is amended to read:  
1275 **31A-2-402. Definitions.**  
1276 As used in this part:  
1277 (1) "Commission" means the Title and Escrow Commission created in Section  
1278 31A-2-403.  
1279 (2) "Concurrence" means the entities given a concurring role must jointly agree for the  
1280 action to be taken.  
1281 (3) "Dual licensed title licensee" means a title licensee who holds:  
1282 (a) [a] an individual title insurance producer license as a title licensee; and  
1283 (b) a license or certificate under:  
1284 (i) Title 61, Chapter 2c, Utah Residential Mortgage Practices and Licensing Act;  
1285 (ii) Title 61, Chapter 2f, Real Estate Licensing and Practices Act; or  
1286 (iii) Title 61, Chapter 2g, Real Estate Appraiser Licensing and Certification Act.  
1287 (4) "Real Estate Commission" means the Real Estate Commission created in Section  
1288 61-2f-103.  
1289 (5) "Title licensee" means a person licensed under this title as:  
1290 (a) an agency title insurance producer with a title insurance line of authority;  
1291 (b) [a] an individual title insurance producer with:  
1292 (i) a general title insurance line of authority; or  
1293 (ii) a specific category of authority for title insurance; or  
1294 (c) a title insurance adjuster.  
1295 Section 4. Section **31A-2-403** is amended to read:  
1296 **31A-2-403. Title and Escrow Commission created.**

1297 (1) (a) Subject to Subsection (1)(b), there is created within the department the Title and  
1298 Escrow Commission that is comprised of five members appointed by the governor with the  
1299 consent of the Senate as follows beginning July 1, 2013:

1300 [~~(i)~~ ~~four members shall each:~~]

1301 (i) two members shall be an employee of a title insurer;

1302 (ii) two members shall:

1303 (A) be an employee of a Utah agency title insurance producer;

1304 [~~(A)~~] (B) be or have been licensed under the title insurance line of authority;

1305 [~~(B)~~] (C) as of the day on which the member is appointed, be or have been licensed  
1306 with the search or escrow subline of authority for at least five years; and

1307 [~~(C)~~] (D) as of the day on which the member is appointed, not be from the same county  
1308 as another member appointed under this Subsection (1)(a)[~~(i)~~](ii); and

1309 [~~(i)~~] (iii) one member shall be a member of the general public from any county in the  
1310 state.

1311 (b) No more than one commission member may be appointed from a single company  
1312 or an affiliate or subsidiary of the company.

1313 (2) (a) Subject to Subsection (2)(c), a commission member shall file with the  
1314 commissioner a disclosure of any position of employment or ownership interest that the  
1315 commission member has with respect to a person that is subject to the jurisdiction of the  
1316 commissioner.

1317 (b) The disclosure statement required by this Subsection (2) shall be:

1318 (i) filed by no later than the day on which the person begins that person's appointment;  
1319 and

1320 (ii) amended when a significant change occurs in any matter required to be disclosed  
1321 under this Subsection (2).

1322 (c) A commission member is not required to disclose an ownership interest that the  
1323 commission member has if the ownership interest is in a publicly traded company or held as  
1324 part of a mutual fund, trust, or similar investment.

1325 (3) (a) Except as required by Subsection (3)(b), as terms of current commission  
1326 members expire, the governor shall appoint each new commission member to a four-year term  
1327 ending on June 30.

1328 (b) Notwithstanding the requirements of Subsection (3)(a), the governor shall, at the  
1329 time of appointment, adjust the length of terms to ensure that the terms of the commission  
1330 members are staggered so that approximately half of the [~~commission is~~] members appointed  
1331 under Subsection (1)(a)(i) and half of the members appointed under Subsection (1)(a)(ii) are  
1332 appointed every two years.

1333 (c) A commission member may not serve more than one consecutive term.

1334 (d) When a vacancy occurs in the membership for any reason, the governor, with the  
1335 consent of the Senate, shall appoint a replacement for the unexpired term.

1336 (e) Notwithstanding the other provisions of this Subsection (3), a commission member  
1337 serves until a successor is appointed by the governor with the consent of the Senate.

1338 (4) A commission member may not receive compensation or benefits for the  
1339 commission member's service, but may receive per diem and travel expenses in accordance  
1340 with:

1341 (a) Section 63A-3-106;

1342 (b) Section 63A-3-107; and

1343 (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and  
1344 63A-3-107.

1345 (5) Members of the commission shall annually select one commission member to serve  
1346 as chair.

1347 (6) (a) The commission shall meet at least monthly. Notwithstanding Section  
1348 52-4-207, a commission member shall physically attend a regularly scheduled monthly meeting  
1349 of the commission and may not attend through electronic means. A commission member may  
1350 attend subcommittee meetings, emergency meetings, or other not regularly scheduled meetings  
1351 electronically in accordance with Section 52-4-207.

1352 (b) The commissioner may call additional meetings:

1353 (i) at the commissioner's discretion;

1354 (ii) upon the request of the chair of the commission; or

1355 (iii) upon the written request of three or more commission members.

1356 (c) (i) Three commission members constitute a quorum for the transaction of business.

1357 (ii) The action of a majority of the commission members when a quorum is present is  
1358 the action of the commission.

1359 (7) The commissioner shall staff the commission.

1360 Section 5. Section **31A-2-404** is amended to read:

1361 **31A-2-404. Duties of the commissioner and Title and Escrow Commission.**

1362 (1) Notwithstanding the other provisions of this chapter, to the extent provided in this  
1363 part, the commissioner shall administer and enforce the provisions in this title related to:

1364 (a) title insurance; and

1365 (b) escrow conducted by a title licensee or title insurer.

1366 (2) The commission shall:

1367 (a) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and  
1368 subject to Subsection [~~(3)~~] (4), make rules for the administration of the provisions in this title  
1369 related to title insurance including rules related to:

1370 (i) rating standards and rating methods for a title licensee, as provided in Section  
1371 31A-19a-209;

1372 (ii) the licensing for a title licensee, including the licensing requirements of Section  
1373 31A-23a-204;

1374 (iii) continuing education requirements of Section 31A-23a-202; and

1375 [~~(iv) examination procedures, after consultation with the commissioner and the  
1376 commissioner's test administrator when required by Section 31A-23a-204; and]~~

1377 [~~(v)~~] (iv) standards of conduct for a title licensee;

1378 (b) concur in the issuance and renewal of a license in accordance with Section  
1379 31A-23a-105 or 31A-26-203;

1380 (c) in accordance with Section 31A-3-103, establish, with the concurrence of the  
1381 commissioner, the fees imposed by this title on a title licensee;

1382 (d) in accordance with Section 31A-23a-415 determine, after consulting with the  
1383 commissioner, the assessment on a title insurer as defined in Section 31A-23a-415;

1384 (e) conduct an administrative hearing not delegated by the commission to an  
1385 administrative law judge related to the:

1386 (i) licensing of an applicant;

1387 (ii) conduct of a title licensee; or

1388 (iii) approval of a continuing education program required by Section 31A-23a-202;

1389 (f) with the concurrence of the commissioner, approve a continuing education program

1390 required by Section 31A-23a-202;

1391 (g) with the concurrence of the commissioner, impose a penalty:

1392 (i) under this title related to:

1393 (A) title insurance; or

1394 (B) escrow conducted by a title licensee;

1395 (ii) after investigation by the commissioner in accordance with Part 3, Procedures and

1396 Enforcement; and

1397 (iii) that is enforced by the commissioner;

1398 (h) advise the commissioner on the administration and enforcement of any matter

1399 affecting the title insurance industry;

1400 (i) advise the commissioner on matters affecting the commissioner's budget related to

1401 title insurance; and

1402 (j) perform other duties as provided in this title.

1403 (3) The commission may make rules establishing an examination for a license that will

1404 satisfy Section 31A-23a-204:

1405 (a) after consultation with the commissioner and the commissioner's test administrator;

1406 (b) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and

1407 (c) subject to Subsection (4).

1408 [~~3~~] (4) The commission may make a rule under this title only if at the time the

1409 commission files its proposed rule and rule analysis with the Division of Administrative Rules

1410 in accordance with Section 63G-3-301, the commission provides the Real Estate Commission

1411 that same information.

1412 [~~4~~] (5) (a) The commissioner shall annually report the information described in

1413 Subsection [~~4~~] (5)(b) in writing to:

1414 (i) the commission; and

1415 (ii) the Business and Labor Interim Committee.

1416 (b) The information required to be reported under this Subsection [~~4~~] (5):

1417 (i) may not identify a person; and

1418 (ii) shall include:

1419 (A) the number of complaints the commissioner receives with regard to transactions

1420 involving title insurance or a title licensee during the calendar year immediately proceeding the

1421 report;

1422 (B) the type of complaints described in Subsection [~~(4)~~] (5)(b)(ii)(A); and

1423 (C) for each complaint described in Subsection [~~(4)~~] (5)(b)(ii)(A):

1424 (I) any action taken by the commissioner with regard to the complaint; and

1425 (II) the time-period beginning the day on which a complaint is made and ending the  
1426 day on which the commissioner determines it will take no further action with regard to the  
1427 complaint.

1428 (6) The commission may not impose a penalty in a manner inconsistent with

1429 Subsection (2)(g) or make a rule that conflicts with Subsection (2)(g).

1430 Section 6. Section **31A-3-304 (Effective 07/01/13)** is amended to read:

1431 **31A-3-304 (Effective 07/01/13). Annual fees -- Other taxes or fees prohibited --**  
1432 **Captive Insurance Restricted Account.**

1433 (1) (a) A captive insurance company shall pay an annual fee imposed under this section  
1434 to obtain or renew a certificate of authority.

1435 (b) The commissioner shall:

1436 (i) determine the annual fee pursuant to Section 31A-3-103; and

1437 (ii) consider whether the annual fee is competitive with fees imposed by other states on  
1438 captive insurance companies.

1439 (2) A captive insurance company that fails to pay the fee required by this section is  
1440 subject to the relevant sanctions of this title.

1441 (3) (a) Except as provided in Subsection (3)(d) and notwithstanding Title 59, Chapter  
1442 9, Taxation of Admitted Insurers, the following constitute the sole taxes, fees, or charges under  
1443 the laws of this state that may be levied or assessed on a captive insurance company:

1444 (i) a fee under this section;

1445 (ii) a fee under Chapter 37, Captive Insurance Companies Act; and

1446 (iii) a fee under Chapter 37a, Special Purpose Financial Captive Insurance Company  
1447 Act.

1448 (b) The state or a county, city, or town within the state may not levy or collect an  
1449 occupation tax or other tax, fee, or charge not described in Subsections (3)(a)(i) through (iii)  
1450 against a captive insurance company.

1451 (c) The state may not levy, assess, or collect a withdrawal fee under Section 31A-4-115

1452 against a captive insurance company.

1453 (d) A captive insurance company is subject to real and personal property taxes.

1454 (4) A captive insurance company shall pay the fee imposed by this section to the  
1455 commissioner by June 20 of each year.

1456 (5) (a) Money received pursuant to a fee described in Subsection (3)(a) shall be  
1457 deposited into the Captive Insurance Restricted Account.

1458 (b) There is created in the General Fund a restricted account known as the "Captive  
1459 Insurance Restricted Account."

1460 (c) The Captive Insurance Restricted Account shall consist of the fees described in  
1461 Subsection (3)(a).

1462 (d) The commissioner shall administer the Captive Insurance Restricted Account.  
1463 Subject to appropriations by the Legislature, the commissioner shall use the money deposited  
1464 into the Captive Insurance Restricted Account to:

1465 (i) administer and enforce:

1466 (A) Chapter 37, Captive Insurance Companies Act; and

1467 (B) Chapter 37a, Special Purpose Financial Captive Insurance Company Act; and

1468 (ii) promote the captive insurance industry in Utah.

1469 (e) An appropriation from the Captive Insurance Restricted Account is nonlapsing,  
1470 except that at the end of each fiscal year, money received by the commissioner in excess of  
1471 [~~\$950,000~~] \$1,250,000 shall be treated as free revenue in the General Fund.

1472 Section 75. Section **31A-4-117** is enacted to read:

1473 **31A-4-117. Closing or settlement protection.**

1474 (1) A title insurer may issue closing or settlement protection in the form of a closing  
1475 protection letter filed with the department to a person who is a party to a transaction in which a  
1476 title insurance policy is issued.

1477 (2) Closing or settlement protection may indemnify a person who is a party to a  
1478 transaction referred to in Subsection (1) against loss that the title insurer approves for the  
1479 closing or settlement protection, under the terms and conditions of the closing protection letter  
1480 issued by the title insurer, because of one or more of the following acts of a title insurance  
1481 policy issuing individual title insurance producer or agency title insurance producer or other  
1482 settlement service provider:



1483           (a) theft or misappropriation of settlement funds in connection with a transaction in  
1484 which one or more title insurance policies are issued by or on behalf of the title insurer issuing  
1485 the closing or settlement protection, but only to the extent that the theft or misappropriation  
1486 relates to the status of the title to that interest in land or to the validity, enforceability, and  
1487 priority of the lien of the mortgage on that interest in land; or

1488           (b) failure to comply with the written closing instructions when agreed to by the  
1489 settlement agent, title agent, or employee of the title insurer, but only to the extent that the  
1490 failure to follow the written closing instructions relates to the status of the title to that interest  
1491 in land or the validity, enforceability, and priority of the lien of the mortgage on that interest in  
1492 land.

1493           (3) A title insurer may not make the fee charged by a title insurer for each party  
1494 receiving closing or settlement protection coverage subject to any agreement requiring a  
1495 division of fees or premiums collected on behalf of the title insurer. The fee charged for a  
1496 closing or settlement coverage protection letter will be filed by the title insurer with the  
1497 department 30 days before use.

1498           (4) A title insurer may not provide any other protection that purports to contractually  
1499 indemnify against improper acts or omissions of a person who is a party to a transaction  
1500 referred to in Subsection (1) with regard to settlement or closing services.

1501           Section 8. Section **31A-8-301** is amended to read:

1502           **31A-8-301. Requirements for doing business in state.**

1503           (1) Only a corporation incorporated and licensed under Part 2, Domestic  
1504 Organizations, may do business in this state as an organization.

1505           (2) To do business in this state as an organization, a foreign [~~corporations~~] corporation  
1506 doing a similar business in other states shall incorporate a subsidiary and license [~~if~~] it under  
1507 Part 2, Domestic Organizations, for its Utah business. Except as to Chapter 16, Insurance  
1508 Holding Companies, the laws applicable to a domestic [~~organizations~~] organization apply only  
1509 to the domestic organization and not to its foreign parent corporation.

1510           Section 9. Section **31A-14-211** is amended to read:

1511           **31A-14-211. Restrictions on foreign title insurers.**

1512           (1) An authorized foreign title insurer may [~~not~~] insure property in this state [~~except~~]:

1513           (a) through [~~a~~] an agency title insurance producer who is a resident in Utah; or

- 1514 (b) ~~[through]~~ if the authorized foreign title insurer has a bona fide office in Utah:
- 1515 (i) that is under the direction and control of the authorized foreign title insurer;
- 1516 (ii) for which the authorized foreign title insurer pays the expenses, including
- 1517 compensation of the employees of the bona fide office;
- 1518 (iii) at which a person may request information about title services related to a real
- 1519 estate transaction for which the person is a party;
- 1520 (iv) at which a person may deliver written communications to the authorized foreign
- 1521 title insurer as required by the real estate transaction for which the person is a party; and
- 1522 (v) at which a person may deliver escrow money related to a real estate transaction for
- 1523 which the person is a party.
- 1524 (2) This section does not apply to reinsurance.
- 1525 Section 10. Section **31A-17-603** is amended to read:
- 1526 **31A-17-603. Company action level event.**
- 1527 (1) "Company action level event" means any of the following events:
- 1528 (a) the filing of an RBC report by an insurer or health organization that indicates that:
- 1529 (i) the insurer's or health organization's total adjusted capital is greater than or equal to
- 1530 its regulatory action level RBC but less than its company action level RBC; ~~[or]~~
- 1531 (ii) if a life or accident and health insurer, the insurer has:
- 1532 (A) total adjusted capital that is greater than or equal to its company action level RBC
- 1533 but less than the product of its authorized control level RBC and ~~[2.5]~~ 3.0; and
- 1534 ~~[(B) a negative trend, determined in accordance with the "trend test calculation"~~
- 1535 ~~included in the RBC instructions;]~~
- 1536 (B) triggers the trend test determined in accordance with the trend test calculation
- 1537 included in the life or fraternal RBC instructions; or
- 1538 (iii) if a property and casualty insurer, the insurer has:
- 1539 (A) total adjusted capital that is greater than or equal to its company action level RBC,
- 1540 but less than the product of its authorized control level RBC and 3.0; and
- 1541 (B) triggers the trend test determined in accordance with the trend test calculation
- 1542 included in the property and casualty RBC instructions;
- 1543 (b) the notification by the commissioner to the insurer or health organization of an
- 1544 adjusted RBC report that indicates an event in Subsection (1)(a), provided the insurer or health

1545 organization does not challenge the adjusted RBC report under Section 31A-17-607; or

1546 (c) if, pursuant to Section 31A-17-607, an insurer or health organization challenges an  
1547 adjusted RBC report that indicates the event in Subsection (1)(a), the notification by the  
1548 commissioner to the insurer or health organization that after a hearing the commissioner rejects  
1549 the insurer's or health organization's challenge.

1550 (2) (a) In the event of a company action level event, the insurer or health organization  
1551 shall prepare and submit to the commissioner an RBC plan that shall:

1552 (i) identify the conditions that contribute to the company action level event;

1553 (ii) contain proposals of corrective actions that the insurer or health organization  
1554 intends to take and that are expected to result in the elimination of the company action level  
1555 event;

1556 (iii) provide projections of the insurer's or health organization's financial results in the  
1557 current year and at least the four succeeding years, both in the absence of proposed corrective  
1558 actions and giving effect to the proposed corrective actions, including projections of:

1559 (A) statutory operating income;

1560 (B) net income;

1561 (C) capital;

1562 (D) surplus; and

1563 (E) RBC levels;

1564 (iv) identify the key assumptions impacting the insurer's or health organization's  
1565 projections and the sensitivity of the projections to the assumptions; and

1566 (v) identify the quality of, and problems associated with, the insurer's or health  
1567 organization's business, including its assets, anticipated business growth and associated surplus  
1568 strain, extraordinary exposure to risk, mix of business and use of reinsurance, if any, in each  
1569 case.

1570 (b) For purposes of Subsection (2)(a)(iii), the projections for both new and renewal  
1571 business may include separate projections for each major line of business and separately  
1572 identify each significant income, expense, and benefit component.

1573 (3) The RBC plan shall be submitted:

1574 (a) within 45 days of the company action level event; or

1575 (b) if the insurer or health organization challenges an adjusted RBC report pursuant to

1576 Section 31A-17-607, within 45 days after notification to the insurer or health organization that  
1577 after a hearing the commissioner rejects the insurer's or health organization's challenge.

1578 (4) (a) Within 60 days after the submission by an insurer or health organization of an  
1579 RBC plan to the commissioner, the commissioner shall notify the insurer or health organization  
1580 whether the RBC plan:

1581 (i) shall be implemented; or

1582 (ii) is unsatisfactory.

1583 (b) If the commissioner determines the RBC plan is unsatisfactory, the notification to  
1584 the insurer or health organization shall set forth the reasons for the determination, and may  
1585 propose revisions that will render the RBC plan satisfactory. Upon notification from the  
1586 commissioner, the insurer or health organization shall:

1587 (i) prepare a revised RBC plan that incorporates any revision proposed by the  
1588 commissioner; and

1589 (ii) submit the revised RBC plan to the commissioner:

1590 (A) within 45 days after the notification from the commissioner; or

1591 (B) if the insurer challenges the notification from the commissioner under Section  
1592 31A-17-607, within 45 days after a notification to the insurer or health organization that after a  
1593 hearing the commissioner rejects the insurer's or health organization's challenge.

1594 (5) In the event of a notification by the commissioner to an insurer or health  
1595 organization that the insurer's or health organization's RBC plan or revised RBC plan is  
1596 unsatisfactory, the commissioner may specify in the notification that the notification constitutes  
1597 a regulatory action level event subject to the insurer's or health organization's right to a hearing  
1598 under Section 31A-17-607.

1599 (6) Every domestic insurer or health organization that files an RBC plan or revised  
1600 RBC plan with the commissioner shall file a copy of the RBC plan or revised RBC plan with  
1601 the insurance commissioner in any state in which the insurer or health organization is  
1602 authorized to do business if:

1603 (a) the state has an RBC provision substantially similar to Subsection 31A-17-608(1);  
1604 and

1605 (b) the insurance commissioner of that state notifies the insurer or health organization  
1606 of its request for the filing in writing, in which case the insurer or health organization shall file

1607 a copy of the RBC plan or revised RBC plan in that state no later than the later of:

1608 (i) 15 days after the receipt of notice to file a copy of its RBC plan or revised RBC plan  
1609 with that state; or

1610 (ii) the date on which the RBC plan or revised RBC plan is filed under Subsections (3)  
1611 and (4).

1612 Section 11. Section **31A-19a-209** is amended to read:

1613 **31A-19a-209. Special provisions for title insurance.**

1614 (1) (a) (i) The Title and Escrow Commission shall adopt rules subject to Section  
1615 31A-2-404, establishing rate standards and rating methods for [~~title agencies and producers~~]  
1616 individual title insurance producers and agency title insurance producers.

1617 (ii) The commissioner shall determine compliance with rate standards and rating  
1618 methods for title insurance insurers[~~, agencies, and producers~~], individual title insurance  
1619 producers, and agency title insurance producers.

1620 (b) In addition to the considerations in determining compliance with rate standards and  
1621 rating methods as set forth in Sections 31A-19a-201 and 31A-19a-202, including for title  
1622 insurers, the commissioner and the Title and Escrow Commission shall consider the costs and  
1623 expenses incurred by title insurance insurers[~~, agencies, and producers~~], individual title  
1624 insurance producers, and agency title insurance producers peculiar to the business of title  
1625 insurance including:

1626 (i) the maintenance of title plants; and

1627 (ii) the searching and examining of public records to determine insurability of title to  
1628 real redevelopment property.

1629 (2) (a) Every title insurance insurer[~~;~~] or agency[~~, and~~] title insurance producer, and  
1630 every individual title insurance producer who is not designated by an agency title insurance  
1631 producer shall file with the commissioner:

1632 (i) a schedule of the escrow charges that the title insurance insurer[~~, agency, or~~],  
1633 individual title insurance producer, or agency title insurance producer proposes to use in this  
1634 state for services performed in connection with the issuance of policies of title insurance; and

1635 (ii) any changes to the schedule of the escrow charges described in Subsection (2)(a)(i).

1636 (b) Except for a schedule filed by a title insurance insurer under this Subsection (2), a  
1637 schedule filed under this Subsection (2) is subject to review by the Title and Escrow

1638 Commission.

1639 (c) (i) The schedule of escrow charges required to be filed by Subsection (2)(a)(i) takes  
1640 effect on the day on which the schedule of escrow charges is filed.

1641 (ii) Any changes to the schedule of the escrow charges required to be filed by  
1642 Subsection (2)(a)(ii) take effect on the day specified in the change to the schedule of escrow  
1643 charges except that the effective date may not be less than 30 calendar days after the day on  
1644 which the change to the schedule of escrow charges is filed.

1645 (3) A title insurance insurer~~[, agency, or producer]~~, individual title insurance producer,  
1646 or agency title insurance producer may not file or use any rate or other charge relating to the  
1647 business of title insurance, including rates or charges filed for escrow that would cause the title  
1648 insurance company~~[, agency, or producer]~~, individual title insurance producer, or agency title  
1649 insurance producer to:

1650 (a) operate at less than the cost of doing:

1651 (i) the insurance business; or

1652 (ii) the escrow business; or

1653 (b) fail to adequately underwrite a title insurance policy.

1654 (4) (a) All or any of the schedule of rates or schedule of charges, including the schedule  
1655 of escrow charges, may be changed or amended at any time, subject to the limitations in this  
1656 Subsection (4).

1657 (b) Each change or amendment shall:

1658 (i) be filed with the commissioner, subject to review by the Title and Escrow  
1659 Commission; and

1660 (ii) state the effective date of the change or amendment, which may not be less than 30  
1661 calendar days after the day on which the change or amendment is filed.

1662 (c) Any change or amendment remains in force for a period of at least 90 calendar days  
1663 from the change or amendment's effective date.

1664 (5) While the schedule of rates and schedule of charges are effective, a copy of each  
1665 shall be:

1666 (a) retained in each of the offices of:

1667 (i) the title insurance insurer in this state;

1668 (ii) the title insurance insurer's individual title insurance producers or agency title

1669 insurance producers in this state; and

1670 (b) upon request, furnished to the public.

1671 (6) Except in accordance with the schedules of rates and charges filed with the  
1672 commissioner, a title insurance insurer~~[-agency, or producer]~~, individual title insurance  
1673 producer, or agency title insurance producer may not make or impose any premium or other  
1674 charge:

1675 (a) in connection with the issuance of a policy of title insurance; or

1676 (b) for escrow services performed in connection with the issuance of a policy of title  
1677 insurance.

1678 Section 12. Section **31A-20-110** is amended to read:

1679 **31A-20-110. Underwriting rules for title insurance.**

1680 (1) [~~No~~] A title insurance policy may not be written until the title insurer or its  
1681 individual title insurance producer or agency title insurance producer has conducted a  
1682 reasonable search and examination of the title and has made a determination of insurability of  
1683 title under sound underwriting principles. Evidence of this search and reasonable  
1684 determination shall be retained in the files of the title insurer or its individual title insurance  
1685 producer or agency title insurance producer for not less than 15 years after the policy has been  
1686 issued, either in its original form or as recorded by any process which can accurately and  
1687 reliably reproduce the original. This section does not apply to a company assuming liability  
1688 through a contract of reinsurance, or to a company acting as coinsurer, if another coinsuring  
1689 company has complied with this section.

1690 (2) [~~No~~] A title insurance policy may not be issued except by a title [~~insurance~~  
1691 ~~company or by a~~] insurer, an individual title insurance producer who is appointed by an insurer,  
1692 or agency title insurance producer licensed under Section 31A-23a-105.

1693 (3) This section is enforceable only by the commissioner. It does not create, eliminate,  
1694 or modify any private cause of action or remedy.

1695 Section 13. Section **31A-22-429** is enacted to read:

1696 **31A-22-429. Producer's duties related to replacement of life insurance or annuity.**

1697 (1) In connection with or as part of each application for life insurance or annuities, the  
1698 applicant shall complete and the producer shall submit to the insurer the statements required by  
1699 rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act as to:

1700 (a) whether the applicant has existing policies or contracts; and

1701 (b) whether the proposed life insurance or annuity will replace, discontinue, or change  
1702 an existing policy or contract.

1703 (2) If an applicant for life insurance or an annuity answers "yes" to the question  
1704 regarding replacement, discontinuance, or change of an existing policy or contract referred to in  
1705 Subsection (1), the producer shall present to, and leave with, the applicant, not later than at the  
1706 time of taking the application, the notice regarding replacements in the form adopted by the  
1707 commissioner by rule made in accordance with Title 63G, Chapter 3, Utah Administrative  
1708 Rulemaking Act, or other substantially similar document filed with the commissioner.

1709 However, a filing is not required when an amendment to the notice is limited to the omission of  
1710 a reference not applicable to the product being sold or replaced. With respect to an  
1711 electronically completed application and notice, the producer is not required to leave a copy of  
1712 the electronically completed notice with the applicant.

1713 (3) (a) The notice described in Subsection (2) shall:

1714 (i) list each existing policy or contract contemplated to be replaced, properly identified  
1715 by name of insurer, the insured or annuitant, and policy or contract number if available; and

1716 (ii) include a statement as to whether each policy or contract will be replaced or  
1717 whether a policy will be used as a source of financing for the new policy or contract.

1718 (b) If a policy or contract number has not been issued by the existing insurer,  
1719 alternative identification, such as an application or receipt number, shall be listed.

1720 (4) In connection with a replacement transaction the producer shall leave with the  
1721 applicant by no later than at the time of policy or contract delivery the original or a copy of all  
1722 printed sales material. With respect to electronically presented sales material, it shall be  
1723 provided to the policy or contract holder in printed form no later than at the time of policy or  
1724 contract delivery.

1725 (5) Except as provided in rule made by the commissioner in accordance with Title  
1726 63G, Chapter 3, Utah Administrative Rulemaking Act, in connection with a replacement  
1727 transaction, the producer shall submit to the insurer to which an application for a policy or  
1728 contract is presented:

1729 (a) a copy of each document required by this section;

1730 (b) a statement identifying any preprinted or electronically presented company



1731 approved sales materials used; and  
1732 (c) copies of any individualized sales materials, including any illustrations related to  
1733 the specific policy or contract purchased.

1734 Section 14. Section **31A-22-519** is amended to read:

1735 **31A-22-519. Death pending conversion.**

1736 If a person insured under a group life insurance policy, or the insured dependent of that  
1737 person, dies during the period of eligibility for conversion under Section 31A-22-517 or  
1738 31A-22-518 and before the individual policy becomes effective, the amount of life insurance to  
1739 which [~~he~~] the insured would have been entitled to have issued under the individual policy is  
1740 payable as a claim under the group policy, whether or not application for the individual policy  
1741 or the payment of the first premium has been made.

1742 Section 15. Section **31A-22-617** is amended to read:

1743 **31A-22-617. Preferred provider contract provisions.**

1744 Health insurance policies may provide for insureds to receive services or  
1745 reimbursement under the policies in accordance with preferred health care provider contracts as  
1746 follows:

1747 (1) Subject to restrictions under this section, any insurer or third party administrator  
1748 may enter into contracts with health care providers as defined in Section 78B-3-403 under  
1749 which the health care providers agree to supply services, at prices specified in the contracts, to  
1750 persons insured by an insurer.

1751 (a) (i) A health care provider contract may require the health care provider to accept the  
1752 specified payment as payment in full, relinquishing the right to collect additional amounts from  
1753 the insured person.

1754 (ii) In any dispute involving a provider's claim for reimbursement, the same shall be  
1755 determined in accordance with applicable law, the provider contract, the subscriber contract,  
1756 and the insurer's written payment policies in effect at the time services were rendered.

1757 (iii) If the parties are unable to resolve their dispute, the matter shall be subject to  
1758 binding arbitration by a jointly selected arbitrator. Each party is to bear its own expense except  
1759 the cost of the jointly selected arbitrator shall be equally shared. This Subsection (1)(a)(iii)  
1760 does not apply to the claim of a general acute hospital to the extent it is inconsistent with the  
1761 hospital's provider agreement.

1762 (iv) An organization may not penalize a provider solely for pursuing a claims dispute  
1763 or otherwise demanding payment for a sum believed owing.

1764 (v) If an insurer permits another entity with which it does not share common ownership  
1765 or control to use or otherwise lease one or more of the organization's networks of participating  
1766 providers, the organization shall ensure, at a minimum, that the entity pays participating  
1767 providers in accordance with the same fee schedule and general payment policies as the  
1768 organization would for that network.

1769 (b) The insurance contract may reward the insured for selection of preferred health care  
1770 providers by:

1771 (i) reducing premium rates;

1772 (ii) reducing deductibles;

1773 (iii) coinsurance;

1774 (iv) other copayments; or

1775 (v) any other reasonable manner.

1776 (c) If the insurer is a managed care organization, as defined in Subsection  
1777 31A-27a-403(1)(f):

1778 (i) the insurance contract and the health care provider contract shall provide that in the  
1779 event the managed care organization becomes insolvent, the rehabilitator or liquidator may:

1780 (A) require the health care provider to continue to provide health care services under  
1781 the contract until the earlier of:

1782 (I) 90 days after the date of the filing of a petition for rehabilitation or the petition for  
1783 liquidation; or

1784 (II) the date the term of the contract ends; and

1785 (B) subject to Subsection (1)(c)(v), reduce the fees the provider is otherwise entitled to  
1786 receive from the managed care organization during the time period described in Subsection  
1787 (1)(c)(i)(A);

1788 (ii) the provider is required to:

1789 (A) accept the reduced payment under Subsection (1)(c)(i)(B) as payment in full; and

1790 (B) relinquish the right to collect additional amounts from the insolvent managed care  
1791 organization's enrollee, as defined in Subsection 31A-27a-403(1)(b);

1792 (iii) if the contract between the health care provider and the managed care organization

1793 has not been reduced to writing, or the contract fails to contain the language required by  
1794 Subsection (1)(c)(i), the provider may not collect or attempt to collect from the enrollee:  
1795 (A) sums owed by the insolvent managed care organization; or  
1796 (B) the amount of the regular fee reduction authorized under Subsection (1)(c)(i)(B);  
1797 (iv) the following may not bill or maintain any action at law against an enrollee to  
1798 collect sums owed by the insolvent managed care organization or the amount of the regular fee  
1799 reduction authorized under Subsection (1)(c)(i)(B):  
1800 (A) a provider;  
1801 (B) an agent;  
1802 (C) a trustee; or  
1803 (D) an assignee of a person described in Subsections (1)(c)(iv)(A) through (C); and  
1804 (v) notwithstanding Subsection (1)(c)(i):  
1805 (A) a rehabilitator or liquidator may not reduce a fee by less than 75% of the provider's  
1806 regular fee set forth in the contract; and  
1807 (B) the enrollee shall continue to pay the copayments, deductibles, and other payments  
1808 for services received from the provider that the enrollee was required to pay before the filing  
1809 of:  
1810 (I) a petition for rehabilitation; or  
1811 (II) a petition for liquidation.  
1812 (2) (a) Subject to Subsections (2)(b) through (2)(f)(e), an insurer using preferred  
1813 health care provider contracts ~~[shall pay for the services of health care providers not under the~~  
1814 ~~contract, unless the illnesses or injuries treated by the health care provider are not within the~~  
1815 ~~scope of the insurance contract. As used in this section, "class of health care providers" means~~  
1816 ~~all health care providers licensed or licensed and certified by the state within the same~~  
1817 ~~professional, trade, occupational, or facility licensure or licensure and certification category~~  
1818 ~~established pursuant to Titles 26, Utah Health Code and 58, Occupations and Professions] is~~  
1819 subject to the reimbursement requirements in Section 31A-8-501 on or after January 1, 2014.  
1820 ~~[(b) (i) Until July 1, 2012, when the insured receives services from a health care~~  
1821 ~~provider not under contract, the insurer shall reimburse the insured for at least 75% of the~~  
1822 ~~average amount paid by the insurer for comparable services of preferred health care providers~~  
1823 ~~who are members of the same class of health care providers.]~~

1824           ~~[(ii) Notwithstanding Subsection (2)(b)(i), an insurer may offer a health plan that~~  
1825 ~~complies with the provisions of Subsection 31A-22-618.5(3).]~~

1826           ~~[(iii) The commissioner may adopt a rule dealing with the determination of what~~  
1827 ~~constitutes 75% of the average amount paid by the insurer under Subsection (2)(b)(i) for~~  
1828 ~~comparable services of preferred health care providers who are members of the same class of~~  
1829 ~~health care providers.]~~

1830           ~~[(e)]~~ (b) When reimbursing for services of health care providers not under contract, the  
1831 insurer may make direct payment to the insured.

1832           ~~[(d) Notwithstanding Subsection (2)(b), an]~~

1833           (c) An insurer using preferred health care provider contracts may impose a deductible  
1834 on coverage of health care providers not under contract.

1835           ~~[(e)]~~ (d) When selecting health care providers with whom to contract under Subsection  
1836 (1), an insurer may not unfairly discriminate between classes of health care providers, but may  
1837 discriminate within a class of health care providers, subject to Subsection (7).

1838           ~~[(f)]~~ (e) For purposes of this section, unfair discrimination between classes of health  
1839 care providers ~~[shall include]~~ includes:

1840           (i) refusal to contract with class members in reasonable proportion to the number of  
1841 insureds covered by the insurer and the expected demand for services from class members; and

1842           (ii) refusal to cover procedures for one class of providers that are:

1843           (A) commonly ~~[utilized]~~ used by members of the class of health care providers for the  
1844 treatment of illnesses, injuries, or conditions;

1845           (B) otherwise covered by the insurer; and

1846           (C) within the scope of practice of the class of health care providers.

1847           (3) Before the insured consents to the insurance contract, the insurer shall fully disclose  
1848 to the insured that it has entered into preferred health care provider contracts. The insurer shall  
1849 provide sufficient detail on the preferred health care provider contracts to permit the insured to  
1850 agree to the terms of the insurance contract. The insurer shall provide at least the following  
1851 information:

1852           (a) a list of the health care providers under contract, and if requested their business  
1853 locations and specialties;

1854           (b) a description of the insured benefits, including any deductibles, coinsurance, or

1855 other copayments;

1856 (c) a description of the quality assurance program required under Subsection (4); and

1857 (d) a description of the adverse benefit determination procedures required under  
1858 Subsection (5).

1859 (4) (a) An insurer using preferred health care provider contracts shall maintain a quality  
1860 assurance program for assuring that the care provided by the health care providers under  
1861 contract meets prevailing standards in the state.

1862 (b) The commissioner in consultation with the executive director of the Department of  
1863 Health may designate qualified persons to perform an audit of the quality assurance program.  
1864 The auditors shall have full access to all records of the organization and its health care  
1865 providers, including medical records of individual patients.

1866 (c) The information contained in the medical records of individual patients shall  
1867 remain confidential. All information, interviews, reports, statements, memoranda, or other data  
1868 furnished for purposes of the audit and any findings or conclusions of the auditors are  
1869 privileged. The information is not subject to discovery, use, or receipt in evidence in any legal  
1870 proceeding except hearings before the commissioner concerning alleged violations of this  
1871 section.

1872 (5) An insurer using preferred health care provider contracts shall provide a reasonable  
1873 procedure for resolving complaints and adverse benefit determinations initiated by the insureds  
1874 and health care providers.

1875 (6) An insurer may not contract with a health care provider for treatment of illness or  
1876 injury unless the health care provider is licensed to perform that treatment.

1877 (7) (a) A health care provider or insurer may not discriminate against a preferred health  
1878 care provider for agreeing to a contract under Subsection (1).

1879 (b) Any health care provider licensed to treat any illness or injury within the scope of  
1880 the health care provider's practice, who is willing and able to meet the terms and conditions  
1881 established by the insurer for designation as a preferred health care provider, shall be able to  
1882 apply for and receive the designation as a preferred health care provider. Contract terms and  
1883 conditions may include reasonable limitations on the number of designated preferred health  
1884 care providers based upon substantial objective and economic grounds, or expected use of  
1885 particular services based upon prior provider-patient profiles.

1886 (8) Upon the written request of a provider excluded from a provider contract, the  
1887 commissioner may hold a hearing to determine if the insurer's exclusion of the provider is  
1888 based on the criteria set forth in Subsection (7)(b).

1889 (9) ~~[Insurers]~~ Except as provided in Subsection 31A-22-618.5(3)(a), insurers are  
1890 subject to ~~[the provisions of]~~ Sections 31A-22-613.5, 31A-22-614.5, and 31A-22-618.

1891 (10) Nothing in this section is to be construed as to require an insurer to offer a certain  
1892 benefit or service as part of a health benefit plan.

1893 (11) This section does not apply to catastrophic mental health coverage provided in  
1894 accordance with Section 31A-22-625.

1895 Section 16. Section **31A-22-618.5** is amended to read:

1896 **31A-22-618.5. Health benefit plan offerings.**

1897 (1) The purpose of this section is to increase the range of health benefit plans available  
1898 in the small group, small employer group, large group, and individual insurance markets.

1899 (2) A health maintenance organization that is subject to Chapter 8, Health Maintenance  
1900 Organizations and Limited Health Plans:

1901 (a) shall offer to potential purchasers at least one health benefit plan that is subject to  
1902 the requirements of Chapter 8, Health Maintenance Organizations and Limited Health Plans;  
1903 and

1904 (b) may offer to a potential purchaser one or more health benefit plans that:

1905 (i) are not subject to one or more of the following:

1906 (A) the limitations on insured indemnity benefits in Subsection 31A-8-105(4);

1907 (B) the limitation on point of service products in Subsections 31A-8-408(3) through  
1908 (6);

1909 (C) except as provided in Subsection (2)(b)(ii), basic health care services as defined in  
1910 Section 31A-8-101; or

1911 (D) coverage mandates enacted after January 1, 2009 that are not required by federal  
1912 law, provided that the insurer offers one plan under Subsection (2)(a) that covers the mandate  
1913 enacted after January 1, 2009; and

1914 (ii) when offering a health plan under this section, provide coverage for an emergency  
1915 medical condition as required by Section 31A-22-627 as follows:

1916 (A) within the organization's service area, covered services shall include health care

1917 services from non-affiliated providers when medically necessary to stabilize an emergency  
1918 medical condition; and

1919 (B) outside the organization's service area, covered services shall include medically  
1920 necessary health care services for the treatment of an emergency medical condition that are  
1921 immediately required while the enrollee is outside the geographic limits of the organization's  
1922 service area.

1923 (3) An insurer that offers a health benefit plan that is not subject to Chapter 8, Health  
1924 Maintenance Organizations and Limited Health Plans:

1925 ~~[(a) notwithstanding Subsection 31A-22-617(2), may offer a health benefit plan that~~  
1926 ~~groups providers into the following reimbursement levels:]~~

1927 ~~[(i) tier one contracted providers;]~~

1928 ~~[(ii) tier two contracted providers who the insurer shall reimburse at least 75% of tier~~  
1929 ~~one providers; and]~~

1930 ~~[(iii) one or more tiers of non-contracted providers;]~~

1931 ~~[(b)]~~ (a) notwithstanding Subsection 31A-22-617(9), may offer a health benefit plan  
1932 that is not subject to Section 31A-22-618;

1933 ~~[(c) beginning July 1, 2012, may offer health benefit plans that:]~~

1934 ~~[(i) are not subject to Subsection 31A-22-617(2); and]~~

1935 ~~[(ii) are subject to the reimbursement requirements in Section 31A-8-501;]~~

1936 ~~[(d)]~~ (b) when offering a health plan under this Subsection (3), shall provide coverage  
1937 of emergency care services as required by Section 31A-22-627 ~~[by providing coverage at a~~  
1938 ~~reimbursement level of at least 75% of the health benefit plan's highest contracted provider~~  
1939 ~~category]; and~~

1940 ~~[(e) are]~~ (c) is not subject to coverage mandates enacted after January 1, 2009 that are  
1941 not required by federal law, provided that an insurer offers one plan that covers a mandate  
1942 enacted after January 1, 2009.

1943 (4) Section 31A-8-106 does not prohibit the offer of a health benefit plan under  
1944 Subsection (2)(b).

1945 (5) (a) Any difference in price between a health benefit plan offered under Subsections  
1946 (2)(a) and (b) shall be based on actuarially sound data.

1947 (b) Any difference in price between a health benefit plan offered under ~~[Subsections]~~

1948 Subsection (3)(a) [~~and (b)~~] shall be based on actuarially sound data.

1949 (6) Nothing in this section limits the number of health benefit plans that an insurer may  
1950 offer.

1951 Section 17. Section **31A-22-724** is amended to read:

1952 **31A-22-724. Offer of alternative coverage -- Utah NetCare Plan.**

1953 (1) For purposes of this section, "alternative coverage" means:

1954 (a) a high deductible or low deductible Utah NetCare Plan described in Subsection (2)  
1955 for a conversion health benefit plan policy offered under Section 31A-22-723; and

1956 (b) a high deductible and low deductible Utah NetCare Plans described in Subsection  
1957 (2) as an alternative to COBRA and mini-COBRA health benefit plan coverage offered under  
1958 Section 31A-22-722.

1959 (2) A Utah NetCare Plan under this section is subject to Section 31A-2-212 and shall,  
1960 except when prohibited by federal law, include:

1961 (a) healthy lifestyle and wellness incentives;

1962 (b) the benefits described in this Subsection (2) or at least the actuarial equivalent of  
1963 the benefits described in this Subsection (2);

1964 (c) a lifetime maximum benefit per person of not less than \$1,000,000;

1965 (d) an annual maximum benefit per person of not less than \$250,000;

1966 (e) the following deductibles:

1967 (i) for a low deductible plan:

1968 (A) \$2,000 for an individual plan;

1969 (B) \$4,000 for a two party plan; and

1970 (C) \$6,000 for a family plan;

1971 (ii) for a high deductible plan:

1972 (A) \$4,000 for an individual plan;

1973 (B) \$8,000 for a two party plan; and

1974 (C) \$12,000 for a family plan;

1975 (f) the following out-of-pocket maximum costs, including deductibles, copayments,  
1976 and coinsurance:

1977 (i) for a low deductible plan:

1978 (A) \$5,000 for an individual plan;



- 1979 (B) \$10,000 for a two party plan; and
- 1980 (C) \$15,000 for a family plan; and
- 1981 (ii) for a high deductible plan:
- 1982 (A) \$10,000 for an individual plan;
- 1983 (B) \$20,000 for a two party plan; and
- 1984 (C) \$30,000 for a family plan;
- 1985 (g) the following benefits before applying a deductible requirement and in accordance
- 1986 with Section 223, Internal Revenue Code, and 42 U.S.C. Sec. 300gg-13:
- 1987 (i) all well child exams and immunizations up to age five, with no annual maximum;
- 1988 (ii) preventive care up to a \$500 annual maximum;
- 1989 (iii) primary care and specialist and urgent care not covered under Subsection (2)(g)(i)
- 1990 or (ii) up to a \$300 annual maximum; and
- 1991 (iv) supplemental accident coverage up to a \$500 annual maximum;
- 1992 (h) the following copayments for each exam:
- 1993 (i) \$15 for preventive care and well child exams;
- 1994 (ii) \$25 for primary care; and
- 1995 (iii) \$50 for urgent care and specialist care;
- 1996 (i) a \$200 copayment for an emergency room visit after applying the deductible;
- 1997 (j) no more than a 30% coinsurance after deductible for covered plan benefits for:
- 1998 (i) hospital services;
- 1999 (ii) maternity;
- 2000 (iii) laboratory work;
- 2001 (iv) x-rays;
- 2002 (v) radiology;
- 2003 (vi) outpatient surgery services;
- 2004 (vii) injectable medications not otherwise covered under a pharmacy benefit;
- 2005 (viii) durable medical equipment;
- 2006 (ix) ambulance services;
- 2007 (x) in-patient mental health services; and
- 2008 (xi) out-patient mental health services; and
- 2009 (k) the following cost-sharing features for a prescription drug:

2010 (i) up to a \$15 copayment for a generic drug; and  
2011 (ii) up to a 50% coinsurance for a name brand drug.  
2012 (3) A Utah NetCare Plan may exclude:  
2013 (a) the benefit mandates described in Subsections 31A-22-618.5(2)(b) and (3)~~(b)~~(a);  
2014 and  
2015 (b) unless required by federal law, mandated coverage required by the following  
2016 sections and related administrative rules:  
2017 (i) Section 31A-22-610.1, Adoption indemnity benefit;  
2018 (ii) Section 31A-22-623, Coverage of inborn metabolic errors;  
2019 (iii) Section 31A-22-624, Primary care physician;  
2020 (iv) Section 31A-22-626, Coverage of diabetes;  
2021 (v) Section 31A-22-628, Standing referral to a specialist; and  
2022 (vi) a mandated coverage enacted after January 1, 2009, that is not required by federal  
2023 law.  
2024 (4) A Utah NetCare Plan may include a formulary or preferred drug list.  
2025 (5) (a) Except as provided in Subsection (6), a person may elect alternative coverage  
2026 under this section if the person is eligible for:  
2027 (i) continuation of employer group health benefit plan coverage under federal COBRA  
2028 laws;  
2029 (ii) continuation of employer group health benefit plan coverage under state  
2030 mini-COBRA under Section 31A-22-722; or  
2031 (iii) a conversion to an individual health benefit plan after the exhaustion of benefits  
2032 under:  
2033 (A) alternative coverage elected in place of federal COBRA; or  
2034 (B) state mini-COBRA under Section 31A-22-722.  
2035 (b) The right to extend coverage under Subsection (5)(a) applies to spouse or  
2036 dependent coverages, including a surviving spouse or dependent whose coverage under the  
2037 policy terminates by reason of the death of the employee or member.  
2038 (6) If a person elects federal COBRA or state mini-COBRA health benefit plan  
2039 coverage under Section 31A-22-722, the person is not eligible to elect alternative coverage  
2040 under this section until the person is eligible to convert coverage to an individual policy under

2041 Section 31A-22-723 and Subsection (1)(a).

2042 (7) (a) [(†)] If alternative coverage is selected as an alternative to COBRA or  
2043 mini-COBRA health benefit plan coverage under Section 31A-22-722[;];

2044 (i) Section 31A-22-722 applies to the alternative coverage[;];

2045 (ii) [~~If an employee of a small employer selects alternative coverage as an alternative to~~  
2046 ~~COBRA or mini-COBRA health benefit plan coverage,~~] the insurer may not use a risk factor  
2047 greater than the employer's most current risk factor for purposes of Subsection  
2048 31A-22-722(5)[;]; and

2049 (iii) the insurer shall credit to the alternative coverage the current year's deductible and  
2050 out of pocket amounts satisfied under the employer's plan.

2051 (b) If alternative coverage is selected as a conversion policy under Section  
2052 31A-22-723[;];

2053 (i) Section 31A-22-723 applies[;]; and

2054 (ii) the insurer shall credit to the alternative coverage the current year's deductible and  
2055 out of pocket amounts satisfied under the employer's plan.

2056 (8) The commissioner shall adopt administrative rules in accordance with Title 63G,  
2057 Chapter 3, Utah Administrative Rulemaking Act, to develop a model letter for employers to  
2058 use to notify an employee of the employee's options for alternative coverage.

2059 Section 18. Section **31A-23a-102** is amended to read:

2060 **31A-23a-102. Definitions.**

2061 As used in this chapter:

2062 (1) "Bail bond producer" is as defined in Section 31A-35-102.

2063 [~~(2) "Escrow" means a license subline of authority in conjunction with the title~~  
2064 ~~insurance line of authority that allows a person to conduct escrow as defined in Section~~  
2065 ~~31A-1-301.~~]

2066 [(3)] (2) "Home state" means a state or territory of the United States or the District of  
2067 Columbia in which an insurance producer:

2068 (a) maintains the insurance producer's principal:

2069 (i) place of residence; or

2070 (ii) place of business; and

2071 (b) is licensed to act as an insurance producer.

2072            [~~(4)~~] (3) "Insurer" is as defined in Section 31A-1-301, except that the following  
2073 persons or similar persons are not insurers for purposes of Part 7, Producer Controlled Insurers:  
2074            (a) a risk retention group as defined in:  
2075            (i) the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499;  
2076            (ii) the Risk Retention Act, 15 U.S.C. Sec. 3901 et seq.; and  
2077            (iii) Chapter 15, Part 2, Risk Retention Groups Act;  
2078            (b) a residual market pool;  
2079            (c) a joint underwriting authority or association; and  
2080            (d) a captive insurer.

2081            [~~(5)~~] (4) "License" is defined in Section 31A-1-301.

2082            [~~(6)~~] (5) (a) "Managing general agent" means a person that:  
2083            (i) manages all or part of the insurance business of an insurer, including the  
2084 management of a separate division, department, or underwriting office;  
2085            (ii) acts as an agent for the insurer whether it is known as a managing general agent,  
2086 manager, or other similar term;  
2087            (iii) produces and underwrites an amount of gross direct written premium equal to, or  
2088 more than 5% of, the policyholder surplus as reported in the last annual statement of the insurer  
2089 in any one quarter or year:  
2090            (A) with or without the authority;  
2091            (B) separately or together with an affiliate; and  
2092            (C) directly or indirectly; and  
2093            (iv) (A) adjusts or pays claims in excess of an amount determined by the  
2094 commissioner; or  
2095            (B) negotiates reinsurance on behalf of the insurer.

2096            (b) Notwithstanding Subsection [~~(6)~~] (5)(a), the following persons may not be  
2097 considered as managing general agent for the purposes of this chapter:  
2098            (i) an employee of the insurer;  
2099            (ii) a United States manager of the United States branch of an alien insurer;  
2100            (iii) an underwriting manager that, pursuant to contract:  
2101            (A) manages all the insurance operations of the insurer;  
2102            (B) is under common control with the insurer;

- 2103 (C) is subject to Chapter 16, Insurance Holding Companies; and  
2104 (D) is not compensated based on the volume of premiums written; and  
2105 (iv) the attorney-in-fact authorized by and acting for the subscribers of a reciprocal  
2106 insurer or inter-insurance exchange under powers of attorney.
- 2107 [~~(7)~~] (6) "Negotiate" means the act of conferring directly with or offering advice  
2108 directly to a purchaser or prospective purchaser of a particular contract of insurance concerning  
2109 a substantive benefit, term, or condition of the contract if the person engaged in that act:
- 2110 (a) sells insurance; or  
2111 (b) obtains insurance from insurers for purchasers.
- 2112 [~~(8)~~] (7) "Reinsurance intermediary" means:  
2113 (a) a reinsurance intermediary-broker; or  
2114 (b) a reinsurance intermediary-manager.
- 2115 [~~(9)~~] (8) "Reinsurance intermediary-broker" means a person other than an officer or  
2116 employee of the ceding insurer, firm, association, or corporation who solicits, negotiates, or  
2117 places reinsurance cessions or retrocessions on behalf of a ceding insurer without the authority  
2118 or power to bind reinsurance on behalf of the insurer.
- 2119 [~~(10)~~] (9) (a) "Reinsurance intermediary-manager" means a person who:  
2120 (i) has authority to bind or who manages all or part of the assumed reinsurance  
2121 business of a reinsurer, including the management of a separate division, department, or  
2122 underwriting office; and  
2123 (ii) acts as an agent for the reinsurer whether the person is known as a reinsurance  
2124 intermediary-manager, manager, or other similar term.
- 2125 (b) Notwithstanding Subsection [~~(10)~~] (9)(a), the following persons may not be  
2126 considered reinsurance intermediary-managers for the purpose of this chapter with respect to  
2127 the reinsurer:
- 2128 (i) an employee of the reinsurer;  
2129 (ii) a United States manager of the United States branch of an alien reinsurer;  
2130 (iii) an underwriting manager that, pursuant to contract:  
2131 (A) manages all the reinsurance operations of the reinsurer;  
2132 (B) is under common control with the reinsurer;  
2133 (C) is subject to Chapter 16, Insurance Holding Companies; and

2134 (D) is not compensated based on the volume of premiums written; and  
2135 (iv) the manager of a group, association, pool, or organization of insurers that:  
2136 (A) engage in joint underwriting or joint reinsurance; and  
2137 (B) are subject to examination by the insurance commissioner of the state in which the  
2138 manager's principal business office is located.

2139 ~~[(11)]~~ (10) "Search" means a license subline of authority in conjunction with the title  
2140 insurance line of authority that allows a person to issue title insurance commitments or policies  
2141 on behalf of a title insurer.

2142 ~~[(12)]~~ (11) "Sell" means to exchange a contract of insurance:

- 2143 (a) by any means;
- 2144 (b) for money or its equivalent; and
- 2145 (c) on behalf of an insurance company.

2146 ~~[(13)]~~ (12) "Solicit" means:

- 2147 (a) attempting to sell insurance;
- 2148 (b) asking or urging a person to apply for:
  - 2149 (i) a particular kind of insurance; and
  - 2150 (ii) insurance from a particular insurance company;
- 2151 (c) advertising insurance, including advertising for the purpose of obtaining leads for  
2152 the sale of insurance; or
- 2153 (d) holding oneself out as being in the insurance business.

2154 ~~[(14)]~~ (13) "Terminate" means:

- 2155 (a) the cancellation of the relationship between:
  - 2156 (i) an individual licensee or agency licensee and a particular insurer; or
  - 2157 (ii) an individual licensee and a particular agency licensee; or
- 2158 (b) the termination of:
  - 2159 (i) an individual licensee's or agency licensee's authority to transact insurance on behalf  
2160 of a particular insurance company; or
  - 2161 (ii) an individual licensee's authority to transact insurance on behalf of a particular  
2162 agency licensee.

2163 ~~[(15)]~~ (14) "Title marketing representative" means a person who:

- 2164 (a) represents a title insurer in soliciting, requesting, or negotiating the placing of:

- 2165 (i) title insurance; or
- 2166 (ii) escrow services; and
- 2167 (b) does not have a search or escrow license as provided in Section 31A-23a-106.

2168 ~~[(16)]~~ (15) "Uniform application" means the version of the National Association of  
2169 Insurance Commissioners' uniform application for resident and nonresident producer licensing  
2170 at the time the application is filed.

2171 ~~[(17)]~~ (16) "Uniform business entity application" means the version of the National  
2172 Association of Insurance Commissioners' uniform business entity application for resident and  
2173 nonresident business entities at the time the application is filed.

2174 Section 19. Section **31A-23a-105** is amended to read:

2175 **31A-23a-105. General requirements for individual and agency license issuance**  
2176 **and renewal.**

2177 (1) (a) The commissioner shall issue or renew a license to a person described in  
2178 Subsection (1)(b) to act as:

- 2179 (i) a producer;
- 2180 (ii) a surplus lines producer;
- 2181 (iii) a limited line producer;
- 2182 (iv) a consultant;
- 2183 (v) a managing general agent; or
- 2184 (vi) a reinsurance intermediary.

2185 (b) The commissioner shall issue or renew a license under Subsection (1)(a) to a  
2186 person who, as to the license type and line of authority classification applied for under Section  
2187 31A-23a-106:

- 2188 (i) satisfies the application requirements under Section 31A-23a-104;
- 2189 (ii) satisfies the character requirements under Section 31A-23a-107;
- 2190 (iii) satisfies any applicable continuing education requirements under Section  
2191 31A-23a-202;
- 2192 (iv) satisfies any applicable examination requirements under Section 31A-23a-108;
- 2193 (v) satisfies any applicable training period requirements under Section 31A-23a-203;
- 2194 (vi) if an applicant for a resident individual producer license, certifies that, to the extent  
2195 applicable, the applicant:

- 2196 (A) is in compliance with Section 31A-23a-203.5; and
- 2197 (B) will maintain compliance with Section 31A-23a-203.5 during the period for which
- 2198 the license is issued or renewed;
- 2199 (vii) has not committed an act that is a ground for denial, suspension, or revocation as
- 2200 provided in Section 31A-23a-111;
- 2201 (viii) if a nonresident:
- 2202 (A) complies with Section 31A-23a-109; and
- 2203 (B) holds an active similar license in that person's state of residence;
- 2204 (ix) if an applicant for [a] an individual title insurance producer or agency title
- 2205 insurance producer license, satisfies the requirements of Section 31A-23a-204;
- 2206 (x) if an applicant for a license to act as a life settlement provider or life settlement
- 2207 producer, satisfies the requirements of Section 31A-23a-117; and
- 2208 (xi) pays the applicable fees under Section 31A-3-103.
- 2209 (2) (a) This Subsection (2) applies to the following persons:
- 2210 (i) an applicant for a pending:
- 2211 (A) individual or agency producer license;
- 2212 (B) surplus lines producer license;
- 2213 (C) limited line producer license;
- 2214 (D) consultant license;
- 2215 (E) managing general agent license; or
- 2216 (F) reinsurance intermediary license; or
- 2217 (ii) a licensed:
- 2218 (A) individual or agency producer;
- 2219 (B) surplus lines producer;
- 2220 (C) limited line producer;
- 2221 (D) consultant;
- 2222 (E) managing general agent; or
- 2223 (F) reinsurance intermediary.
- 2224 (b) A person described in Subsection (2)(a) shall report to the commissioner:
- 2225 (i) an administrative action taken against the person, including a denial of a new or
- 2226 renewal license application:



2227 (A) in another jurisdiction; or  
2228 (B) by another regulatory agency in this state; and  
2229 (ii) a criminal prosecution taken against the person in any jurisdiction.  
2230 (c) The report required by Subsection (2)(b) shall:  
2231 (i) be filed:  
2232 (A) at the time the person files the application for an individual or agency license; and  
2233 (B) for an action or prosecution that occurs on or after the day on which the person  
2234 files the application:  
2235 (I) for an administrative action, within 30 days of the final disposition of the  
2236 administrative action; or  
2237 (II) for a criminal prosecution, within 30 days of the initial appearance before a court;  
2238 and  
2239 (ii) include a copy of the complaint or other relevant legal documents related to the  
2240 action or prosecution described in Subsection (2)(b).  
2241 (3) (a) The department may require a person applying for a license or for consent to  
2242 engage in the business of insurance to submit to a criminal background check as a condition of  
2243 receiving a license or consent.  
2244 (b) A person, if required to submit to a criminal background check under Subsection  
2245 (3)(a), shall:  
2246 (i) submit a fingerprint card in a form acceptable to the department; and  
2247 (ii) consent to a fingerprint background check by:  
2248 (A) the Utah Bureau of Criminal Identification; and  
2249 (B) the Federal Bureau of Investigation.  
2250 (c) For a person who submits a fingerprint card and consents to a fingerprint  
2251 background check under Subsection (3)(b), the department may request:  
2252 (i) criminal background information maintained pursuant to Title 53, Chapter 10, Part  
2253 2, Bureau of Criminal Identification, from the Bureau of Criminal Identification; and  
2254 (ii) complete Federal Bureau of Investigation criminal background checks through the  
2255 national criminal history system.  
2256 (d) Information obtained by the department from the review of criminal history records  
2257 received under this Subsection (3) shall be used by the department for the purposes of:

- 2258 (i) determining if a person satisfies the character requirements under Section  
2259 31A-23a-107 for issuance or renewal of a license;
- 2260 (ii) determining if a person has failed to maintain the character requirements under  
2261 Section 31A-23a-107; and
- 2262 (iii) preventing a person who violates the federal Violent Crime Control and Law  
2263 Enforcement Act of 1994, 18 U.S.C. Sec. 1033, from engaging in the business of insurance in  
2264 the state.
- 2265 (e) If the department requests the criminal background information, the department  
2266 shall:
- 2267 (i) pay to the Department of Public Safety the costs incurred by the Department of  
2268 Public Safety in providing the department criminal background information under Subsection  
2269 (3)(c)(i);
- 2270 (ii) pay to the Federal Bureau of Investigation the costs incurred by the Federal Bureau  
2271 of Investigation in providing the department criminal background information under  
2272 Subsection (3)(c)(ii); and
- 2273 (iii) charge the person applying for a license or for consent to engage in the business of  
2274 insurance a fee equal to the aggregate of Subsections (3)(e)(i) and (ii).
- 2275 (4) To become a resident licensee in accordance with Section 31A-23a-104 and this  
2276 section, a person licensed as one of the following in another state who moves to this state shall  
2277 apply within 90 days of establishing legal residence in this state:
- 2278 (a) insurance producer;
- 2279 (b) surplus lines producer;
- 2280 (c) limited line producer;
- 2281 (d) consultant;
- 2282 (e) managing general agent; or
- 2283 (f) reinsurance intermediary.
- 2284 (5) (a) The commissioner may deny a license application for a license listed in  
2285 Subsection (5)(b) if the person applying for the license, as to the license type and line of  
2286 authority classification applied for under Section 31A-23a-106:
- 2287 (i) fails to satisfy the requirements as set forth in this section; or
- 2288 (ii) commits an act that is grounds for denial, suspension, or revocation as set forth in

2289 Section 31A-23a-111.

2290 (b) This Subsection (5) applies to the following licenses:

2291 (i) producer;

2292 (ii) surplus lines producer;

2293 (iii) limited line producer;

2294 (iv) consultant;

2295 (v) managing general agent; or

2296 (vi) reinsurance intermediary.

2297 (6) Notwithstanding the other provisions of this section, the commissioner may:

2298 (a) issue a license to an applicant for a license for a title insurance line of authority only

2299 with the concurrence of the Title and Escrow Commission; and

2300 (b) renew a license for a title insurance line of authority only with the concurrence of

2301 the Title and Escrow Commission.

2302 Section 20. Section **31A-23a-106** is amended to read:

2303 **31A-23a-106. License types.**

2304 (1) (a) A resident or nonresident license issued under this chapter shall be issued under  
2305 the license types described under Subsection (2).

2306 (b) A license type and a line of authority pertaining to a license type describe the type  
2307 of licensee and the lines of business that a licensee may sell, solicit, or negotiate. A license  
2308 type is intended to describe the matters to be considered under any education, examination, and  
2309 training required of a license applicant under Sections 31A-23a-108, 31A-23a-202, and  
2310 31A-23a-203.

2311 (2) (a) A producer license type includes the following lines of authority:

2312 (i) life insurance, including a nonvariable contract;

2313 (ii) variable contracts, including variable life and annuity, if the producer has the life  
2314 insurance line of authority;

2315 (iii) accident and health insurance, including a contract issued to a policyholder under  
2316 Chapter 7, Nonprofit Health Service Insurance Corporations, or Chapter 8, Health Maintenance  
2317 Organizations and Limited Health Plans;

2318 (iv) property insurance;

2319 (v) casualty insurance, including a surety or other bond;

- 2320 (vi) title insurance under one or more of the following categories:
- 2321 (A) search, including authority to act as a title marketing representative;
- 2322 (B) escrow, including authority to act as a title marketing representative; and
- 2323 (C) title marketing representative only; and
- 2324 (vii) personal lines insurance.
- 2325 (b) A surplus lines producer license type includes the following lines of authority:
- 2326 (i) property insurance, if the person holds an underlying producer license with the
- 2327 property line of insurance; and
- 2328 (ii) casualty insurance, if the person holds an underlying producer license with the
- 2329 casualty line of authority.
- 2330 (c) A limited line producer license type includes the following limited lines of
- 2331 authority:
- 2332 (i) limited line credit insurance;
- 2333 (ii) travel insurance;
- 2334 (iii) motor club insurance;
- 2335 (iv) car rental related insurance;
- 2336 (v) legal expense insurance;
- 2337 (vi) crop insurance;
- 2338 (vii) self-service storage insurance;
- 2339 (viii) bail bond producer;
- 2340 (ix) guaranteed asset protection waiver; and
- 2341 (x) portable electronics insurance.
- 2342 (d) A consultant license type includes the following lines of authority:
- 2343 (i) life insurance, including a nonvariable contract;
- 2344 (ii) variable contracts, including variable life and annuity, if the consultant has the life
- 2345 insurance line of authority;
- 2346 (iii) accident and health insurance, including a contract issued to a policyholder under
- 2347 Chapter 7, Nonprofit Health Service Insurance Corporations, or Chapter 8, Health Maintenance
- 2348 Organizations and Limited Health Plans;
- 2349 (iv) property insurance;
- 2350 (v) casualty insurance, including a surety or other bond; and

- 2351 (vi) personal lines insurance.
- 2352 (e) A managing general agent license type includes the following lines of authority:
- 2353 (i) life insurance, including a nonvariable contract;
- 2354 (ii) variable contracts, including variable life and annuity, if the managing general
- 2355 agent has the life insurance line of authority;
- 2356 (iii) accident and health insurance, including a contract issued to a policyholder under
- 2357 Chapter 7, Nonprofit Health Service Insurance Corporations, or Chapter 8, Health Maintenance
- 2358 Organizations and Limited Health Plans;
- 2359 (iv) property insurance;
- 2360 (v) casualty insurance, including a surety or other bond; and
- 2361 (vi) personal lines insurance.
- 2362 (f) A reinsurance intermediary license type includes the following lines of authority:
- 2363 (i) life insurance, including a nonvariable contract;
- 2364 (ii) variable contracts, including variable life and annuity, if the reinsurance
- 2365 intermediary has the life insurance line of authority;
- 2366 (iii) accident and health insurance, including a contract issued to a policyholder under
- 2367 Chapter 7, Nonprofit Health Service Insurance Corporations, or Chapter 8, Health Maintenance
- 2368 Organizations and Limited Health Plans;
- 2369 (iv) property insurance;
- 2370 (v) casualty insurance, including a surety or other bond; and
- 2371 (vi) personal lines insurance.
- 2372 (g) A person who holds a license under Subsection (2)(a) has the qualifications
- 2373 necessary to act as a holder of a license under Subsection (2)(c), except that the person may not
- 2374 act under Subsection (2)(c)(viii) or (ix).
- 2375 (3) (a) The commissioner may by rule recognize other producer, surplus lines producer,
- 2376 limited line producer, consultant, managing general agent, or reinsurance intermediary lines of
- 2377 authority as to kinds of insurance not listed under Subsections (2)(a) through (f).
- 2378 (b) Notwithstanding Subsection (3)(a), for purposes of title insurance the Title and
- 2379 Escrow Commission may by rule, with the concurrence of the commissioner and subject to
- 2380 Section 31A-2-404, recognize other categories for [a] an individual title insurance producer or
- 2381 agency title insurance producer line of authority not listed under Subsection (2)(a)(vi).

- 2382 (4) The variable contracts line of authority requires:
- 2383 (a) for a producer, licensure by the Financial Industry Regulatory Authority as a:
- 2384 (i) registered broker-dealer; or
- 2385 (ii) broker-dealer agent, with a current registration with a broker-dealer; and
- 2386 (b) for a consultant, registration with the Securities and Exchange Commission or
- 2387 licensure by the Utah Division of Securities as an:
- 2388 (i) investment adviser; or
- 2389 (ii) investment adviser representative, with a current association with an investment
- 2390 adviser.
- 2391 (5) A surplus lines producer is a producer who has a surplus lines license.
- 2392 Section 21. Section **31A-23a-202** is amended to read:
- 2393 **31A-23a-202. Continuing education requirements.**
- 2394 (1) Pursuant to this section, the commissioner shall by rule prescribe the continuing
- 2395 education requirements for a producer and a consultant.
- 2396 (2) (a) The commissioner may not state a continuing education requirement in terms of
- 2397 formal education.
- 2398 (b) The commissioner may state a continuing education requirement in terms of hours
- 2399 of insurance-related instruction received.
- 2400 (c) Insurance-related formal education may be a substitute, in whole or in part, for the
- 2401 hours required under Subsection (2)(b).
- 2402 (3) (a) The commissioner shall impose continuing education requirements in
- 2403 accordance with a two-year licensing period in which the licensee meets the requirements of
- 2404 this Subsection (3).
- 2405 (b) (i) Except as provided in this section, the continuing education requirements shall
- 2406 require:
- 2407 (A) that a licensee complete 24 credit hours of continuing education for every two-year
- 2408 licensing period;
- 2409 (B) that 3 of the 24 credit hours described in Subsection (3)(b)(i)(A) be ethics courses;
- 2410 and
- 2411 (C) that the licensee complete at least half of the required hours through classroom
- 2412 hours of insurance-related instruction.

2413 (ii) An hour of continuing education in accordance with Subsection (3)(b)(i) may be  
2414 obtained through:

- 2415 (A) classroom attendance;
- 2416 (B) home study;
- 2417 (C) watching a video recording;
- 2418 (D) experience credit; or
- 2419 (E) another method provided by rule.

2420 (iii) (A) Notwithstanding Subsections (3)(b)(i)(A) and (B), [a] an individual title  
2421 insurance producer is required to complete 12 credit hours of continuing education for every  
2422 two-year licensing period, with 3 of the credit hours being ethics courses unless the individual  
2423 title insurance producer is licensed in this state as [a] an individual title insurance producer for  
2424 20 or more consecutive years.

2425 (B) If [a] an individual title insurance producer is licensed in this state as [a] an  
2426 individual title insurance producer for 20 or more consecutive years, the individual title  
2427 insurance producer is required to complete 6 credit hours of continuing education for every  
2428 two-year licensing period, with 3 of the credit hours being ethics courses.

2429 (C) Notwithstanding Subsection (3)(b)(iii)(A) or (B), [a] an individual title insurance  
2430 producer is considered to have met the continuing education requirements imposed under  
2431 Subsection (3)(b)(iii)(A) or (B) if the individual title insurance producer:

- 2432 (I) is an active member in good standing with the Utah State Bar;
- 2433 (II) is in compliance with the continuing education requirements of the Utah State Bar;
- 2434 and

2435 (III) if requested by the department, provides the department evidence that the  
2436 individual title insurance producer complied with the continuing education requirements of the  
2437 Utah State Bar.

2438 (c) A licensee may obtain continuing education hours at any time during the two-year  
2439 licensing period.

2440 (d) (i) A licensee is exempt from continuing education requirements under this section  
2441 if:

- 2442 (A) the licensee was first licensed before April 1, 1978;
- 2443 (B) the license does not have a continuous lapse for a period of more than one year,

2444 except for a license for which the licensee has had an exemption approved before May 11,  
2445 2011;

2446 (C) the licensee requests an exemption from the department; and

2447 (D) the department approves the exemption.

2448 (ii) If the department approves the exemption under Subsection (3)(d)(i), the licensee is  
2449 not required to apply again for the exemption.

2450 (e) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the  
2451 commissioner shall, by rule:

2452 (i) publish a list of insurance professional designations whose continuing education  
2453 requirements can be used to meet the requirements for continuing education under Subsection  
2454 (3)(b);

2455 (ii) authorize a continuing education provider or a state or national professional  
2456 producer or consultant association to:

2457 (A) offer a qualified program for a license type or line of authority on a geographically  
2458 accessible basis; and

2459 (B) collect a reasonable fee for funding and administration of a continuing education  
2460 program, subject to the review and approval of the commissioner; and

2461 (iii) provide that membership by a producer or consultant in a state or national  
2462 professional producer or consultant association is considered a substitute for the equivalent of  
2463 two hours for each year during which the producer or consultant is a member of the  
2464 professional association, except that the commissioner may not give more than two hours of  
2465 continuing education credit in a year regardless of the number of professional associations of  
2466 which the producer or consultant is a member.

2467 (f) A fee permitted under Subsection (3)(e)(ii)(B) that is charged for attendance at a  
2468 professional producer or consultant association program may be less for an association  
2469 member, on the basis of the member's affiliation expense, but shall preserve the right of a  
2470 nonmember to attend without affiliation.

2471 (4) The commissioner shall approve a continuing education provider or continuing  
2472 education course that satisfies the requirements of this section.

2473 (5) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the  
2474 commissioner shall by rule set the processes and procedures for continuing education provider



2475 registration and course approval.

2476 (6) The requirements of this section apply only to a producer or consultant who is an  
2477 individual.

2478 (7) A nonresident producer or consultant is considered to have satisfied this state's  
2479 continuing education requirements if the nonresident producer or consultant satisfies the  
2480 nonresident producer's or consultant's home state's continuing education requirements for a  
2481 licensed insurance producer or consultant.

2482 (8) A producer or consultant subject to this section shall keep documentation of  
2483 completing the continuing education requirements of this section for two years after the end of  
2484 the two-year licensing period to which the continuing education applies.

2485 Section 22. Section **31A-23a-203.5** is amended to read:

2486 **31A-23a-203.5. Errors and omissions coverage requirements.**

2487 (1) In accordance with this section, a resident individual producer shall ensure that the  
2488 resident individual producer is covered:

2489 (a) for the legal liability of the resident individual producer as the result of an  
2490 erroneous act or failure to act in the resident individual producer's capacity as a producer; and

2491 (b) at all times during the term of the resident individual producer's license.

2492 (2) The coverage required by Subsection (1) shall consist of:

2493 (a) a policy naming the resident individual producer;

2494 (b) a policy naming the agency that designates the resident individual producer in  
2495 accordance with this chapter; or

2496 (c) a written agreement by an insurer or group of affiliated insurers, on behalf of a  
2497 resident individual producer who is or will become an exclusive agent of the insurer or group  
2498 of affiliated insurers, under which the insurer or group of affiliated insurers agrees to assume  
2499 responsibility, to the benefit of an aggrieved person, for legal liability of the resident individual  
2500 producer as the result of an erroneous act or failure to act in the resident individual producer's  
2501 capacity as a producer for the insurer or group of affiliated insurers.

2502 (3) The commissioner may, by rule made in accordance with Title 63G, Chapter 3,  
2503 Utah Administrative Rulemaking Act, provide for:

2504 (a) the terms and conditions of the coverage required under Subsection (1); and

2505 (b) if the coverage required by Subsection (1) is terminated during a resident individual

2506 producer's license term, requirements to:

2507 (i) provide notice; and

2508 (ii) replace the coverage.

2509 (4) ~~[A]~~ An individual title insurance producer is considered to be in compliance with

2510 this section ~~[if the]~~ when:

2511 (a) the individual title insurance producer is not designated by an agency title producer  
2512 and maintains [a] the individual title insurance producer's own bond, policy, or other financial  
2513 protection in accordance with Subsection 31A-23a-204(2)~~[-];~~ or

2514 (b) the individual title insurance producer is designated by an agency title insurance  
2515 producer that maintains a bond, policy, or other financial protection in accordance with  
2516 Subsection 31A-23a-204(2).

2517 (5) Notwithstanding the other provisions of this section, a resident individual producer  
2518 is exempt from the requirement to maintain coverage as provided in this section during a  
2519 period in which the resident individual producer is not either:

2520 (a) appointed by an insurer under this title; or

2521 (b) designated by an agency under this title.

2522 (6) A limited lines producer is exempt from this section.

2523 Section 23. Section **31A-23a-204** is amended to read:

2524 **31A-23a-204. Special requirements for title insurance producers and agencies.**

2525 ~~[A]~~ An individual title insurance producer or agency title insurance producer~~;~~

2526 ~~including an agency;~~ shall be licensed in accordance with this chapter, with the additional  
2527 requirements listed in this section.

2528 (1) (a) A person that receives a new license under this title as ~~[a]~~ an agency title

2529 insurance ~~[agency]~~ producer, shall at the time of licensure be owned or managed by at least one  
2530 individual who is licensed for at least three of the five years immediately preceding the date on  
2531 which the agency title insurance ~~[agency]~~ producer applies for a license with both:

2532 (i) a search line of authority; and

2533 (ii) an escrow line of authority.

2534 (b) ~~[A]~~ An agency title insurance ~~[agency]~~ producer subject to Subsection (1)(a) may

2535 comply with Subsection (1)(a) by having the agency title insurance ~~[agency]~~ producer owned or  
2536 managed by:

2537 (i) one or more individuals who are licensed with the search line of authority for the  
2538 time period provided in Subsection (1)(a); and

2539 (ii) one or more individuals who are licensed with the escrow line of authority for the  
2540 time period provided in Subsection (1)(a).

2541 (c) A person licensed as ~~[a]~~ an agency title insurance [agency] producer shall at all  
2542 times during the term of licensure be owned or managed by at least one individual who is  
2543 licensed for at least three years within the preceding five-year period with both:

2544 (i) a search line of authority; and

2545 (ii) an escrow line of authority.

2546 (d) The Title and Escrow Commission may by rule, subject to Section 31A-2-404,  
2547 exempt an attorney with real estate experience from the experience requirements in Subsection  
2548 (1)(a).

2549 (e) An individual that satisfies the requirements of this Subsection (1) is known as a  
2550 "qualifying licensee." At any given time, an individual may be a qualifying licensee for not  
2551 more than two agency title insurance producers.

2552 (2) (a) ~~[A]~~ An individual title insurance producer or agency title insurance [agency or]  
2553 producer appointed by an insurer shall maintain:

2554 (i) a fidelity bond;

2555 (ii) a professional liability insurance policy; or

2556 (iii) a financial protection:

2557 (A) equivalent to that described in Subsection (2)(a)(i) or (ii); and

2558 (B) that the commissioner considers adequate.

2559 (b) The bond, insurance, or financial protection required by this Subsection (2):

2560 (i) shall be supplied under a contract approved by the commissioner to provide  
2561 protection against the improper performance of any service in conjunction with the issuance of  
2562 a contract or policy of title insurance; and

2563 (ii) be in a face amount no less than \$50,000.

2564 (c) The Title and Escrow Commission may by rule, subject to Section 31A-2-404,  
2565 exempt individual title insurance producer or agency title insurance producers from the  
2566 requirements of this Subsection (2) upon a finding that, and only so long as, the required policy  
2567 or bond is generally unavailable at reasonable rates.

2568 (3) [A] An individual title insurance producer or agency title insurance [agency or]  
2569 producer appointed by an insurer may maintain a reserve fund to the extent money was  
2570 deposited before July 1, 2008, and not withdrawn to the income of the individual title insurance  
2571 producer or agency title insurance producer.

2572 (4) An examination for licensure shall include questions regarding the search and  
2573 examination of title to real property.

2574 (5) [A] An individual title insurance producer may not perform the functions of escrow  
2575 unless the individual title insurance producer has been examined on the fiduciary duties and  
2576 procedures involved in those functions.

2577 (6) The Title and Escrow Commission [~~shall~~] may adopt rules, subject to Section  
2578 31A-2-404, after consulting with the [~~department~~] commissioner and the [~~department's~~]  
2579 commissioner's test administrator, establishing an examination for a license that will satisfy  
2580 this section.

2581 (7) A license may be issued to [~~a~~] an individual title insurance producer or agency title  
2582 insurance producer who has qualified:

2583 (a) to perform only searches and examinations of title as specified in Subsection (4);

2584 (b) to handle only escrow arrangements as specified in Subsection (5); or

2585 (c) to act as a title marketing representative.

2586 (8) (a) A person licensed to practice law in Utah is exempt from the requirements of  
2587 Subsections (2) and (3) if that person issues 12 or less policies in any 12-month period.

2588 (b) In determining the number of policies issued by a person licensed to practice law in  
2589 Utah for purposes of Subsection (8)(a), if the person licensed to practice law in Utah issues a  
2590 policy to more than one party to the same closing, the person is considered to have issued only  
2591 one policy.

2592 (9) A person licensed to practice law in Utah, whether exempt under Subsection (8) or  
2593 not, shall maintain a trust account separate from a law firm trust account for all title and real  
2594 estate escrow transactions.

2595 Section 24. Section **31A-23a-402** is amended to read:

2596 **31A-23a-402. Unfair marketing practices -- Communication -- Unfair**  
2597 **discrimination -- Coercion or intimidation -- Restriction on choice.**

2598 (1) (a) (i) Any of the following may not make or cause to be made any communication

2599 that contains false or misleading information, relating to an insurance product or contract, any  
2600 insurer, or any licensee under this title, including information that is false or misleading  
2601 because it is incomplete:

2602 (A) a person who is or should be licensed under this title;

2603 (B) an employee or producer of a person described in Subsection (1)(a)(i)(A);

2604 (C) a person whose primary interest is as a competitor of a person licensed under this  
2605 title; and

2606 (D) a person on behalf of any of the persons listed in this Subsection (1)(a)(i).

2607 (ii) As used in this Subsection (1), "false or misleading information" includes:

2608 (A) assuring the nonobligatory payment of future dividends or refunds of unused  
2609 premiums in any specific or approximate amounts, but reporting fully and accurately past  
2610 experience is not false or misleading information; and

2611 (B) with intent to deceive a person examining it:

2612 (I) filing a report;

2613 (II) making a false entry in a record; or

2614 (III) wilfully refraining from making a proper entry in a record.

2615 (iii) A licensee under this title may not:

2616 (A) use any business name, slogan, emblem, or related device that is misleading or  
2617 likely to cause the insurer or other licensee to be mistaken for another insurer or other licensee  
2618 already in business; or

2619 (B) use any advertisement or other insurance promotional material that would cause a  
2620 reasonable person to mistakenly believe that a state or federal government agency, including  
2621 the Health Insurance Exchange, also called the "Utah Health Exchange," created in Section  
2622 63M-1-2504, the Comprehensive Health Insurance Pool created in Chapter 29, Comprehensive  
2623 Health Insurance Pool Act, and the Children's Health Insurance Program created in Title 26,  
2624 Chapter 40, Utah Children's Health Insurance Act:

2625 (I) is responsible for the insurance sales activities of the person;

2626 (II) stands behind the credit of the person;

2627 (III) guarantees any returns on insurance products of or sold by the person; or

2628 (IV) is a source of payment of any insurance obligation of or sold by the person.

2629 (iv) A person who is not an insurer may not assume or use any name that deceptively

2630 implies or suggests that person is an insurer.

2631 (v) A person other than persons licensed as health maintenance organizations under  
2632 Chapter 8 may not use the term "Health Maintenance Organization" or "HMO" in referring to  
2633 itself.

2634 (b) A licensee's violation creates a rebuttable presumption that the violation was also  
2635 committed by the insurer if:

2636 (i) the licensee under this title distributes cards or documents, exhibits a sign, or  
2637 publishes an advertisement that violates Subsection (1)(a), with reference to a particular  
2638 insurer:

2639 (A) that the licensee represents; or

2640 (B) for whom the licensee processes claims; and

2641 (ii) the cards, documents, signs, or advertisements are supplied or approved by that  
2642 insurer.

2643 (2) (a) A title insurer [~~or~~], individual title insurance producer, or agency title insurance  
2644 producer or any officer or employee of [either] the title insurer, individual title insurance  
2645 producer, or agency title insurance producer may not pay, allow, give, or offer to pay, allow, or  
2646 give, directly or indirectly, as an inducement to obtaining any title insurance business:

2647 (i) any rebate, reduction, or abatement of any rate or charge made incident to the  
2648 issuance of the title insurance;

2649 (ii) any special favor or advantage not generally available to others; [~~or~~]

2650 (iii) any money or other consideration, except if approved under Section 31A-2-405; or

2651 (iv) material inducement.

2652 (b) "Charge made incident to the issuance of the title insurance" includes escrow  
2653 charges, and any other services that are prescribed in rule by the Title and Escrow Commission  
2654 after consultation with the commissioner and subject to Section 31A-2-404.

2655 (c) An insured or any other person connected, directly or indirectly, with the  
2656 transaction may not knowingly receive or accept, directly or indirectly, any benefit referred to  
2657 in Subsection (2)(a), including:

2658 (i) a person licensed under Title 61, Chapter 2c, Utah Residential Mortgage Practices  
2659 and Licensing Act;

2660 (ii) a person licensed under Title 61, Chapter 2f, Real Estate Licensing and Practices

2661 Act;

2662 (iii) a builder;

2663 (iv) an attorney; or

2664 (v) an officer, employee, or agent of a person listed in this Subsection (2)(c)(iii).

2665 (3) (a) An insurer may not unfairly discriminate among policyholders by charging

2666 different premiums or by offering different terms of coverage, except on the basis of

2667 classifications related to the nature and the degree of the risk covered or the expenses involved.

2668 (b) Rates are not unfairly discriminatory if they are averaged broadly among persons

2669 insured under a group, blanket, or franchise policy, and the terms of those policies are not

2670 unfairly discriminatory merely because they are more favorable than in similar individual

2671 policies.

2672 (4) (a) This Subsection (4) applies to:

2673 (i) a person who is or should be licensed under this title;

2674 (ii) an employee of that licensee or person who should be licensed;

2675 (iii) a person whose primary interest is as a competitor of a person licensed under this

2676 title; and

2677 (iv) one acting on behalf of any person described in Subsections (4)(a)(i) through (iii).

2678 (b) A person described in Subsection (4)(a) may not commit or enter into any

2679 agreement to participate in any act of boycott, coercion, or intimidation that:

2680 (i) tends to produce:

2681 (A) an unreasonable restraint of the business of insurance; or

2682 (B) a monopoly in that business; or

2683 (ii) results in an applicant purchasing or replacing an insurance contract.

2684 (5) (a) (i) Subject to Subsection (5)(a)(ii), a person may not restrict in the choice of an

2685 insurer or licensee under this chapter, another person who is required to pay for insurance as a

2686 condition for the conclusion of a contract or other transaction or for the exercise of any right

2687 under a contract.

2688 (ii) A person requiring coverage may reserve the right to disapprove the insurer or the

2689 coverage selected on reasonable grounds.

2690 (b) The form of corporate organization of an insurer authorized to do business in this

2691 state is not a reasonable ground for disapproval, and the commissioner may by rule specify

2692 additional grounds that are not reasonable. This Subsection (5) does not bar an insurer from  
2693 declining an application for insurance.

2694 (6) A person may not make any charge other than insurance premiums and premium  
2695 financing charges for the protection of property or of a security interest in property, as a  
2696 condition for obtaining, renewing, or continuing the financing of a purchase of the property or  
2697 the lending of money on the security of an interest in the property.

2698 (7) (a) A licensee under this title may not refuse or fail to return promptly all indicia of  
2699 agency to the principal on demand.

2700 (b) A licensee whose license is suspended, limited, or revoked under Section  
2701 31A-2-308, 31A-23a-111, or 31A-23a-112 may not refuse or fail to return the license to the  
2702 commissioner on demand.

2703 (8) (a) A person may not engage in an unfair method of competition or any other unfair  
2704 or deceptive act or practice in the business of insurance, as defined by the commissioner by  
2705 rule, after a finding that the method of competition, the act, or the practice:

- 2706 (i) is misleading;
- 2707 (ii) is deceptive;
- 2708 (iii) is unfairly discriminatory;
- 2709 (iv) provides an unfair inducement; or
- 2710 (v) unreasonably restrains competition.

2711 (b) Notwithstanding Subsection (8)(a), for purpose of the title insurance industry, the  
2712 Title and Escrow Commission shall make rules, subject to Section 31A-2-404, that define an  
2713 unfair method of competition or unfair or deceptive act or practice after a finding that the  
2714 method of competition, the act, or the practice:

- 2715 (i) is misleading;
- 2716 (ii) is deceptive;
- 2717 (iii) is unfairly discriminatory;
- 2718 (iv) provides an unfair inducement; or
- 2719 (v) unreasonably restrains competition.

2720 Section 25. Section **31A-23a-402.5** is amended to read:

2721 **31A-23a-402.5. Inducements.**

2722 (1) (a) Except as provided in Subsection (2), a producer, consultant, or other licensee



2723 under this title, or an officer or employee of a licensee, may not induce a person to enter into,  
2724 continue, or terminate an insurance contract by offering a benefit that is not:  
2725 (i) specified in the insurance contract; or  
2726 (ii) directly related to the insurance contract.  
2727 (b) An insurer may not make or knowingly allow an agreement of insurance that is not  
2728 clearly expressed in the insurance contract to be issued or renewed.  
2729 (c) A licensee under this title may not absorb the tax under Section 31A-3-301.  
2730 (2) This section does not apply to a title insurer, [~~a title~~] an individual title insurance  
2731 producer, or agency title producer, or an officer or employee of a title insurer [~~or title~~], an  
2732 individual title insurance producer, or an agency title insurance producer.  
2733 (3) Items not prohibited by Subsection (1) include an insurer:  
2734 (a) reducing premiums because of expense savings;  
2735 (b) providing to a policyholder or insured one or more incentives, as defined by the  
2736 commissioner by rule made in accordance with Title 63G, Chapter 3, Utah Administrative  
2737 Rulemaking Act, to participate in a program or activity designed to reduce claims or claim  
2738 expenses, including:  
2739 (i) a premium discount offered to a small or large employer group based on a wellness  
2740 program if:  
2741 (A) the premium discount for the employer group does not exceed 20% of the group  
2742 premium; and  
2743 (B) the premium discount based on the wellness program is offered uniformly by the  
2744 insurer to all employer groups in the large or small group market;  
2745 (ii) a premium discount offered to employees of a small or large employer group in an  
2746 amount that does not exceed federal limits on wellness program incentives; or  
2747 (iii) a combination of premium discounts offered to the employer group and the  
2748 employees of an employer group, based on a wellness program, if:  
2749 (A) the premium discounts for the employer group comply with Subsection (3)(b)(i);  
2750 and  
2751 (B) the premium discounts for the employees of an employer group comply with  
2752 Subsection (3)(b)(ii); or  
2753 (c) receiving premiums under an installment payment plan.

2754 (4) Items not prohibited by Subsection (1) include a producer, consultant, or other  
2755 licensee, or an officer or employee of a licensee, either directly or through a third party:  
2756 (a) engaging in a usual kind of social courtesy if receipt of the social courtesy is not  
2757 conditioned on a quote or the purchase of a particular insurance product;  
2758 (b) extending credit on a premium to the insured:  
2759 (i) without interest, for no more than 90 days from the effective date of the insurance  
2760 contract;  
2761 (ii) for interest that is not less than the legal rate under Section 15-1-1, on the unpaid  
2762 balance after the time period described in Subsection (4)(b)(i); and  
2763 (iii) except that an installment or payroll deduction payment of premiums on an  
2764 insurance contract issued under an insurer's mass marketing program is not considered an  
2765 extension of credit for purposes of this Subsection (4)(b);  
2766 (c) preparing or conducting a survey that:  
2767 (i) is directly related to an accident and health insurance policy purchased from the  
2768 licensee; or  
2769 (ii) is used by the licensee to assess the benefit needs and preferences of insureds,  
2770 employers, or employees directly related to an insurance product sold by the licensee;  
2771 (d) providing limited human resource services that are directly related to an insurance  
2772 product sold by the licensee, including:  
2773 (i) answering questions directly related to:  
2774 (A) an employee benefit offering or administration, if the insurance product purchased  
2775 from the licensee is accident and health insurance or health insurance; and  
2776 (B) employment practices liability, if the insurance product offered by or purchased  
2777 from the licensee is property or casualty insurance; and  
2778 (ii) providing limited human resource compliance training and education directly  
2779 pertaining to an insurance product purchased from the licensee;  
2780 (e) providing the following types of information or guidance:  
2781 (i) providing guidance directly related to compliance with federal and state laws for an  
2782 insurance product purchased from the licensee;  
2783 (ii) providing a workshop or seminar addressing an insurance issue that is directly  
2784 related to an insurance product purchased from the licensee; or

- 2785 (iii) providing information regarding:
- 2786 (A) employee benefit issues;
- 2787 (B) directly related insurance regulatory and legislative updates; or
- 2788 (C) similar education about an insurance product sold by the licensee and how the
- 2789 insurance product interacts with tax law;
- 2790 (f) preparing or providing a form that is directly related to an insurance product
- 2791 purchased from, or offered by, the licensee;
- 2792 (g) preparing or providing documents directly related to a premium only cafeteria plan
- 2793 within the meaning of Section 125, Internal Revenue Code, or a flexible spending account, but
- 2794 not providing ongoing administration of a flexible spending account;
- 2795 (h) providing enrollment and billing assistance, including:
- 2796 (i) providing benefit statements or new hire insurance benefits packages; and
- 2797 (ii) providing technology services such as an electronic enrollment platform or
- 2798 application system;
- 2799 (i) communicating coverages in writing and in consultation with the insured and
- 2800 employees;
- 2801 (j) providing employee communication materials and notifications directly related to an
- 2802 insurance product purchased from a licensee;
- 2803 (k) providing claims management and resolution to the extent permitted under the
- 2804 licensee's license;
- 2805 (l) providing underwriting or actuarial analysis or services;
- 2806 (m) negotiating with an insurer regarding the placement and pricing of an insurance
- 2807 product;
- 2808 (n) recommending placement and coverage options;
- 2809 (o) providing a health fair or providing assistance or advice on establishing or
- 2810 operating a wellness program, but not providing any payment for or direct operation of the
- 2811 wellness program;
- 2812 (p) providing COBRA and Utah mini-COBRA administration, consultations, and other
- 2813 services directly related to an insurance product purchased from the licensee;
- 2814 (q) assisting with a summary plan description;
- 2815 (r) providing information necessary for the preparation of documents directly related to

2816 the Employee Retirement Income Security Act of 1974, 29 U.S.C. Sec. 1001, et seq., as  
2817 amended;

2818 (s) providing information or services directly related to the Health Insurance Portability  
2819 and Accountability Act of 1996, Pub. L. 104-191, 110 Stat. 1936, as amended, such as services  
2820 directly related to health care access, portability, and renewability when offered in connection  
2821 with accident and health insurance sold by a licensee;

2822 (t) sending proof of coverage to a third party with a legitimate interest in coverage;

2823 (u) providing information in a form approved by the commissioner and directly related  
2824 to determining whether an insurance product sold by the licensee meets the requirements of a  
2825 third party contract that requires or references insurance coverage;

2826 (v) facilitating risk management services directly related to ~~the~~ property and casualty  
2827 insurance ~~[product]~~ products sold or offered for sale by the licensee, including:

2828 (i) risk management;

2829 (ii) claims and loss control services; ~~and~~

2830 (iii) risk assessment consulting~~;~~, including analysis of:

2831 (A) employer's job descriptions; or

2832 (B) employer's safety procedures or manuals; and

2833 (iv) providing information and training on best practices;

2834 (w) otherwise providing services that are legitimately part of servicing an insurance  
2835 product purchased from a licensee; and

2836 (x) providing other directly related services approved by the department.

2837 (5) An inducement prohibited under Subsection (1) includes a producer, consultant, or  
2838 other licensee, or an officer or employee of a licensee:

2839 (a) (i) providing a premium or commission rebate;

2840 (ii) paying the salary of an employee of a person who purchases an insurance product  
2841 from the licensee; or

2842 (iii) if the licensee is an insurer, or a third party administrator who contracts with an  
2843 insurer, paying the salary for an onsite staff member to perform an act prohibited under  
2844 Subsection (5)(b)(xii); or

2845 (b) engaging in one or more of the following unless a fee is paid in accordance with  
2846 Subsection ~~(7)~~ (8):

- 2847 (i) performing background checks of prospective employees;
- 2848 (ii) providing legal services by a person licensed to practice law;
- 2849 (iii) performing drug testing that is directly related to an insurance product purchased
- 2850 from the licensee;
- 2851 (iv) preparing employer or employee handbooks, except that a licensee may:
- 2852 (A) provide information for a medical benefit section of an employee handbook;
- 2853 (B) provide information for the section of an employee handbook directly related to an
- 2854 employment practices liability insurance product purchased from the licensee; or
- 2855 (C) prepare or print an employee benefit enrollment guide;
- 2856 (v) providing job descriptions, postings, and applications for a person [~~that purchases~~
- 2857 ~~an employment practices liability insurance product from the licensee~~];
- 2858 (vi) providing payroll services;
- 2859 (vii) providing performance reviews or performance review training;
- 2860 (viii) providing union advice;
- 2861 (ix) providing accounting services;
- 2862 (x) providing data analysis information technology programs, except as provided in
- 2863 Subsection (4)(h)(ii);
- 2864 (xi) providing administration of health reimbursement accounts or health savings
- 2865 accounts; or
- 2866 (xii) if the licensee is an insurer, or a third party administrator who contracts with an
- 2867 insurer, the insurer issuing an insurance policy that lists in the insurance policy one or more of
- 2868 the following prohibited benefits:
- 2869 (A) performing background checks of prospective employees;
- 2870 (B) providing legal services by a person licensed to practice law;
- 2871 (C) performing drug testing that is directly related to an insurance product purchased
- 2872 from the insurer;
- 2873 (D) preparing employer or employee handbooks;
- 2874 (E) providing job descriptions postings, and applications;
- 2875 (F) providing payroll services;
- 2876 (G) providing performance reviews or performance review training;
- 2877 (H) providing union advice;

- 2878 (I) providing accounting services;
- 2879 (J) providing discrimination testing; or
- 2880 (K) providing data analysis information technology programs.

2881 (6) A producer, consultant, or other licensee or an officer or employee of a licensee  
2882 shall itemize and bill separately from any other insurance product or service offered or  
2883 provided under Subsection (5)(b).

2884 [~~(6)~~] (7) A de minimis gift or meal not to exceed \$25 for each individual receiving the  
2885 gift or meal is [~~presumed to be a social courtesy not~~] allowed, whether or not it is conditioned  
2886 on [the] a quote or purchase of a particular insurance product for purposes of Subsection (4)(a).

2887 [~~(7)~~] (8) If as provided under Subsection (5)(b) a producer, consultant, or other licensee  
2888 is paid a fee to provide an item listed in Subsection (5)(b), the licensee shall comply with  
2889 Subsection 31A-23a-501(2) in charging the fee, except that the fee paid for the item shall equal  
2890 or exceed the fair market value of the item.

2891 Section 26. Section **31A-23a-406** is amended to read:

2892 **31A-23a-406. Title insurance producer's business.**

2893 (1) [~~A~~] An individual title insurance producer or agency title insurance producer may  
2894 do escrow involving real property transactions if all of the following exist:

2895 (a) the individual title insurance producer or agency title insurance producer is licensed  
2896 with:

2897 (i) the title line of authority; and

2898 (ii) the escrow subline of authority;

2899 (b) the individual title insurance producer or agency title insurance producer is  
2900 appointed by a title insurer authorized to do business in the state;

2901 (c) the individual title insurance producer or agency title insurance producer issues one  
2902 or more of the following as part of the transaction:

2903 (i) an owner's policy of title insurance; or

2904 (ii) a lender's policy of title insurance;

2905 (d) money deposited with the individual title insurance producer or agency title  
2906 insurance producer in connection with any escrow:

2907 (i) is deposited:

2908 (A) in a federally insured financial institution; and

2909 (B) in a trust account that is separate from all other trust account money that is not  
2910 related to real estate transactions;

2911 (ii) is the property of the one or more persons entitled to the money under the  
2912 provisions of the escrow; and

2913 (iii) is segregated escrow by escrow in the records of the individual title insurance  
2914 producer or agency title insurance producer;

2915 (e) earnings on money held in escrow may be paid out of the escrow account to any  
2916 person in accordance with the conditions of the escrow;

2917 (f) the escrow does not require the individual title insurance producer or agency title  
2918 insurance producer to hold:

2919 (i) construction money; or

2920 (ii) money held for exchange under Section 1031, Internal Revenue Code; and

2921 (g) the individual title insurance producer or agency title insurance producer shall  
2922 maintain a physical office in Utah staffed by a person with an escrow subline of authority who  
2923 processes the escrow.

2924 (2) Notwithstanding Subsection (1), [a] an individual title insurance producer or  
2925 agency title insurance producer may engage in the escrow business if:

2926 (a) the escrow involves:

2927 (i) a mobile home;

2928 (ii) a grazing right;

2929 (iii) a water right; or

2930 (iv) other personal property authorized by the commissioner; and

2931 (b) the individual title insurance producer or agency title insurance producer complies  
2932 with this section except for Subsection (1)(c).

2933 (3) Money held in escrow:

2934 (a) is not subject to any debts of the individual title insurance producer or agency title  
2935 insurance producer;

2936 (b) may only be used to fulfill the terms of the individual escrow under which the  
2937 money is accepted; and

2938 (c) may not be used until the conditions of the escrow are met.

2939 (4) Assets or property other than escrow money received by [a] an individual title

2940 insurance producer or agency title insurance producer in accordance with an escrow shall be  
2941 maintained in a manner that will:

2942 (a) reasonably preserve and protect the asset or property from loss, theft, or damages;  
2943 and

2944 (b) otherwise comply with the general duties and responsibilities of a fiduciary or  
2945 bailee.

2946 (5) (a) A check from the trust account described in Subsection (1)(d) may not be  
2947 drawn, executed, or dated, or money otherwise disbursed unless the segregated escrow account  
2948 from which money is to be disbursed contains a sufficient credit balance consisting of collected  
2949 and cleared money at the time the check is drawn, executed, or dated, or money is otherwise  
2950 disbursed.

2951 (b) As used in this Subsection (5), money is considered to be "collected and cleared,"  
2952 and may be disbursed as follows:

2953 (i) cash may be disbursed on the same day the cash is deposited;

2954 (ii) a wire transfer may be disbursed on the same day the wire transfer is deposited; and

2955 (iii) the proceeds of one or more of the following financial instruments may be  
2956 disbursed on the same day the financial instruments are deposited if received from a single  
2957 party to the real estate transaction and if the aggregate of the financial instruments for the real  
2958 estate transaction is less than \$10,000:

2959 (A) a cashier's check, certified check, or official check that is drawn on an existing  
2960 account at a federally insured financial institution;

2961 (B) a check drawn on the trust account of a principal broker or associate broker  
2962 licensed under Title 61, Chapter 2f, Real Estate Licensing and Practices Act, if the individual  
2963 title insurance producer or agency title insurance producer has reasonable and prudent grounds  
2964 to believe sufficient money will be available from the trust account on which the check is  
2965 drawn at the time of disbursement of proceeds from the individual title insurance producer or  
2966 agency title insurance producer's escrow account;

2967 (C) a personal check not to exceed \$500 per closing; or

2968 (D) a check drawn on the escrow account of another individual title insurance producer  
2969 or agency title insurance producer, if the individual title insurance producer or agency title  
2970 insurance producer in the escrow transaction has reasonable and prudent grounds to believe



2971 that sufficient money will be available for withdrawal from the account upon which the check  
2972 is drawn at the time of disbursement of money from the escrow account of the individual title  
2973 insurance producer or agency title insurance producer in the escrow transaction.

2974 (c) A check or deposit not described in Subsection (5)(b) may be disbursed:

2975 (i) within the time limits provided under the Expedited Funds Availability Act, 12  
2976 U.S.C. Sec. 4001 et seq., as amended, and related regulations of the Federal Reserve System; or

2977 (ii) upon notification from the financial institution to which the money has been  
2978 deposited that final settlement has occurred on the deposited financial instrument.

2979 (6) [A] An individual title insurance producer or agency title insurance producer shall  
2980 maintain a record of a receipt or disbursement of escrow money.

2981 (7) [A] An individual title insurance producer or agency title insurance producer shall  
2982 comply with:

2983 (a) Section 31A-23a-409;

2984 (b) Title 46, Chapter 1, Notaries Public Reform Act; and

2985 (c) any rules adopted by the Title and Escrow Commission, subject to Section  
2986 31A-2-404, that govern escrows.

2987 (8) If [a] an individual title insurance producer or agency title insurance producer  
2988 conducts a search for real estate located in the state, the individual title insurance producer or  
2989 agency title insurance producer shall conduct a [~~minimum mandatory search, as defined by rule~~  
2990 ~~made by the Title and Escrow Commission, subject to Section 31A-2-404~~] reasonable search of  
2991 the public records.

2992 Section 27. Section **31A-23a-406.5** is enacted to read:

2993 **31A-23a-406.5. Conduct of escrow.**

2994 (1) Only an escrow agent or a title insurer in compliance with Subsection

2995 31A-4-107(1)(a) and Section 31A-14-211 shall conduct escrow.

2996 (2) Subsection (1) does not apply to:

2997 (a) a person defined as an escrow agent in Section 7-22-101; or

2998 (b) a person licensed to practice law in Utah, if that person meets the requirements of  
2999 Section 31A-23a-204.

3000 Section 28. Section **31A-23a-407** is amended to read:

3001 **31A-23a-407. Liability of title insurers for acts of title insurance producers.**

3002 Any title company, represented by one or more individual title insurance producers  
3003 appointed by an insurer or agency title insurance producers, is directly and primarily liable to  
3004 others dealing with the individual title insurance producers or agency title insurance producers  
3005 for the receipt and disbursement of funds deposited in escrows with the individual title  
3006 insurance producers appointed by an insurer or agency title insurance producers in all those  
3007 transactions where a commitment or binder for or policy or contract of title insurance of that  
3008 title [~~insurance company~~] insurer has been ordered, or a preliminary report of the title  
3009 [~~insurance company~~] insurer has been issued or distributed. This liability does not modify,  
3010 mitigate, impair, or affect the contractual obligations between the individual title insurance  
3011 producers or agency title insurance producers and the title [~~insurance company~~] insurer.

3012 Section 29. Section **31A-23a-413** is amended to read:

3013 **31A-23a-413. Title insurance producer's annual report.**

3014 [~~Every~~] An agency title insurance producer and an individual title insurance producer  
3015 who has not been designated by an agency title insurance producer shall annually file with the  
3016 commissioner, by a date and in a form the commissioner specifies by rule, a verified statement  
3017 of the agency title insurance producer's or individual title insurance producer's financial  
3018 condition, transactions, and affairs as of the end of the preceding calendar year.

3019 Section 30. Section **31A-23a-415** is amended to read:

3020 **31A-23a-415. Assessment on agency title insurance producers or title insurers --**  
3021 **Account created.**

3022 (1) For purposes of this section:

3023 (a) "Premium" is as defined in Subsection 59-9-101(3).

3024 (b) "Title insurer" means a person:

3025 (i) making any contract or policy of title insurance as:

3026 (A) insurer;

3027 (B) guarantor; or

3028 (C) surety;

3029 (ii) proposing to make any contract or policy of title insurance as:

3030 (A) insurer;

3031 (B) guarantor; or

3032 (C) surety; or

3033 (iii) transacting or proposing to transact any phase of title insurance, including:

3034 (A) soliciting;

3035 (B) negotiating preliminary to execution;

3036 (C) executing of a contract of title insurance;

3037 (D) insuring; and

3038 (E) transacting matters subsequent to the execution of the contract and arising out of

3039 the contract.

3040 (c) "Utah risks" means insuring, guaranteeing, or indemnifying with regard to real or  
3041 personal property located in Utah, an owner of real or personal property, the holders of liens or  
3042 encumbrances on that property, or others interested in the property against loss or damage  
3043 suffered by reason of:

3044 (i) liens or encumbrances upon, defects in, or the unmarketability of the title to the  
3045 property; or

3046 (ii) invalidity or unenforceability of any liens or encumbrances on the property.

3047 (2) (a) The commissioner may assess each title insurer, each individual title insurance  
3048 producer who is not designated by an agency title insurance producer, and each agency title  
3049 insurance [agency] producer an annual assessment:

3050 (i) determined by the Title and Escrow Commission:

3051 (A) after consultation with the commissioner; and

3052 (B) in accordance with this Subsection (2); and

3053 (ii) to be used for the purposes described in Subsection (3).

3054 (b) [~~A~~] An agency title insurance [agency] producer and individual title insurance  
3055 producer who is not designated by an agency title insurance producer shall be assessed up to:

3056 (i) \$250 for the first office in each county in which the agency title insurance [agency]  
3057 producer or individual title insurance producer maintains an office; and

3058 (ii) \$150 for each additional office the agency title insurance [agency] producer or  
3059 individual title insurance producer maintains in the county described in Subsection (2)(b)(i).

3060 (c) A title insurer shall be assessed up to:

3061 (i) \$250 for the first office in each county in which the title insurer maintains an office;

3062 (ii) \$150 for each additional office the title insurer maintains in the county described in  
3063 Subsection (2)(c)(i); and

- 3064 (iii) an amount calculated by:
- 3065 (A) aggregating the assessments imposed on:
- 3066 (I) agency title insurance [agencies] producers and individual title insurance producers
- 3067 under Subsection (2)(b); and
- 3068 (II) title insurers under Subsections (2)(c)(i) and (2)(c)(ii);
- 3069 (B) subtracting the amount determined under Subsection (2)(c)(iii)(A) from the total
- 3070 costs and expenses determined under Subsection (2)(d); and
- 3071 (C) multiplying:
- 3072 (I) the amount calculated under Subsection (2)(c)(iii)(B); and
- 3073 (II) the percentage of total premiums for title insurance on Utah risk that are premiums
- 3074 of the title insurer.
- 3075 (d) Notwithstanding Section 31A-3-103 and subject to Section 31A-2-404, the Title
- 3076 and Escrow Commission by rule shall establish the amount of costs and expenses described
- 3077 under Subsection (3) that will be covered by the assessment, except the costs or expenses to be
- 3078 covered by the assessment may not exceed \$80,000 annually.
- 3079 (3) (a) Money received by the state under this section shall be deposited into the Title
- 3080 Licensee Enforcement Restricted Account.
- 3081 (b) There is created in the General Fund a restricted account known as the "Title
- 3082 Licensee Enforcement Restricted Account."
- 3083 (c) The Title Licensee Enforcement Restricted Account shall consist of the money
- 3084 received by the state under this section.
- 3085 (d) The commissioner shall administer the Title Licensee Enforcement Restricted
- 3086 Account. Subject to appropriations by the Legislature, the commissioner shall use the money
- 3087 deposited into the Title Licensee Enforcement Restricted Account only to pay for a cost or
- 3088 expense incurred by the department in the administration, investigation, and enforcement of
- 3089 this part and Part 5, Compensation of Producers and Consultants, related to:
- 3090 (i) the marketing of title insurance; and
- 3091 (ii) audits of [agencies] agency title insurance producers.
- 3092 (e) An appropriation from the Title Licensee Enforcement Restricted Account is
- 3093 nonlapsing.
- 3094 (4) The assessment imposed by this section shall be in addition to any premium

3095 assessment imposed under Subsection 59-9-101(3).

3096 Section 31. Section **31A-23a-503** is amended to read:

3097 **31A-23a-503. Controlled business in title insurance.**

3098 (1) As used in this section:

3099 (a) "Associate" means any:

3100 (i) business organized for profit in which a person who refers title business is a  
3101 director, officer, partner, or employee;

3102 (ii) spouse or relative within the second degree by blood or marriage of a person who  
3103 refers title business, who is a natural person;

3104 (iii) employee of a person who refers title business; or

3105 (iv) person with whom a person who refers title business or any associate of that title  
3106 insurer, individual title insurance producer, or agency title insurance producer has any  
3107 agreement, arrangement, or understanding, or pursues any course of conduct, designed to avoid  
3108 the provisions of this chapter.

3109 (b) "Controlled business" means that portion of the title insurance business of a title  
3110 insurer [~~or~~], individual title insurance producer, or agency title insurance producer in this state  
3111 that is referred to it by all those producers of title business who have a financial interest in the  
3112 title insurer [~~or~~], individual title insurance producer, or agency title insurance producer and by  
3113 all associates of those producers. Business is referred if there is influence over the selection of  
3114 the person with whom the business is placed.

3115 (c) "A person who refers title business" includes any person engaged in this state in a  
3116 business of:

3117 (i) buying or selling interests in real property;

3118 (ii) making loans secured by interests in real property; or

3119 (iii) acting as a representative or employee of a person who buys or sells any interest in  
3120 real property or who lends or borrows money with interest as security, other than acting as a  
3121 licensed title insurer [~~or~~], individual title insurance producer, or agency title insurance producer  
3122 doing the business of title insurance.

3123 (d) "Financial interest" means any legal or beneficial interest that together with other  
3124 interests entitles the holder to more than 1% of the net profits or net worth of the business in  
3125 which the interest is held.

3126 (2) A title insurer [or], individual title insurance producer, or agency title insurance  
3127 producer or person having a financial interest in a title insurer [or], individual title insurance  
3128 producer, or agency title insurance producer may not knowingly be a party to or knowingly  
3129 permit to continue in any arrangement in which the title insurer, individual title insurance  
3130 producer or agency title insurance producer, or person knows or has reason to believe that any  
3131 person who refers title business has or will have, directly or indirectly, a financial interest in the  
3132 title insurer [or], individual title insurance producer, or agency title insurance producer, if it  
3133 reasonably appears that a substantial factor in the person who refers title business owning or  
3134 acquiring the financial interest is the expected realization of financial profit or gain derived in  
3135 whole or in part from controlled business.

3136 (3) A title insurer may not appoint or knowingly continue its authorization of any  
3137 individual title insurance producer or agency title insurance producer in which the company  
3138 knows or has reason to believe that any person who refers title business has or will have,  
3139 directly or indirectly, a financial interest, if it reasonably appears that a substantial factor in the  
3140 person who refers title business owning or acquiring the financial interest is the person's  
3141 expected realization of financial profit or gain derived in whole or part from controlled  
3142 business.

3143 (4) (a) If for any calendar quarter, the gross operating revenues of a title insurer [or],  
3144 individual title insurance producer, or agency title insurance producer derived from all sources  
3145 of controlled business in this state amount to more than 1/3 of its gross operating revenues  
3146 from all other sources of its business of title insurance in this state, it is presumed that the  
3147 expected realization of financial profit or gain derived in whole or in part from controlled  
3148 business was a substantial factor in the ownership of financial interest in the title insurer [or],  
3149 individual title insurance producer, or agency title insurance producer.

3150 (b) The title insurer [or], individual title insurance producer, or agency title insurance  
3151 producer has the burden of overcoming the presumption described in Subsection (4)(a).

3152 (c) This Subsection (4) does not authorize any controlled business if a violation of the  
3153 standards set forth in Subsection (2) or (3) exists.

3154 (5) A title insurer [or], individual title insurance producer, or agency title insurance  
3155 producer may not accept any order for the business of title insurance that it knows or has reason  
3156 to believe constitutes controlled business, unless it records and maintains in its permanent

3157 records on forms prescribed by the commissioner the facts relating to the transactions.

3158 (6) An applicant for qualification as a title insurer [~~or~~], individual title insurance  
3159 producer, or agency title insurance producer may not be granted a license if it reasonably  
3160 appears that the expected realization of financial profit or gain to be derived in whole or in part  
3161 from controlled business is or will be a substantial factor in the applicant's plan of operation or  
3162 in the ownership or acquisition of financial interests in the applicant by any person who refers  
3163 title business.

3164 (7) Each title insurer [~~and~~], individual title insurance producer, and agency title  
3165 insurance producer shall maintain permanent records relating to its controlled business on  
3166 forms prescribed by the commissioner.

3167 (8) (a) Each title insurer and agency title insurance producer shall file annually with the  
3168 commissioner, on forms prescribed by the commissioner, reports setting forth:

3169 (i) the names and addresses of any persons owning a financial interest in the title  
3170 insurer or agency title insurance producer as of the last day of the calendar year, who are  
3171 known or reasonably believed by the title insurer or agency title insurance producer to be a  
3172 person who refers title business; and

3173 (ii) a summary compiled from the title insurer's or agency title insurance producer's  
3174 records of the controlled business, sufficient to inform the commissioner and the Title and  
3175 Escrow Commission as to the proportion of the title insurer's or agency title insurance  
3176 producer's gross operating revenues attributable to controlled business during the preceding  
3177 calendar year.

3178 (b) The reports shall be filed with the reports required under Section 31A-23a-413 and  
3179 shall contain the certification of an officer of the title insurer or agency title insurance producer  
3180 that the information contained in them is true to the best of the officer's knowledge,  
3181 information, and belief. Upon filing, the reports are public records.

3182 (c) A report filed pursuant to Subsection (8)(a) is subject to review by the Title and  
3183 Escrow Commission.

3184 (9) An attorney who is also a licensed individual title insurance producer and who  
3185 issues as producer a policy of title insurance to a client on behalf of whom the attorney is also  
3186 acting as an attorney and who, in so doing, acts consistently with the applicable ethical  
3187 standards of the Utah State Bar pertaining to the billing and receipt of legal fees and the receipt

3188 of a commission on a policy of title insurance is not, without more, considered to be engaged in  
3189 controlled business.

3190 Section 32. Section **31A-27a-104** is amended to read:

3191 **31A-27a-104. Persons covered.**

3192 (1) This chapter applies to:

3193 (a) an insurer who:

3194 (i) is doing, or has done, an insurance business in this state; and

3195 (ii) against whom a claim arising from that business may exist;

3196 (b) a person subject to examination by the commissioner;

3197 (c) an insurer who purports to do an insurance business in this state;

3198 (d) an insurer who has an insured who is resident in this state; and

3199 (e) in addition to Subsections (1)(a) through (d), a person doing business as follows:

3200 (i) under Chapter 6a, Service Contracts;

3201 (ii) under Chapter 7, Nonprofit Health Service Insurance Corporations;

3202 (iii) under Chapter 8a, Health Discount Program Consumer Protection Act;

3203 (iv) under Chapter 9, Insurance Fraternal;

3204 (v) under Chapter 11, Motor Clubs;

3205 (vi) under Chapter 13, Employee Welfare Funds and Plans;

3206 (vii) under Chapter 15, Unauthorized Insurers, Surplus Lines, and Risk Retention

3207 Groups;

3208 (viii) as a bail bond surety company under Chapter 35, Bail Bond Act;

3209 (ix) under Chapter 37, Captive Insurance Companies Act;

3210 (x) a title insurance company;

3211 (xi) a prepaid health care delivery plan; and

3212 (xii) a person not described in Subsections (1)(e)(i) through (xi) that is organized or

3213 doing insurance business, or in the process of organizing with the intent to do insurance

3214 business in this state.

3215 (2) Notwithstanding Sections 31A-1-301 and 31A-27a-102, this chapter does not apply

3216 to a person licensed by the insurance commissioner as one or more of the following in this state

3217 unless the person engages in the business of insurance as an insurer:

3218 (a) an insurance agency;



- 3219 (b) an insurance producer;
- 3220 (c) a limited line producer;
- 3221 (d) an insurance consultant;
- 3222 (e) a managing general agent;
- 3223 (f) reinsurance intermediary;
- 3224 (g) [a] an individual title insurance producer or agency title insurance producer;
- 3225 (h) a third party administrator;
- 3226 (i) an insurance adjustor;
- 3227 (j) a life settlement provider; or
- 3228 (k) a life settlement producer.

3229 Section 33. Section **31A-29-106** is amended to read:

3230 **31A-29-106. Powers of board.**

3231 (1) The board shall have the general powers and authority granted under the laws of  
3232 this state to insurance companies licensed to transact health care insurance business. In  
3233 addition, the board shall have the specific authority to:

3234 (a) enter into contracts to carry out the provisions and purposes of this chapter,  
3235 including, with the approval of the commissioner, contracts with:

3236 (i) similar pools of other states for the joint performance of common administrative  
3237 functions; or

3238 (ii) persons or other organizations for the performance of administrative functions;

3239 (b) sue or be sued, including taking such legal action necessary to avoid the payment of  
3240 improper claims against the pool or the coverage provided through the pool;

3241 (c) establish appropriate rates, rate schedules, rate adjustments, expense allowances,  
3242 agents' referral fees, claim reserve formulas, and any other actuarial function appropriate to the  
3243 operation of the pool;

3244 (d) issue policies of insurance in accordance with the requirements of this chapter;

3245 (e) retain an executive director and appropriate legal, actuarial, and other personnel as  
3246 necessary to provide technical assistance in the operations of the pool;

3247 (f) establish rules, conditions, and procedures for reinsuring risks under this chapter;

3248 (g) cause the pool to have an annual audit of its operations by the state auditor;

3249 (h) coordinate with the Department of Health in seeking to obtain from the Centers for

3250 Medicare and Medicaid Services, or other appropriate office or agency of government, all  
3251 appropriate waivers, authority, and permission needed to coordinate the coverage available  
3252 from the pool with coverage available under Medicaid, either before or after Medicaid  
3253 coverage, or as a conversion option upon completion of Medicaid eligibility, without the  
3254 necessity for requalification by the enrollee;

3255 (i) provide for and employ cost containment measures and requirements including  
3256 preadmission certification, concurrent inpatient review, and individual case management for  
3257 the purpose of making the pool more cost-effective;

3258 (j) offer pool coverage through contracts with health maintenance organizations,  
3259 preferred provider organizations, and other managed care systems that will manage costs while  
3260 maintaining quality care;

3261 (k) establish annual limits on benefits payable under the pool to or on behalf of any  
3262 enrollee;

3263 (l) exclude from coverage under the pool specific benefits, medical conditions, and  
3264 procedures for the purpose of protecting the financial viability of the pool;

3265 (m) administer the Pool Fund;

3266 (n) make rules in accordance with Title 63G, Chapter 3, Utah Administrative  
3267 Rulemaking Act, to implement this chapter; [~~and~~]

3268 (o) adopt, trademark, and copyright a trade name for the pool for use in marketing and  
3269 publicizing the pool and its products[-]; and

3270 (p) transition health care coverage for all individuals covered under the pool as part of  
3271 the conversion to health insurance coverage, regardless of preexisting conditions, under  
3272 PPACA.

3273 (2) (a) The board shall prepare and submit an annual report to the Legislature which  
3274 shall include:

3275 (i) the net premiums anticipated;

3276 (ii) actuarial projections of payments required of the pool;

3277 (iii) the expenses of administration; and

3278 (iv) the anticipated reserves or losses of the pool.

3279 (b) The budget for operation of the pool is subject to the approval of the board.

3280 (c) The administrative budget of the board and the commissioner under this chapter

3281 shall comply with the requirements of Title 63J, Chapter 1, Budgetary Procedures Act, and is  
3282 subject to review and approval by the Legislature.

3283 (3) (a) The board shall on or before September 1, 2004, require the plan administrator  
3284 or an independent actuarial consultant retained by the plan administrator to redetermine the  
3285 reasonable equivalent of the criteria for uninsurability required under Subsection  
3286 31A-30-106(1)(h) that is used by the board to determine eligibility for coverage in the pool.

3287 (b) The board shall redetermine the criteria established in Subsection (3)(a) at least  
3288 every five years thereafter.

3289 Section 34. Section **31A-29-113** is amended to read:

3290 **31A-29-113. Benefits -- Additional types of pool insurance -- Preexisting**  
3291 **conditions -- Waiver -- Maximum benefits.**

3292 (1) (a) The pool policy shall pay for eligible medical expenses rendered or furnished  
3293 for the diagnoses or treatment of illness or injury that:

3294 (i) exceed the deductible and copayment amounts applicable under Section  
3295 31A-29-114; and

3296 (ii) are not otherwise limited or excluded.

3297 (b) Eligible medical expenses are the allowed charges established by the board for the  
3298 health care services and items rendered during times for which benefits are extended under the  
3299 pool policy.

3300 (2) The coverage to be issued by the pool, its schedule of benefits, exclusions, and  
3301 other limitations shall be established by the board.

3302 (3) The commissioner shall approve the benefit package developed by the board to  
3303 ensure its compliance with this chapter.

3304 (4) The pool shall offer at least one benefit plan through a managed care program as  
3305 authorized under Section 31A-29-106.

3306 (5) This chapter may not be construed to prohibit the pool from issuing additional types  
3307 of pool policies with different types of benefits which in the opinion of the board may be of  
3308 benefit to the citizens of Utah.

3309 (6) (a) The board shall design and require an administrator to employ cost containment  
3310 measures and requirements including preadmission certification and concurrent inpatient  
3311 review for the purpose of making the pool more cost effective.

3312 (b) Sections 31A-22-617 and 31A-22-618 do not apply to coverage issued under this  
3313 chapter.

3314 (7) (a) A pool policy may contain provisions under which coverage for a preexisting  
3315 condition is excluded if:

3316 (i) the exclusion relates to a condition, regardless of the cause of the condition, for  
3317 which medical advice, diagnosis, care, or treatment was recommended or received, from an  
3318 individual licensed or similarly authorized to provide such services under state law and  
3319 operating within the scope of practice authorized by state law, within the six-month period  
3320 ending on the effective date of plan coverage; and

3321 (ii) except as provided in Subsection (8), the exclusion extends for a period no longer  
3322 than the six-month period following the effective date of plan coverage for a given individual.

3323 (b) Subsection (7)(a) does not apply to a HIPAA eligible individual.

3324 (8) (a) A pool policy may contain provisions under which coverage for a preexisting  
3325 pregnancy is excluded during a ten-month period following the effective date of plan coverage  
3326 for a given individual.

3327 (b) Subsection (8)(a) does not apply to a HIPAA eligible individual.

3328 (9) (a) The pool will waive the preexisting condition exclusion described in  
3329 Subsections (7)(a) and (8)(a) for an individual that is changing health coverage to the pool, to  
3330 the extent to which similar exclusions have been satisfied under any prior health insurance  
3331 coverage if the individual applies not later than 63 days following the date of involuntary  
3332 termination, other than for nonpayment of premiums, from health coverage.

3333 (b) If this Subsection (9) applies, coverage in the pool shall be effective from the date  
3334 on which the prior coverage was terminated.

3335 (10) Covered benefits available from the pool may not exceed a [~~\$1,500,000~~]  
3336 \$1,800,000 lifetime maximum, which includes a per enrollee calendar year maximum  
3337 established by the board.

3338 Section 35. Section **31A-31-108** is amended to read:

3339 **31A-31-108. Assessment of insurers.**

3340 (1) For purposes of this section:

3341 (a) The commissioner shall by rule made in accordance with Title 63G, Chapter 3,  
3342 Utah Administrative Rulemaking Act, define:

- 3343 (i) "annuity consideration";
- 3344 (ii) "membership fees";
- 3345 (iii) "other fees";
- 3346 (iv) "deposit-type contract funds"; and
- 3347 (v) "other considerations in Utah."
- 3348 (b) "Insurance fraud provisions" means:
- 3349 (i) this chapter;
- 3350 (ii) Section 34A-2-110; and
- 3351 (iii) Section 76-6-521.
- 3352 (c) "Utah consideration" means:
- 3353 (i) the total premiums written for Utah risks;
- 3354 (ii) annuity consideration;
- 3355 (iii) membership fees collected by the insurer;
- 3356 (iv) other fees collected by the insurer;
- 3357 (v) deposit-type contract funds; and
- 3358 (vi) other considerations in Utah.

3359 (d) "Utah risks" means insurance coverage on the lives, health, or against the liability  
3360 of persons residing in Utah, or on property located in Utah, other than property temporarily in  
3361 transit through Utah.

3362 (2) To implement insurance fraud provisions, the commissioner may assess an  
3363 admitted insurer and a nonadmitted insurer transacting insurance under Chapter 15, Parts 1,  
3364 Unauthorized Insurers and Surplus Lines, and 2, Risk Retention Groups Act, an annual fee as  
3365 follows:

- 3366 (a) \$200 for an insurer for which the sum of the Utah consideration is less than or equal  
3367 to \$1,000,000;
- 3368 (b) \$450 for an insurer for which the sum of the Utah consideration is greater than  
3369 \$1,000,000 but is less than or equal to \$2,500,000;
- 3370 (c) \$800 for an insurer for which the sum of the Utah consideration is greater than  
3371 \$2,500,000 but is less than or equal to \$5,000,000;
- 3372 (d) \$1,600 for an insurer for which the sum of the Utah consideration is greater than  
3373 \$5,000,000 but less than or equal to \$10,000,000;

3374 (e) \$6,100 for an insurer for which the sum of the Utah consideration is greater than  
3375 \$10,000,000 but less than \$50,000,000; and

3376 (f) \$15,000 for an insurer for which the sum of the Utah consideration equals or  
3377 exceeds \$50,000,000.

3378 (3) Money received by the state under this section shall be deposited into the Insurance  
3379 Fraud Investigation Restricted Account created in Subsection (4).

3380 (4) (a) There is created in the General Fund a restricted account known as the  
3381 "Insurance Fraud Investigation Restricted Account."

3382 (b) The Insurance Fraud Investigation Restricted Account shall consist of the money  
3383 received by the commissioner under this section and [~~Section 31A-31-109.~~] Subsections  
3384 31A-31-109(1)(a)(ii), (1)(b), (2)(b)(i), (2)(c), and (3)(a). Money ordered paid under  
3385 Subsections 31A-31-109(1)(a)(i) and (2)(a) shall be deposited in the Insurance Fraud Victim  
3386 Restitution Fund pursuant to Section 31A-31-108.5.

3387 (c) The commissioner shall administer the Insurance Fraud Investigation Restricted  
3388 Account. Subject to appropriations by the Legislature, the commissioner shall use the money  
3389 deposited into the Insurance Fraud Investigation Restricted Account to pay for a cost or  
3390 expense incurred by the commissioner in the administration, investigation, and enforcement of  
3391 insurance fraud provisions.

3392 Section 36. Section **31A-31-108.5** is enacted to read:

3393 **31A-31-108.5. Insurance Fraud Victim Restitution Fund.**

3394 (1) There is created a restricted special revenue fund known as the "Insurance Fraud  
3395 Victim Restitution Fund."

3396 (2) The Insurance Fraud Victim Restitution Fund shall consist of money ordered paid  
3397 under Subsections 31A-31-109(1)(a)(i) and (2)(a).

3398 (3) The commissioner shall administer the Insurance Fraud Victim Restitution Fund for  
3399 the sole benefit of insurance fraud victims.

3400 Section 37. Section **31A-41-102** is amended to read:

3401 **31A-41-102. Definitions.**

3402 As used in this chapter:

3403 (1) "Commission" means the Title and Escrow Commission created in Section  
3404 31A-2-403.

3405 (2) "Fund" means the Title Insurance Recovery, Education, and Research Fund created  
3406 in Section 31A-41-201.

3407 (3) "Title insurance licensee" means:

3408 (a) [~~a~~] an agency title insurance [~~agency~~] producer; or

3409 (b) [~~a~~] an individual title insurance producer.

3410 Section 38. Section **31A-41-201** is amended to read:

3411 **31A-41-201. Creation of Title Insurance Recovery, Education, and Research**  
3412 **Fund.**

3413 (1) There is created a restricted special revenue fund to be known as the "Title  
3414 Insurance Recovery, Education, and Research Fund."

3415 (2) The fund shall consist of:

3416 (a) assessments on individual title insurance producers and agency title insurance  
3417 producers made under this chapter;

3418 (b) amounts collected under Section 31A-41-305; and

3419 (c) interest earned on the fund.

3420 (3) Interest on fund money shall be deposited into the fund.

3421 (4) The department shall administer the fund.

3422 Section 39. Section **31A-41-202** is amended to read:

3423 **31A-41-202. Assessments.**

3424 (1) Beginning January 1, 2009, [~~a~~] an agency title insurance [~~agency~~] producer licensed  
3425 under this title shall pay an annual assessment determined by the commission by rule made in  
3426 accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, except that the  
3427 annual assessment:

3428 (a) may not exceed \$1,000; and

3429 (b) shall be determined on the basis of title insurance premium volume.

3430 (2) Beginning January 1, 2009, an individual who applies for a license or renewal of a  
3431 license as [~~a~~] an individual title insurance producer, shall pay in addition to any other fee  
3432 required by this title, an assessment not to exceed \$20, as determined by the commission by  
3433 rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,  
3434 except that if the individual holds more than one license, the total of all assessments under this  
3435 Subsection (2) may not exceed \$20 in a fiscal year.

3436 (3) (a) To be licensed as [a] an agency title insurance [agency] producer on or after July  
3437 1, 2008, a person shall pay to the department an assessment of \$1,000 before the day on which  
3438 the person is licensed as a title insurance agency.

3439 (b) (i) By no later than July 15, 2008, the department shall assess on [a] an agency title  
3440 insurance [agency] producer licensed as of June 30, 2008, an amount equal to the greater of:

3441 (A) \$1,000; or

3442 (B) subject to Subsection (3)(b)(ii), 2% of the balance as of December 31, 2007, in the  
3443 agency title insurance [agency's] producer's reserve account [~~required under~~] described in  
3444 Subsection 31A-23a-204(3).

3445 (ii) The department may assess on [a] an agency title insurance [agency] producer an  
3446 amount less than 2% of the balance described in Subsection (3)(b)(i)(B) if:

3447 (A) before issuing the assessments under this Subsection (3)(b) the department  
3448 determines that the total of all assessments under Subsection (3)(b)(i) will exceed \$250,000;

3449 (B) the amount assessed on the agency title insurance [agency] producer is not less than  
3450 \$1,000; and

3451 (C) the department reduces the assessment in a proportionate amount for agency title  
3452 insurance [agencies] producers assessed on the basis of the 2% of the balance described in  
3453 Subsection (3)(b)(i)(B).

3454 (iii) [A] An agency title insurance [agency] producer assessed under this Subsection  
3455 (3)(b) shall pay the assessment by no later than August 1, 2008.

3456 (4) The department may not assess a title insurance licensee an assessment for  
3457 purposes of the fund if that assessment is not expressly provided for in this section.

3458 Section 40. **Effective date.**

3459 (1) If approved by two-thirds of all the members elected to each house, Section  
3460 31A-4-117 takes effect upon approval by the governor, or the day following the constitutional  
3461 time limit of Utah Constitution Article VII, Section 8, without the governor's signature, or in  
3462 the case of a veto, the date of veto override.

3463 (2) Except as provided in Subsection (1) and Subsection (3), this bill takes effect on  
3464 May 14, 2013.

3465 (3) The action to Section 31A-3-3-4 (Effective 07/01/13) takes effect on July 1, 2015.