

Part 2 Authorization of Foreign Insurers

31A-14-201 Application.

- (1)
 - (a) An incorporated person, other than a foreign health maintenance organization, authorized as an insurer in another jurisdiction in the United States may apply under this section for a certificate of authority as an insurer in this state.
 - (b) An alien insurer that is incorporated may apply under this section for a certificate of authority as an insurer in this state.
- (2) An applicant for a certificate of authority under this section shall:
 - (a) use the forms prescribed by the commissioner; and
 - (b) provide the information and documents the commissioner requests, including the following:
 - (i) a copy of the applicant's articles and bylaws;
 - (ii) financial statements for the most recent complete fiscal year, with an explanation of the bases of all valuations and computations, in the detail reasonably required by the commissioner;
 - (iii) a summary, as detailed as the commissioner reasonably requires, of the applicant's financial history for:
 - (A) the preceding 10 years; or
 - (B) the entire period of the applicant's existence if less than 10 years;
 - (iv) for each of the applicant's current or proposed directors and principal officers:
 - (A) the name of the director or principal officer;
 - (B) the address of the director or principal officer; and
 - (C) the occupation for the preceding 10 years of the director or principal officer;
 - (v) for an alien insurer:
 - (A) the name of its United States manager, the manager's addresses and occupations for the preceding 10 years; and
 - (B) if the manager is a corporation, the names, addresses, and occupations of its directors and principal officers, and its most recent detailed financial statements;
 - (vi) a schedule listing:
 - (A) all jurisdictions in which applicant has done or has been authorized to conduct an insurance business during the preceding 10 years;
 - (B) all jurisdictions in which the applicant has applied for authorization to conduct an insurance business during the preceding 10 years, and the dates and results of those applications;
 - (C) all jurisdictions from which the applicant has withdrawn from conducting an insurance business during the preceding 10 years, and the reasons for its withdrawals; and
 - (D) the name of and the circumstances surrounding any officer, director, or controlling shareholder of the corporation ever being subject to a:
 - (I) felony indictment or conviction; or
 - (II) civil, criminal, or administrative action alleging fraud;
 - (vii) a summary description of the applicant's present business operations, including the coverages written and the states and countries in which it does business;
 - (viii) a list of any statements, reports, or other documents that have, within the last five years, been generally transmitted or distributed to or among the insurer's creditors, shareholders, members, subscribers, or policyholders;

- (ix) if the applicant has been in the insurance business for less than 10 years, a summary of the past and a projection of the anticipated operating results at the end of each year of the first 10 years of operation, based, where known, on actual data and otherwise on reasonable assumptions of loss experience, premium and other income, operating expenses, and acquisition costs;
 - (x) a statement that organizational and promotional expenses have been paid, and that organizational procedures required by the insurer's domiciliary authority are complete;
 - (xi) a statement from the domiciliary regulatory authority and the state of entry into the United States, if any, that so far as known, the applicant is sound and there are no legitimate objections to its proposed operations in this state;
 - (xii) the plan for conducting an insurance business in this state, including:
 - (A) the geographical area where business is to be conducted;
 - (B) the types of insurance to be written;
 - (C) the proposed general marketing methods;
 - (D) the proposed method for establishing premium rates; and
 - (E) copies of the policy and application forms to be used in this state;
 - (xiii) any other information the commissioner reasonably requires;
 - (xiv) authorization to the commissioner to make inquiry of any person about the applicant, its manager under a management contract, its attorney in fact, its general agents, and any of the officers, directors, or shareholders of any of them designated by the commissioner; and
 - (xv) written agreement by the applicant and any other designated persons that in the absence of actual malice, no communication made in response to any inquiry under Subsection (2) (b)(xiv) will subject the person making it to an action for damages for defamation brought by the applicant, the designated person, or a legal representative of either.
- (3) No action for damages for defamation lies even in the absence of this agreement.
- (4) Notwithstanding Subsection (2), the commissioner may exempt an applicant for a certificate of authority from providing the information described in Subsection (2) if the commissioner finds that the information will not be helpful in making the decision of whether to issue a certificate of authority.

Amended by Chapter 116, 2001 General Session

31A-14-202 Certificate of authority.

- (1) The commissioner shall either issue a certificate of authority to an applicant under Section 31A-14-201 or issue an order refusing the certificate which explains why he finds that:
 - (a) not all specific requirements of the law have been met, including the requirements of Section 31A-14-209 for an alien insurer;
 - (b) the applicant is not sound, reliable, entitled to public confidence, or cannot reasonably be expected to perform its obligations continuously in the future;
 - (c) the applicant's directors and officers or, in the case of an alien insurer, its United States manager, are not sufficiently trustworthy and competent to engage in the proposed business in this state and to comply with the laws of this state; or
 - (d) the applicant has not been in existence long enough to demonstrate its competence to engage in the proposed business in this state.
- (2) If the commissioner finds that the applicant does not comply with all requirements of the law, the commissioner may, after a hearing under Section 31A-2-301, issue a certificate of authority if the purposes of each unsatisfied requirement and the protection of insureds, creditors, and the public in this state are otherwise achieved by:

- (a) a deposit in trust to be established and maintained under Section 31A-2-206;
 - (b) a bond acceptable to the commissioner conditioned on the satisfaction of the purposes of the requirement;
 - (c) special limits on the applicant's business or methods of operation in this state or elsewhere; or
 - (d) other protective devices satisfactory to the commissioner.
- (3) The certificate of authority shall specify the terms of any deposit or bond required as a condition for authorization, any limits placed on the insurer's business or methods of operation in this state, and any other conditions imposed under Subsection (2).
- (4) An insurer may apply to the commissioner for a new certificate of authority, removing, altering, or adding limits on its business or methods of operation. The application shall be accompanied by the information specified in Section 31A-14-201 that the commissioner reasonably requires. The commissioner shall issue the new certificate as requested if he would do so if an initial application were being made.

Amended by Chapter 204, 1986 General Session

31A-14-203 Admission of foreign fraternal.

- (1) A foreign fraternal may apply for authorization to transact business in Utah, by filing with the commissioner:
- (a) a certified copy of its articles and bylaws;
 - (b) a power of attorney to the commissioner to receive service of process and other papers;
 - (c) a certificate from the commissioner in its domiciliary jurisdiction that the fraternal is authorized to transact business in that jurisdiction;
 - (d) a copy of each of its contract forms;
 - (e) a statement of its business in the form required by the commissioner, showing that the business of the fraternal substantially complies with all the provisions of law relating to similar domestic fraternal; and
 - (f) other information the commissioner may reasonably request.
- (2) The commissioner shall examine the applicant fraternal.
- (3) The commissioner shall grant a certificate of authority to do business in Utah if the fraternal's condition and practices protect the interests of potential insureds, creditors, and the public.

Enacted by Chapter 242, 1985 General Session

31A-14-204 Registered agent and registered office.

- (1) Title 16, Chapter 17, Model Registered Agents Act, applies to the registered agent and service of process on all foreign insurers authorized to do business in this state. Whenever the words "Division of Corporations and Commercial Code" or "division" are used, they mean "insurance commissioner."
- (2) The principal office shall have sufficient personnel to provide information and assistance to Utah insureds, unless the insurer informs policyholders on the policy or on other written communications of a toll-free telephone connection accessible at normal business hours in this state.

Amended by Chapter 364, 2008 General Session

31A-14-205 Requirements from other applicable chapters.

- (1) A foreign insurer may not be authorized to do business in this state, unless it strictly complies with the following requirements:
 - (a) Foreign insurers shall comply with the solvency standard set forth in Chapter 17, Part 6, Risk-Based Capital, including maintenance of minimum capital or permanent surplus under Section 31A-5-211.
 - (b) A foreign insurer proposing to market securities in this state shall comply with Sections 31A-5-301, 31A-5-302, and 31A-5-305, unless this marketing is subject to United States Securities and Exchange Commission regulation.
 - (c) Section 16-10a-1506 applies to the corporate name and the change of name of foreign stock insurers. Section 16-6a-1507 applies to the change of name of foreign mutual insurers.
 - (d) Subsection 31A-5-203(2)(c) applies to other business of foreign mutual insurers.
 - (e) Subsection 31A-5-404(2), as modified by Subsection 31A-5-404(4), applies to communications to shareholders, policyholders, or voting members of mutuals by foreign insurers.
 - (f) Section 31A-5-413 applies to interlocking directorates of foreign insurers.
 - (g) Subsection 31A-5-203(2)(d) applies to assessment liability in foreign insurers issuing assessable policies in any state.
- (2) The commissioner may issue orders imposing and eliminating restrictions to foreign insurers under Section 31A-5-103.
- (3) After a hearing, the commissioner may by order apply any of the provisions of Sections 31A-5-307, 31A-5-414, 31A-5-418 to a foreign corporation after finding that it is necessary for the protection of the interests of its insureds, creditors, or the public in this state. This Subsection (3) may be applied to a foreign insurer without a hearing if done under a reciprocal agreement with the domiciliary regulatory authority.
- (4) If any provision made applicable to a foreign insurer under this section conflicts with the law of the insurer's domicile so that it is impossible for the corporation to comply with both laws, the law of the domicile governs.
- (5) This section does not excuse or exempt any foreign insurer from complying with the provisions of this title which are otherwise applicable to a foreign insurer.
- (6) This section does not apply to foreign fraternal insurers.
- (7) If a licensed foreign insurer is in rehabilitation or liquidation proceedings or is found to be insolvent in its state of domicile, the commissioner may, without hearing, suspend the insurer's certificate of authority to do business in this state.

Amended by Chapter 300, 2000 General Session

31A-14-206 Commercially domiciled insurers.

- (1) As used in this section, and except as to title insurers, the commissioner may consider a foreign insurer to be "commercially domiciled" in this state if:
 - (a) during the three immediately preceding calendar years, the foreign insurer wrote more insurance premiums in this state than it wrote in its state of domicile during the same period;
or
 - (b) during the same three-year period, the foreign insurer's gross premiums written in this state constituted 15% or more of the insurer's total gross premiums written in the United States.
- (2) Subject to Subsection (3), an insurer determined by the commissioner to be commercially domiciled in this state may be subjected to Chapter 16, Insurance Holding Companies, Chapter 17, Determination of Financial Condition, Chapter 18, Investments, Chapter 27, Delinquency Administrative Action Provisions, and Chapter 27a, Insurer Receivership Act, and Chapter 5,

Part 4, Liquidation, Part 5, Asset Recovery, and Part 6, Claims, in the same manner and to the same extent as domestic insurers. The commissioner shall, by order, notify any commercially domiciled insurer not exempt under Subsection (3) of the extent to which the insurer is subject to the provisions listed under this Subsection (2).

- (3) The commissioner may exempt from the provisions of this section any commercially domiciled insurer if the commissioner determines that the insurer has assets physically located in this state or an asset to liability ratio sufficient to justify the conclusion that there is no reasonable danger that the operations or conduct of the business of the insurer could present a danger of loss to Utah policyholders.
- (4) Subsection 31A-14-205(4) applies to the conflict of the laws of this state with the laws of the insurer's domicile for foreign insurers, including commercially domiciled insurers, under this section.
- (5) This section does not excuse or exempt any foreign insurer from complying with the provisions under this title which are otherwise applicable to a foreign insurer.

Amended by Chapter 309, 2007 General Session

31A-14-207 Exclusive agency and management contracts.

- (1) No foreign insurer licensed under this chapter may enter into or be subject to a contract that grants or surrenders the control or management of the insurer, unless the commissioner gives express approval of the contract. If amended, a contract previously approved under this subsection must again receive the commissioner's express approval.
- (2) No nondomestic insurer may enter into any contract giving a person the exclusive or dominant right to produce the entire insurance business for the insurer in this state unless the contract is filed with and approved by the commissioner. The contract is considered approved unless disapproved by the commissioner within 30 days after the date of filing. The commissioner's disapproval shall be delivered to the insurer in writing, stating the grounds for the disapproval.
- (3) The commissioner may not approve an exclusive management or exclusive agency contract under Subsection (1) or (2) which:
 - (a) subjects the insurer to excessive charges for expenses;
 - (b) vests in a person any control over the general affairs of the insurer to the exclusion of its board of directors or officers;
 - (c) extends for an unreasonable length of time; or
 - (d) contains other inequitable provisions which may jeopardize the security of Utah policyholders.

Amended by Chapter 91, 1987 General Session

31A-14-208 Requirements for foreign reciprocals.

- (1) No foreign reciprocal may be authorized to do business in this state unless:
 - (a) under the laws of its domicile, the provisions of its power of attorney, or otherwise, it can sue and be sued in its own name;
 - (b) the assets resulting from the exchange of insurance contracts can be reached by its creditors; and
 - (c) either:
 - (i) if it issues only nonassessable policies, it meets all the financial requirements for a mutual corporation in similar circumstances, including unallocated surplus that is at least as great as the level required under Chapter 17, Part 6, Risk-Based Capital; or

- (ii) if it issues any assessable policies, it meets all the requirements for a mutual corporation issuing assessable policies in similar circumstances and its subscribers are liable to the exchange to the limit of their assessability without regard to the validity or collectibility of any assessment levied against other subscribers.
- (2) Any reciprocal admitted to Utah shall have a name that includes the word "reciprocal," "interinsurer," "interinsurance exchange," "underwriters," or "association." The name may not suggest a corporate entity.
- (3) The reciprocal may not be authorized to do business in Utah unless the contract with its attorney in fact satisfies the requirements for a management contract under Section 31A-14-207.
- (4) To the extent they are consistent with the nature of a reciprocal, the provisions of Chapter 5, Domestic Stock and Mutual Insurance Corporations, that are made applicable to foreign mutual corporations by Section 31A-14-205 apply to foreign reciprocals, and the provisions and requirements applicable to principal officers of corporations apply to the attorneys in fact of reciprocal insurers.
- (5) Except for life insurance and annuities, an authorized reciprocal may transact any kind of insurance, including reinsurance subject to Section 31A-20-107.

Amended by Chapter 9, 1996 Special Session 2

Amended by Chapter 9, 1996 Special Session 2

31A-14-209 Requirements for incorporated alien insurers.

- (1) No incorporated alien insurer may be authorized to do business in Utah unless, in addition to the requirements of Section 31A-14-201, it satisfies all of the following:
 - (a) It has operated for three years in its domicile or the commissioner finds other grounds for being confident that it will be solid during its formative period.
 - (b) It supplies and commits itself to maintain in the United States a deposit or bond in an amount the commissioner considers sufficient to protect the interests of insureds, creditors, and the public in Utah.
 - (c) It files an agreement with the commissioner as required by the commissioner regarding its records, reports, and submission to examinations. This agreement shall include a commitment to keep its records, reports, and other documents relevant to its United States business constantly available in full in the English language, and to keep these records and make its reports on its United States business in a form which satisfies the commissioner.
- (2) A deposit under Subsection (1)(b) may be made as specified in Section 31A-2-206 or it may be made in another state with a custodian approved by the commissioner. The deposit shall be in trust for those persons the commissioner considers appropriate to protect the interests of insureds, creditors, and the public in Utah. The custodian shall supply a certificate of the deposit in the form and at the intervals reasonably required by the commissioner.
- (3) A bond satisfies Subsection (1)(b) if it is issued by an insurer authorized to do a surety business in Utah and is conditioned on nonperformance of any obligation to those persons the commissioner considers appropriate in protecting the interests of insureds, creditors, and the public in Utah. Each bond shall cover any claims that arise out of occurrences prior to the termination of the bond, and may not be terminable on any ground without at least 30 days notice to the commissioner. Each bond shall be in the form and be renewed at the intervals reasonably required by the commissioner.

Enacted by Chapter 242, 1985 General Session

31A-14-210 Requirements for foreign fraternal.

- (1) A foreign fraternal may not be authorized to do business in this state under Section 31A-14-203, unless it strictly complies with:
 - (a) the financial requirements of Section 31A-9-209 and Chapter 17, Part 6, Risk-Based Capital;
 - (b) the requirements of Section 16-6a-1506 and Subsection 31A-5-410(1)(a), the reporting requirements of Subsection 31A-5-410(2), Section 31A-5-413 whenever removal is made involuntarily under the laws of the domicile, Section 31A-9-202, and Subsections 31A-9-204(1)(c), 31A-9-402(2), and 31A-9-602(1); and
 - (c) for five years after the initial issuance of a certificate of authority in its domiciliary jurisdiction, the requirements of Subsection 31A-9-213(2).
- (2)
 - (a) No foreign fraternal may be authorized to do business in this state unless it substantially complies with Sections 31A-5-217 and 31A-5-218, except that the approval requirement of Subsection 31A-5-217(2) does not apply.
 - (b) When any corporate reorganization, transformation, or liquidation of a foreign fraternal, or any levy to cover a deficiency under a law comparable to Subsection 31A-9-209(2), is formally initiated by the fraternal, by the official act of the domiciliary commissioner, or by any other official, the fraternal shall promptly give written notice to the commissioner.
- (3) The commissioner may issue orders imposing and eliminating restrictions under Section 31A-9-103 that are applicable to foreign fraternal.
- (4)
 - (a) After a hearing, the commissioner may, by order, apply any of the provisions of Sections 31A-9-213, 31A-9-404, 31A-9-411, 31A-9-413, or Subsection 31A-5-415(2) to a foreign fraternal after finding that it is necessary for the protection of the interests of its members, creditors, or the public in this state.
 - (b) If any provision made applicable to the foreign fraternal under Subsection (4)(a) conflicts with a provision of the law of the domicile, so that it is impossible for the fraternal to comply with both, the law of the domicile governs.

Amended by Chapter 300, 2000 General Session

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

- (1) An authorized foreign title insurer may only insure property in this state:
 - (a) through an agency title insurance producer who is a resident in Utah; or
 - (b) if the authorized foreign title insurer has a bona fide office in Utah:
 - (i) that is under the direction and control of the authorized foreign title insurer;
 - (ii) for which the authorized foreign title insurer pays the expenses, including compensation of the employees of the bona fide office;
 - (iii) at which a person may request information about title services related to a real estate transaction for which the person is a party;
 - (iv) at which a person may deliver written communications to the authorized foreign title insurer as required by the real estate transaction for which the person is a party; and
 - (v) at which a person may deliver escrow money related to a real estate transaction for which the person is a party.
- (2) This section does not apply to reinsurance.

Amended by Chapter 319, 2013 General Session

31A-14-212 Changes in business plan.

- (1) Within two years after the initial issuance of a certificate of authority to a foreign insurer by its domiciliary jurisdiction, the insurer may not substantially deviate from its business plan under Subsection 31A-14-201(2)(b)(xii) unless notice of the proposed action is filed with the commissioner 30 days in advance of the proposed effective date.
- (2) If the commissioner believes that the change proposed under Subsection (1) would be contrary to Utah law or to the interests of insureds, creditors, or the public, he may prohibit the application of the change to Utah. In his prohibitory order he shall explain why he has prohibited the change.
- (3) If the commissioner finds after a hearing that the application of the proposed change outside Utah would endanger the interests of insureds, creditors, or the public in Utah, the commissioner may revoke the insurer's certificate of authority unless the insurer agrees not to make the change.

Amended by Chapter 116, 2001 General Session

31A-14-213 Transfer of business.

- (1) A foreign insurer that intends to transfer to another person all or a substantial part of its insurance business in Utah by means of an assumption reinsurance transaction, a sale, or otherwise, shall report the proposed transaction to the commissioner not less than 30 days before the proposed effective date. The commissioner may approve the transaction to take effect immediately. Alternatively, the commissioner may defer the effective date of the transaction for an additional period not exceeding 30 days, by written notice to the insurer before the expiration of the initial 30-day period.
- (2) The commissioner may, within the 30-day period or its extension, prohibit the proposed action if it would be contrary to the law or to the interests of insureds, creditors, or the public in Utah.

Enacted by Chapter 242, 1985 General Session

31A-14-214 Amendment to articles and notice of corporate reorganization.

Sections 16-10a-1001 through 16-10a-1004 apply when a foreign insurer amends its articles of incorporation. If a foreign insurer plans to undergo any corporate reorganization of the kinds dealt with in Chapter 5, Part 5, Corporate Reorganization, the insurer shall notify the commissioner in writing, at the same time that the first formal step of the statutory procedure for achieving the reorganization is taken in the domiciliary jurisdiction or elsewhere. The insurer shall provide the details required by the commissioner, whether by rule or order.

Amended by Chapter 90, 2004 General Session

31A-14-215 Assessment by foreign company.

Every foreign mutual insurer authorized in this state shall notify the commissioner immediately after making an assessment upon any of its members in this state. The insurer shall attach to the notice a statement of the condition of the insurer, giving the facts showing the necessity for the assessment. Unless the commissioner orders otherwise under a Chapter 27, Part 5, Administrative Actions, proceeding, a foreign mutual insurer authorized in this state may not make or increase any assessment because of its inability to collect assessments from its members in other states.

Amended by Chapter 309, 2007 General Session

31A-14-216 Release from regulation.

- (1) A foreign insurer authorized under this chapter is subject to regulation under the applicable provisions of the Insurance Code, unless it is released from regulation under this section.
- (2) A foreign insurer may apply for release from regulation by filing with the commissioner:
 - (a) its certificate of authority;
 - (b) a schedule of its outstanding liabilities from policies issued in this state to residents of Utah or on risks located in Utah, and from other business transactions in Utah;
 - (c) a plan for securing the discharge of those outstanding liabilities; and
 - (d) any other information as reasonably required by the commissioner.
- (3) The commissioner shall promptly release the insurer from regulation if he finds all the following:
 - (a) The insurer has stopped doing any new business in Utah.
 - (b) The discharge of existing liabilities to creditors in Utah is sufficiently secured.
 - (c) The release would not otherwise be prejudicial to the interests of insureds or creditors in Utah or, if the insurer is an alien insurer and Utah is the state of entry into the United States, of all insureds and creditors in the United States.
- (4) Before deciding on the release, the commissioner may require the insurer to notify, at its own expense, all agents or other classes of potentially interested persons in a manner the commissioner prescribes, including publication of its withdrawal from Utah. The notice shall advise affected persons to communicate to the commissioner any objections they may have to the insurer's release from regulation.
- (5) As a prerequisite for releasing the insurer, the commissioner may require a deposit under Section 31A-2-206, a bond issued by a surety authorized in Utah, or other appropriate security or reinsurance in a sufficient amount to secure the proper discharge of the insurer's remaining liabilities in Utah. The commissioner may also require the insurer to sign an agreement to remain subject to the jurisdiction of the commissioner and the courts of Utah with respect to any matter arising out of business done in Utah prior to the release.

Enacted by Chapter 242, 1985 General Session

31A-14-217 Revocation of certificate of authority.

Whenever there would be grounds for delinquency proceedings under Chapter 27a, Insurer Receivership Act, against a foreign insurer, if the foreign insurer were a domestic insurer, the commissioner may, after any proceeding authorized by Title 63G, Chapter 4, Administrative Procedures Act, revoke, suspend, or limit the foreign insurer's certificate of authority. This action does not affect insurance which has already been issued. The insurer remains subject to regulation until released under Section 31A-14-216.

Amended by Chapter 382, 2008 General Session