Chapter 15
Unauthorized Insurers, Surplus Lines, and Risk Retention Groups

Part 1
Unauthorized Insurers and Surplus Lines

31A-15-101 Purposes.

It is the purpose of this chapter to:

(1) prevent evasion by unauthorized insurers of the regulatory and tax laws of Utah and protect Utah and its residents against loss from that type of evasion;

(2) subject unauthorized insurers and other persons doing an insurance business in Utah to the jurisdiction of the Utah commissioner and courts;

(3) protect authorized insurers from unfair competition by unauthorized insurers; and

(4) provide an orderly method, under reasonable and practical safeguards, for procuring insurance from unauthorized insurers.

Enacted by Chapter 242, 1985 General Session

31A-15-102 Assisting unauthorized insurers.

(1) No person may do any act enumerated under Subsection (2) who knows or should know that the act may assist in the illegal placement of insurance with an unauthorized insurer or the subsequent servicing of an insurance policy illegally placed with an unauthorized insurer.

(2) An act performed by mail is performed both at the place of mailing and at the place of delivery. Any of the following acts, whether performed by mail or otherwise, fall within the prohibition of Subsection (1):

(a) soliciting, making, or proposing to make an insurance contract;

(b) taking, receiving, or forwarding an application for insurance;

(c) collecting or receiving, in full or in part, an insurance premium;

(d) issuing or delivering an insurance policy or other evidence of an insurance contract except as a messenger not employed by the insurer, or an insurance producer;

(e) doing any of the following in connection with the solicitation, negotiation, procuring, or effectuation of insurance coverage for another: inspecting risks, setting rates, advertising, disseminating information, or advising on risk management;

(f) publishing or disseminating any advertisement encouraging the placement or servicing of insurance that would violate Subsection (1); however this provision does not apply to publication or dissemination to an audience primarily outside Utah that also reaches persons in Utah unless the extension to persons inside Utah can be conveniently avoided without substantial expense other than loss of revenue; nor does it apply to regional or national network programs on radio or television unless they originate in Utah;

(g) investigating, settling, adjusting, or litigating claims; or

(h) representing or assisting any person to do an unauthorized insurance business or to procure insurance from an unauthorized insurer.

(3) Subsection (1) does not prohibit:

(a) an attorney acting for a client;

(b) a full-time salaried employee of an insured acting in the capacity of an insurance buyer or manager; or

(c) insurance activities described under Section 31A-15-103.

(4) Any act performed in Utah which is prohibited under this section constitutes appointment of the commissioner or the lieutenant governor as agent for service of process under Sections 31A-2-309 and 31A-2-310.
(5) Any person or entity who knows or should know that the person's or entity's actions assist in the illegal placement of insurance in violation of this section is guilty of a third degree felony.

Amended by Chapter 58, 2005 General Session

31A-15-103 Surplus lines insurance -- Unauthorized insurers.
(1) Notwithstanding Section 31A-15-102, when this state is the home state as defined in Section 31A-3-305, a nonadmitted insurer may make an insurance contract for coverage of a person in this state and on a risk located in this state, subject to the limitations and requirements of this section.
(2)
(a) For a contract made under this section, the insurer may, in this state:
(i) inspect the risks to be insured;
(ii) collect premiums;
(iii) adjust losses; and
(iv) do another act reasonably incidental to the contract.
(b) An act described in Subsection (2)(a) may be done through:
(i) an employee; or
(ii) an independent contractor.
(3)
(a) Subsections (1) and (2) do not permit a person to solicit business in this state on behalf of an insurer that has no certificate of authority.
(b) Insurance placed with a nonadmitted insurer shall be placed by a surplus lines producer licensed under Chapter 23a, Insurance Marketing - Licensing Producers, Consultants, and Reinsurance Intermediaries.
(c) The commissioner may by rule prescribe how a surplus lines producer may:
(i) pay or permit the payment, commission, or other remuneration on insurance placed by the surplus lines producer under authority of the surplus lines producer's license to one holding a license to act as an insurance producer; and
(ii) advertise the availability of the surplus lines producer's services in procuring, on behalf of a person seeking insurance, a contract with a nonadmitted insurer.
(4) For a contract made under this section, a nonadmitted insurer is subject to Sections 31A-23a-402, 31A-23a-402.5, and 31A-23a-403 and the rules adopted under those sections.
(5) A nonadmitted insurer may not issue workers' compensation insurance coverage to an employer located in this state, except:
(a) for stop loss coverage issued to an employer securing workers' compensation under Subsection 34A-2-201(2);
(b) a cannabis production establishment as defined in Section 4-41a-102; or
(c) a medical cannabis pharmacy as defined in Section 26B-4-201.
(6)
(a) The commissioner may by rule prohibit making a contract under Subsection (1) for a specified class of insurance if authorized insurers provide an established market for the class in this state that is adequate and reasonably competitive.
(b) The commissioner may by rule place a restriction or a limitation on and create special procedures for making a contract under Subsection (1) for a specified class of insurance if:

(i) there have been abuses of placements in the class; or
(ii) the policyholders in the class, because of limited financial resources, business experience, or knowledge, cannot protect their own interests adequately.
(c) The commissioner may prohibit an individual insurer from making a contract under Subsection (1) and all insurance producers from dealing with the insurer if:
(i) the insurer willfully violates:
(A) this section;
(B) Section 31A-4-102, 31A-23a-402, 31A-23a-402.5, or 31A-26-303; or
(C) a rule adopted under a section listed in Subsection (6)(c)(i)(A) or (B);
(ii) the insurer fails to pay the fees and taxes specified under Section 31A-3-301; or
(iii) the commissioner has reason to believe that the insurer is:
(A) in an unsound condition;
(B) operated in a fraudulent, dishonest, or incompetent manner; or
(C) in violation of the law of its domicile.
(d)
(i) The commissioner may issue one or more lists of nonadmitted foreign insurers whose:
(A) solidity the commissioner doubts; or
(B) practices the commissioner considers objectionable.
(ii) The commissioner shall issue one or more lists of nonadmitted foreign insurers the commissioner considers to be reliable and solid.
(iii) In addition to the lists described in Subsections (6)(d)(i) and (ii), the commissioner may issue other relevant evaluations of nonadmitted insurers.
(iv) An action may not lie against the commissioner or an employee of the department for a written or oral communication made in, or in connection with the issuance of, a list or evaluation described in this Subsection (6)(d).
(e) A foreign nonadmitted insurer shall be listed on the commissioner's "reliable" list only if the nonadmitted insurer:
(i) delivers a request to the commissioner to be on the list;
(ii) establishes satisfactory evidence of good reputation and financial integrity;
(iii)
(A) delivers to the commissioner a copy of the nonadmitted insurer's current annual statement certified by the insurer and, each subsequent year, delivers to the commissioner a copy of the nonadmitted insurer's annual statement within 60 days after the day on which the nonadmitted insurer files the annual statement with the insurance regulatory authority where the nonadmitted insurer is domiciled; or
(B) files the nonadmitted insurer's annual statements with the National Association of Insurance Commissioners and the nonadmitted insurer's annual statements are available electronically from the National Association of Insurance Commissioners;
(iv)
(A) is in substantial compliance with the solvency standards in Chapter 17, Part 6, Risk-Based Capital, or maintains capital and surplus of at least $15,000,000, whichever is greater; or
(B) in the case of any "Lloyd's" or other similar incorporated or unincorporated group of alien individual insurers, maintains a trust fund that:
(I) shall be in an amount not less than $50,000,000 as security to its full amount for all policyholders and creditors in the United States of each member of the group;
(II) may consist of cash, securities, or investments of substantially the same character and quality as those which are "qualified assets" under Section 31A-17-201; and

(III) may include as part of this trust arrangement a letter of credit that qualifies as acceptable security under Section 31A-17-404.1; and

(v) for an alien insurer not domiciled in the United States or a territory of the United States, is listed on the Quarterly Listing of Alien Insurers maintained by the National Association of Insurance Commissioners International Insurers Department.

(7)

(a) Subject to Subsection (7)(b), a surplus lines producer may not, either knowingly or without reasonable investigation of the financial condition and general reputation of the insurer, place insurance under this section with:

(i) a financially unsound insurer;

(ii) an insurer engaging in unfair practices; or

(iii) an otherwise substandard insurer.

(b) A surplus line producer may place insurance under this section with an insurer described in Subsection (7)(a) if the surplus line producer:

(i) gives the applicant notice in writing of the known deficiencies of the insurer or the limitations on the surplus line producer's investigation; and

(ii) explains the need to place the business with that insurer.

(c) A copy of the notice described in Subsection (7)(b) shall be kept in the office of the surplus line producer for at least five years.

(d) To be financially sound, an insurer shall satisfy standards that are comparable to those applied under the laws of this state to an authorized insurer.

(e) An insurer on the "doubtful or objectionable" list under Subsection (6)(d) or an insurer not on the commissioner's "reliable" list under Subsection (6)(e) is presumed substandard.

(8)

(a) A policy issued under this section shall:

(i) include a description of the subject of the insurance; and

(ii) indicate:

(A) the coverage, conditions, and term of the insurance;

(B) the premium charged the policyholder;

(C) the premium taxes to be collected from the policyholder; and

(D) the name and address of the policyholder and insurer.

(b) If the direct risk is assumed by more than one insurer, the policy shall state:

(i) the names and addresses of all insurers; and

(ii) the portion of the entire direct risk each assumes.

(c) A policy issued under this section shall have attached or affixed to the policy the following statement: "The insurer issuing this policy does not hold a certificate of authority to do business in this state and thus is not fully subject to regulation by the Utah insurance commissioner. This policy receives no protection from any of the guaranty associations created under Title 31A, Chapter 28, Guaranty Associations."

(9) Upon placing a new or renewal coverage under this section, a surplus lines producer shall promptly deliver to the policyholder or the policyholder's agent evidence of the insurance consisting either of:

(a) the policy as issued by the insurer; or

(b) if the policy is not available upon placing the coverage, a certificate, cover note, or other confirmation of insurance complying with Subsection (8).

(10) If the commissioner finds it necessary to protect the interests of insureds and the public in this state, the commissioner may by rule subject a policy issued under this section to as much

of the regulation provided by this title as is required for a comparable policy written by an authorized foreign insurer.

(11)

(a) A surplus lines transaction in this state shall be examined to determine whether it complies with:

(i) the surplus lines tax levied under Chapter 3, Department Funding, Fees, and Taxes;

(ii) the solicitation limitations of Subsection (3);

(iii) the requirement of Subsection (3) that placement be through a surplus lines producer;

(iv) placement limitations imposed under Subsections (6)(a), (b), and (c); and

(v) the policy form requirements of Subsections (8) and (10).

(b) The examination described in Subsection (11)(a) shall take place as soon as practicable after the transaction. The surplus lines producer shall submit to the examiner information necessary to conduct the examination within a period specified by rule.

(c)

(i) The examination described in Subsection (11)(a) may be conducted by the commissioner or by an advisory organization created under Section 31A-15-111 and authorized by the commissioner to conduct these examinations. The commissioner is not required to authorize an additional advisory organization to conduct an examination under this Subsection (11)(c).

(ii) The commissioner's authorization of one or more advisory organizations to act as examiners under this Subsection (11)(c) shall be:

(A) by rule; and

(B) evidenced by a contract, on a form provided by the commissioner, between the authorized advisory organization and the department.

(d)

(i)

(A) A person conducting the examination described in Subsection (11)(a) shall collect a stamping fee of an amount not to exceed 1% of the policy premium payable in connection with the transaction.

(B) A stamping fee collected by the commissioner shall be deposited in the General Fund.

(C) The commissioner shall establish a stamping fee by rule.

(ii) A stamping fee collected by an advisory organization is the property of the advisory organization to be used in paying the expenses of the advisory organization.

(iii) Liability for paying a stamping fee is as required under Subsection 31A-3-303(1) for taxes imposed under Section 31A-3-301.

(iv) The commissioner shall adopt a rule dealing with the payment of stamping fees. If a stamping fee is not paid when due, the commissioner or advisory organization may impose a penalty of 25% of the stamping fee due, plus 1-1/2% per month from the time of default until full payment of the stamping fee.

(e) The commissioner, representatives of the department, advisory organizations, representatives and members of advisory organizations, authorized insurers, and surplus lines insurers are not liable for damages on account of statements, comments, or recommendations made in good faith in connection with their duties under this Subsection (11)(e) or under Section 31A-15-111.

(f) An examination conducted under this Subsection (11) and a document or materials related to the examination are confidential.

(12)

(a) For a surplus lines insurance transaction in the state entered into on or after May 13, 2014, if an audit is required by the surplus lines insurance policy, a surplus lines insurer:
(i) shall exercise due diligence to initiate an audit of an insured, to determine whether additional premium is owed by the insured, by no later than six months after the expiration of the term for which premium is paid; and
(ii) may not audit an insured more than three years after the surplus lines insurance policy expires.
(b) A surplus lines insurer that does not comply with this Subsection (12) may not charge or collect additional premium in excess of the premium agreed to under the surplus lines insurance policy.

Amended by Chapter 327, 2023 General Session

31A-15-104 Direct placement of insurance.

(1) Subject to this section, any person seeking insurance may obtain it from an unauthorized insurer if no producer resident doing business in Utah is involved and if negotiations occur primarily outside Utah. Negotiations by mail occur within Utah if a letter or other document containing insurance-related solicitations or negotiations is sent from or to a Utah address. Negotiations by telephone take place within Utah if one of the parties to the conversation is in Utah.
(2) Each policyholder who procures or renews insurance otherwise subject to this code from any insurer not authorized to do business in Utah, other than insurance procured under Section 31A-15-103 and the renewal of guaranteed renewable insurance lawfully issued outside Utah, shall within 60 days after the insurance is procured or renewed, report to the commissioner in the form required by the commissioner and pay the taxes specified by Section 31A-3-301.
(3)
(a) Any insurance on personal property sold on the installment plan, under a conditional sales contract, or an equivalent security agreement under the Uniform Commercial Code which charges the buyer, as a part of the consideration in the agreement of sale for insurance on the property, shall be placed with an insurer authorized to do business in Utah.
(b) Whenever the law of Utah requires a person to purchase insurance on risks in Utah, it shall be obtained from an insurer authorized to do business in Utah, or under Section 31A-15-103.

Amended by Chapter 298, 2003 General Session

31A-15-105 Effect of contracts illegal because insurer was unauthorized.

(1) An insurance contract entered into in violation of this chapter is unenforceable by, but enforceable against, the insurer. In an action against the insurer on the contract, the insured is bound by the terms of the contract as affected by this title and rules adopted under this title.
(2) An insurance policy entered into in violation of this chapter is voidable by the policyholder who entered into the transaction without knowing it was illegal. The policyholder may avoid the contract by notice to the insurer, if no insured has enforced the contract by an action under Subsection (1), and may recover any consideration paid under the contract.
(3) Any person who assisted in the procurement of an illegal contract under this chapter, and who knew or should have known the transaction was illegal, is liable to the insured for the full amount of a claim or loss payable under the contract, if the insurer does not pay it. The receiver appointed under Chapter 27a, Insurer Receivership Act, may assert the claims of insureds if the insurer is the subject of a proceeding under Chapter 27a, Insurer Receivership Act.

Amended by Chapter 309, 2007 General Session

31A-15-106 Servicing of contracts made out of state.

(1) A foreign insurer that does not have a certificate of authority to do business in this state under Section 31A-14-202 may, in this state, collect premiums and adjust losses and do all other acts reasonably incidental to contracts made outside this state without violating this chapter. Any premiums collected under this section are subject to Section 31A-3-301.

(2) Subsection (1) does not permit a renewal, extension, increase, or other substantial change in the terms of any contract under Subsection (1) unless:

(a) it is permitted under Section 31A-15-103;

(b) the contract is for life or accident and health insurance or annuities; or

(c) a rule adopted by the commissioner permits this action when the interests of the policyholder and the public appear to be sufficiently protected.

Amended by Chapter 116, 2001 General Session

31A-15-107 Defense of action by unauthorized person.

(1) Except under Subsection (3), no pleading, notice, order, or process in any action in court or in any administrative proceeding before the commissioner instituted against an unauthorized person under Sections 31A-2-309 and 31A-2-310 may be filed by or on behalf of the unauthorized person unless one of the following conditions exists:

(a) The unauthorized person deposits with the clerk of the court in which the action or proceeding is pending, or with the commissioner in administrative proceedings, cash, securities, or a bond with sureties in an amount fixed by the court or the commissioner, sufficient to secure the payment or performance of any probable final judgment or order.

(b) That person procures proper authorization to do an insurance business in Utah.

(c) The commissioner, after a hearing, issues an order stating that he is satisfied the person has funds or securities, in a state of the United States, in trust or otherwise, which are readily available and adequate to satisfy any probable final judgment or to perform in accordance with any order.

(2) The court in any action or proceeding under this section, or the commissioner in any administrative proceeding under this section, may order any postponement he considers necessary to give the unauthorized person a reasonable opportunity to comply with Subsection (1).

(3) Subsection (1) does not prevent an unauthorized person from filing a motion to quash a writ or to set aside service on the ground that the person has not done any of the acts specified under Subsection 31A-15-102(2).

Enacted by Chapter 242, 1985 General Session

31A-15-108 Attorney fees.

In an action against an unauthorized person upon a contract of insurance issued in violation of this chapter, if the unauthorized person fails to make payment in accordance with the contract for 30 days after the payment is due and demand is made, and it appears to the court that the failure was without just cause, the court may allow the plaintiff a reasonable attorney's fee and may include the fee in any judgment that may be rendered in the action. The unauthorized person's failure to defend this action is prima facie evidence that the failure to pay was without just cause.

Enacted by Chapter 242, 1985 General Session

31A-15-109 Investigation and disclosure of insurance contracts.

Whenever the commissioner has reason to believe that insurance has been effectuated by or for any person in Utah with an unauthorized insurer, the commissioner may, in writing, order the person to produce for examination all insurance contracts and other documents evidencing insurance with both authorized and unauthorized insurers and to disclose to the commissioner the amount of insurance, the name and address of each insurer, the gross amount of premium, and the name and address of any person who has assisted in effecting the insurance.

Enacted by Chapter 242, 1985 General Session

31A-15-110 Reporting of illegal insurance.

(1) Every person investigating or adjusting any loss or claim on a subject of insurance in this state shall immediately report to the commissioner every insurance policy or contract connected with the investigation or settlement, which the person has reason to believe has been entered into illegally by any insurer not authorized to transact business in this state.

(2) Every person acting as an insurance consultant shall immediately report to the commissioner every insurance policy or contract covering a subject of insurance in this state, which the consultant has reason to believe has been entered into illegally by an insurer not authorized to transact that type of insurance in this state.

Amended by Chapter 204, 1986 General Session

31A-15-111 Surplus lines advisory organizations.

(1) Advisory organizations of surplus lines producers may be formed to:

(a) facilitate and encourage compliance by its members with the laws of this state and the rules of the commissioner relative to surplus lines insurance;

(b) if authorized by the commissioner, perform and report to the commissioner on the confidential examinations and assess and receive the stamping fees described in Subsection 31A-15-103(11);

(c) make recommendations to the commissioner concerning classes of insurance for which a rule under Subsection 31A-15-103(6)(a) is appropriate;

(d) investigate "abuses of placements," as described in Subsection 31A-15-103(6)(b), and provide recommendations to the commissioner concerning rules under Subsection 31A-15-103(6)(b);

(e) bring to the commissioner's attention the existence of grounds for issuing an order under Subsection 31A-15-103(6)(c) concerning a particular unauthorized insurer;

(f) provide recommendations to the commissioner concerning unauthorized insurers which should be listed on a "doubtful or objectionable" list under Subsection 31A-15-103(6)(d);

(g) provide comments to the commissioner concerning whether an unauthorized insurer has a good reputation and financial integrity under Subsection 31A-15-103(6)(d)(ii);

(h) provide recommendations to the commissioner concerning rules under Subsection 31A-15-103(10) necessary to protect the interests of insureds and the public; and

(i) receive and disseminate to its members information relative to surplus lines coverages.

(2) Every advisory organization formed under this section shall file with the commissioner:

(a) a copy of its constitution, articles of agreement or association or articles of incorporation, and any amendments to these documents;
(b) a copy of its bylaws and any other writing governing the organization's activities and any amendments to these documents;
(c) a list of the names and addresses of residents of this state upon whom notices or orders of the commissioner or processes issued at his direction may be served, with changes in this list to be filed within 10 days of a change; and
(d) an agreement, on a form provided by the commissioner and executed by the advisory organization, that the commissioner may examine the advisory organization in accordance with the provisions of Sections 31A-2-203, 31A-2-204, and 31A-2-205.

(3) The commissioner may by rule or order require each person licensed as a surplus lines producer under Chapter 23a, Insurance Marketing - Licensing Producers, Consultants, and Reinsurance Intermediaries, to be a member of one or more specified advisory organizations operating under this section. The commissioner may make compliance with the rule or order a condition to continued licensure as a surplus lines producer.

(4) The comments and recommendations given the commissioner under Subsection (1) are merely advisory. The formation of an advisory organization under this section does not alter the commissioner's authority under this chapter.

Amended by Chapter 298, 2003 General Session

Part 2
Risk Retention Groups Act

31A-15-201 Short title.

This part shall be known as the "Risk Retention Groups Act."

Enacted by Chapter 258, 1992 General Session

31A-15-202 Definitions.

As used in this part:

(1) Notwithstanding Section 31A-1-301, "commissioner" means the insurance commissioner of Utah or the commissioner, director, or superintendent of insurance in another state.

(2)
(a) Subject to Subsection (2)(b), "completed operations liability" means liability arising out of the installation, maintenance, or repair of any product at a site that is not owned or controlled by:
(i) any person who performs that work; or
(ii) any person who hires an independent contractor to perform that work.
(b) "Completed operations liability" includes liability for an activity that is completed or abandoned before the date of the occurrence giving rise to the liability.

(3) "Domicile," for purposes of determining the state in which a purchasing group is domiciled, means:
(a) for a corporation, the state in which the purchasing group is incorporated; and
(b) for an unincorporated entity, the state of its principal place of business.

(4) "Hazardous financial condition" means that a risk retention group, based on its present or reasonably anticipated financial condition, although not yet financially impaired or insolvent, is unlikely to be able:
(a) to meet obligations to policyholders with respect to known claims and reasonably anticipated claims; or
(b) to pay other obligations in the normal course of business.
(5) "Insurance" means primary insurance, excess insurance, reinsurance, surplus lines insurance, and any other arrangement for shifting and distributing risk which is determined to be insurance under the laws of this state.
(6)
(a) "Liability" means legal liability for damages, including costs of defense, legal costs and fees, and other claims expenses because of injuries to other persons, damage to their property, or other damage or loss to other persons resulting from or arising out of:
(i) any business, whether profit or nonprofit, trade, product, services, including professional services, premises, or operations; or
(ii) any activity of any state or local government or any agency or political subdivision of any state or local government.
(b) "Liability" does not include personal risk liability and an employer's liability with respect to its employees other than legal liability under the Federal Employers' Liability Act, 45 U.S.C. Sec. 51 et seq.
(7) "Personal risk liability" means liability for damages because of injury to any person, damage to property, or other loss or damage resulting from any personal, familial, or household responsibilities or activities, rather than from responsibilities or activities referred to in Subsection (6).
(8) "Plan of operation" or "feasibility study" means an analysis that presents the expected activities and results of a risk retention group, including at a minimum:
(a) information sufficient to verify that its members are engaged in businesses or activities similar or related with respect to the liability to which the members are exposed by virtue of any related, similar or common business, trade, product, services, premises or operations;
(b) for each state in which it intends to operate, the coverages, deductibles, coverage limits, rates, and rating classification systems for each line of insurance the group intends to offer;
(c) historical and expected loss experience of the proposed members and national experience of similar exposures to the extent that this experience is reasonably available;
(d) pro forma financial statements and projections;
(e) appropriate opinions by a qualified, independent casualty actuary, including a determination of minimum premium or participation levels required to commence operations and to prevent a hazardous financial condition;
(f) identification of management, underwriting and claims procedures, marketing methods, managerial oversight methods, investment policies, and reinsurance agreements;
(g) identification of each state in which the risk retention group has obtained, or sought to obtain, a charter and license, and a description of its status in each such state; and
(h) any other matters required by the commissioner of the state in which the risk retention group is chartered for liability insurance companies authorized by the insurance laws of that state.
(9)
(a) "Product liability" means liability for damages because of any personal injury, death, emotional harm, consequential economic damage, or property damage, including damages resulting from the loss of use of property arising out of the manufacture, design, importation, distribution, packaging, labeling, lease, or sale of a product.

(b) "Product liability" does not include the liability of any person for those damages described in Subsection (9)(a) if the product involved was in the possession of the person when the incident giving rise to the claim occurred.

(10) "Purchasing group" means any group that:

(a) has as one of its purposes the purchase of liability insurance on a group basis;

(b) purchases liability insurance only for its group members and only to cover their similar or related liability exposure, as described in Subsection (10)(c);

(c) is composed of members whose businesses or activities are similar or related with respect to the liability to which members are exposed by virtue of any related, similar, or common business, trade, products, services, premises, or operations; and

(d) is domiciled in any state.

(11) "Risk retention group" means any corporation or other limited liability association:

(a) whose primary activity consists of assuming and spreading all, or any portion of, the liability exposure of its group members;

(b) which is organized for the primary purpose of conducting the activity described under Subsection (11)(a);

(c) that:

(i) is chartered and licensed as a liability insurance company and authorized to engage in the business of insurance under the laws of any state; or

(ii)

(A) before January 1, 1985, was chartered or licensed and authorized to engage in the business of insurance under the laws of Bermuda or the Cayman Islands and, before January 1, 1985, had certified to the insurance commissioner of at least one state that it satisfied the capitalization requirements of that state;

(B) except that any group as described in Subsection (11)(c)(ii)(A) shall be considered to be a risk retention group only if it has been engaged in business continuously since January 1, 1985, and only for the purpose of continuing to provide insurance to cover product liability or completed operations liability, as these terms were defined in the Product Liability Risk Retention Act of 1981 before the date of the enactment of the Liability Risk Retention Act of 1986;

(d) that does not exclude any person from membership in the group solely to provide for members of the group a competitive advantage over the excluded person;

(e) that:

(i) has as its owners only persons who comprise the membership of the risk retention group and who are provided insurance by the group; or

(ii) has as its sole owner an organization that has as:

(A) its members only persons who comprise the membership of the risk retention group; and

(B) its owners only persons who comprise the membership of the risk retention group and who are provided insurance by the group;

(f) whose members are engaged in businesses or activities similar or related with respect to the liability to which the members are exposed by virtue of any related, similar, or common business trade, products, services, premises or operations;

(g) whose activities do not include providing insurance other than:

(i) liability insurance for assuming and spreading all or any portion of the liability of its group members; and

(ii) reinsurance with respect to the liability of any other risk retention group, or any members of the other group, which is engaged in businesses or activities so that the group or member

meets the requirement described in Subsection (11)(f) for membership in the risk retention group which provides the reinsurance; and

(h) the name of which includes the phrase "risk retention group."

(12) "State" means:

(a) a state of the United States; or

(b) the District of Columbia.

Amended by Chapter 138, 2016 General Session

31A-15-203 Risk retention groups chartered in this state.

(1) As used in this section:

(a) "Board of directors" or "board" means the governing body of the risk retention group elected by the shareholders or members to establish policy, elect or appoint officers and committees, and make other governing decisions.

(b) "Director" means a natural person designated in the articles of the risk retention group, or designated, elected, or appointed by any other manner, name, or title to act as a director.

(2)

(a) A risk retention group under this part shall be chartered and licensed to write only liability insurance pursuant to this part and, except as provided elsewhere in this part, shall comply with all of the laws, rules, and requirements that apply to liability insurers chartered and licensed in this state, and with Section 31A-15-204 to the extent the requirements are not a limitation on other laws, rules, or requirements of this state.

(b) Notwithstanding any other provision to the contrary, all risk retention groups chartered in this state shall file with the commissioner and the National Association of Insurance Commissioners an annual statement in a form prescribed by the commissioner and completed in accordance with the statement instructions and the National Association of Insurance Commissioners Accounting Practices and Procedures Manual.

(3) Before it may offer insurance in any state, each risk retention group shall also submit for approval to the commissioner of this state a plan of operation or feasibility study. The risk retention group shall submit an appropriate revision of the plan or study in the event of any subsequent material change in any item of the plan of operation or feasibility study within 10 days of any change. The group may not offer any additional kinds of liability insurance, in this state or in any other state, until any revision of the plan or study is approved by the commissioner.

(4)

(a) At the time of filing its application for charter, the risk retention group shall provide to the commissioner in summary form the following information:

(i) the identity of the initial members of the group;

(ii) the identity of those individuals who organized the group or who will provide administrative services or otherwise influence or control the activities of the group;

(iii) the amount and nature of initial capitalization;

(iv) the coverages to be afforded; and

(v) the states in which the group intends to operate.

(b) Upon receipt of this information, the commissioner shall forward the information to the National Association of Insurance Commissioners. Providing notification to the National Association of Insurance Commissioners is in addition to, and may not be sufficient to satisfy, the requirements of Section 31A-15-204 or any other sections of this part.

(5) The governance standards for risk retention groups are as follows:

(a) A risk retention group that exists as of May 10, 2016, shall be in compliance with the governance standards described in this Subsection (5) by no later than May 10, 2017. A risk retention group licensed on or after May 10, 2016, shall be in compliance with the governance standards described in this Subsection (5) at the time of licensure.

(b) The board of directors of a risk retention group shall have a majority of independent directors. If the risk retention group is a reciprocal:

(i) the attorney-in-fact is required to adhere to the same standards regarding independence of operation and governance as imposed on the risk retention group's board of directors and subscribers advisory committee under these standards; and

(ii) to the extent permissible under state law, service providers of a reciprocal risk retention group shall contract with the risk retention group and not the attorney-in-fact.

(c) A director does not qualify as independent unless the board of directors affirmatively determines that the director has no material relationship with the risk retention group. Each risk retention group shall disclose these determinations to its domestic regulator, at least annually. For this purpose, any person who is a direct or indirect owner of, or subscriber in, the risk retention group or is an officer, director, or employee of the owner and insured, is considered to be independent, unless some other position of the officer, director, or employee constitutes a material relationship, as contemplated by Section 3901(a)(4)(E)(ii) of the Liability Risk Retention Act.

(d) Material relationship of a person with the risk retention group includes the following:

(i) A material relationship exists if the person receives in any one 12-month period compensation or payment of any other item of value by the person, a member of the person's immediate family, or a business with which the person is affiliated, from the risk retention group or a consultant or service provider to the risk retention group is greater than the greater of the following as measured at the end of any fiscal quarter falling in the 12-month period:

(A) 5% of the risk retention group's gross written premium for the 12-month period; or

(B) 2% of the risk retention group's surplus.

(ii) The person or immediate family member of the person is not independent until one year after the person's compensation from the risk retention group falls below the threshold outlined in Subsection (5)(d)(i).

(iii) A material relationship exists if a director or an immediate family member of a director is affiliated with or employed in a professional capacity by a present or former internal or external auditor of the risk retention group.

(iv) The director or immediate family member of a director described in Subsection (5)(d)(iii) is not independent until one year after the end of the affiliation, employment, or auditing relationship.

(v) A material relationship exists if the director or immediate family member of a director who is employed as an executive officer of another company where any of the risk retention group's present executives serve on that other company's board of directors is not independent until one year after the end of the service or the employment relationship.

(e)

(i) The term of any material service provider contract with the risk retention group may not exceed five years. A material service provider contract, or its renewal, shall require the approval of the majority of the risk retention group's independent directors. The service provider contract is considered material if the amount to be paid for the contract is greater than or equal to the greater of:

(A) 5% of the risk retention group's annual gross written premium; or

(B) 2% of the risk retention group's surplus.

(ii) For purposes of Subsection (5)(e)(i), "service provider" includes a captive manager, auditor, accountant, actuary, investment advisor, lawyer, managing general underwriter, or other party responsible for underwriting, determining rates, collecting premiums, adjusting and settling claims, or preparing financial statements. A reference to "lawyer" in this Subsection (5)(e)(ii) does not include defense counsel retained by the risk retention group to defend claims, unless the amount of fees paid to the lawyer is "material" as referenced in Section (5)(e)(i).

(iii) A service provider contract meeting the definition of material relationship contained in Section (5)(d) may not be entered into unless the risk retention group has, at least 30 days before entering into the service provider contract, notified the commissioner in writing of its intention to enter into the transaction and the commissioner has not disapproved it within the 30-day period.

(iv) The risk retention group's board of directors shall have the right to terminate any service provider, audit contract, or actuarial contract at any time for cause after providing adequate notice as defined in the contract.

(f) The risk retention group's board of directors shall adopt a written policy in the plan of operation as approved by the board that requires the board to:

(i) assure that an owner of the risk retention group receive evidence of ownership interest;

(ii) develop a set of governance standards applicable to the risk retention group;

(iii) oversee the evaluation of the risk retention group's management including the performance of the captive manager, managing general underwriter, or one or more other parties responsible for underwriting, determining rates, collecting premiums, adjusting or settling claims, or preparing financial statements;

(iv) review and approve the amount to be paid for all material service providers; and

(v) review and approve at least annually:

(A) the risk retention group's goals and objectives relevant to the compensation of officers and service providers;

(B) the officers' and service providers' performance in light of those goals and objectives; and

(C) the continued engagement of the officers and material service providers.

(g)

(i) A risk retention group shall have an audit committee composed of at least three independent board members as defined in Subsection (5)(c). A non-independent board member may participate in the activities of the audit committee, if invited by the members of the audit committee, but cannot be a member of the audit committee.

(ii) The audit committee shall have a written charter that defines the audit committee's purpose, which, at a minimum, shall be to:

(A) assist the board's oversight of the integrity of the financial statements, the compliance with legal and regulatory requirements, and the qualifications, independence, and performance of the independent auditor and actuary;

(B) discuss the annual audited financial statements and quarterly financial statements with management;

(C) discuss the annual audited financial statements with its independent auditor and, if advisable, discuss its quarterly financial statements with its independent auditor;

(D) discuss policies with respect to risk assessment and risk management;

(E) meet separately and periodically, either directly or through a designated representative of the committee, with management and the independent auditor;

(F) review with the independent auditor any audit problems or difficulties and management's response;
(G) set clear hiring policies of the risk retention group as to the hiring of employees or former employees of the independent auditor;
(H) require the external auditor to rotate the lead or coordinating audit partner having primary responsibility for the risk retention group's audit as well as the audit partner responsible for reviewing that audit so that neither individual performs audit services for more than five consecutive fiscal years; and
(I) report regularly to the board of directors.

(iii) The domestic regulator may waive the requirement to establish an audit committee composed of independent board members if the risk retention group is able to demonstrate to the domestic regulator that it is impracticable to do so and the risk retention group's board of directors itself is otherwise able to accomplish the purposes of an audit committee, as described in this Section (5)(g).

(h) The board of directors shall adopt and disclose governance standards, where "disclose" means making such information available through election, including posting the information on the risk retention group's website or other means, and providing such information to owners upon request, which shall include:
(i) a process by which the directors are elected by the owners;
(ii) director qualification standards;
(iii) director responsibilities;
(iv) director access to management and, as necessary and appropriate, independent advisors;
(v) director compensation;
(vi) director orientation and continuing education;
(vii) the policies and procedures that are followed for management succession; and
(viii) the policies and procedures that are followed for annual performance evaluation of the board.

(i) The board of directors shall adopt and disclose a code of business conduct and ethics for directors, officers, and employees and promptly disclose to the board of directors any waivers of the code for directors or executive officers, which shall include the following topics:
(i) conflicts of interest;
(ii) matters covered under the corporate opportunities doctrine under the state of domicile;
(iii) confidentiality;
(iv) fair dealing;
(v) protection and proper use of risk retention group assets;
(vi) compliance with all applicable laws, rules, and regulations; and
(vii) requiring the reporting of any illegal or unethical behavior that affects the operation of the risk retention group.

(j) A captive manager, president, or chief executive officer of a risk retention group shall promptly notify the domestic regulator in writing if the captive manager, president, or chief executive officer becomes aware of any material non-compliance with any of the governance standards in this Subsection (5).

Amended by Chapter 138, 2016 General Session

31A-15-204 Risk retention groups not chartered in this state -- Designation of commissioner as agent -- Compliance with unfair claims settlement practices act -- Deceptive, false, or

fraudulent practices -- Examination regarding financial condition -- Prohibitions -- Penalties -- Operation prior to enactment of this part.

(1) Risk retention groups chartered and licensed in other states and seeking to do business as a risk retention group in this state shall comply with the following:

(a) Before offering insurance in this state a risk retention group shall submit to the commissioner:

(i) a statement identifying the states in which the group is chartered and licensed as a liability insurance company, its charter date, its principal place of business, and any other information, including information on its membership, the commissioner may require to verify that the group is a qualified risk retention group as defined in Section 31A-15-202; and

(ii) a copy of its plan of operations or feasibility study and revisions of the plan or study submitted to the state in which the risk retention group is chartered and licensed, except a plan or study is not required for any line or classification of liability insurance that:

(A) was defined in the Product Liability Risk Retention Act of 1981 before October 27, 1986; and

(B) was offered before that date by any risk retention group that had been chartered and operating for not less than three years before that date.

(b) The risk retention group shall submit to the commissioner a copy of any revision to its plan or study required by Subsection 31A-15-203(3) at the same time it submits the revision of its chartering state.

(c) The risk retention group shall submit, on a form approved by the commissioner, a statement of registration and a notice designating the commissioner as agent for the purpose of receiving service of legal documents or process.

(d) The risk retention group shall pay annual license fees required by Section 31A-3-103.

(2) Any risk retention group doing business in this state shall submit to the commissioner:

(a) a copy of the group's financial statement submitted to the state in which the risk retention group is chartered and licensed, which shall be certified by an independent public accountant and shall contain a statement of opinion on loss and loss adjustment expense reserves made by a member of the American Academy of Actuaries or a loss reserve specialist qualified under criteria approved by the commissioner;

(b) a copy of each examination of the risk retention group as certified by the commissioner or public official conducting the examination;

(c) if the commissioner requests, a copy of any information or document pertaining to any outside audit performed with respect to the risk retention group; and

(d) any other information required to verify the group's continuing qualification as a risk retention group within the definition in Section 31A-15-202.

(3)

(a) Each risk retention group shall pay premium taxes and taxes on premiums of direct business for risks resident or located within this state, and shall report to the Utah State Tax Commission the net premiums written for risks resident or located within this state. Each risk retention group shall be subject to taxation, and any applicable fines and penalties related to taxation, on the same basis as a foreign admitted insurer.

(b) To the extent licensed producers are utilized pursuant to Section 31A-15-212, they shall report to the commissioner the premiums for direct business for all risks resident or located within this state that the producers have placed with, or on behalf of, a risk retention group not chartered in this state.

(c) To the extent that insurance producers are utilized pursuant to Section 31A-15-212 they shall keep a complete and separate record of all policies procured from each risk retention group. The record shall be open to examination by the commissioner, as provided under Section

31A-23a-412. These records shall include the following for each policy and each kind of insurance provided under each policy:

(i) the limit of liability;

(ii) the time period covered;

(iii) the effective date;

(iv) the name of the risk retention group that issued the policy;

(v) the gross premium charged;

(vi) the amount of any returned premiums; and

(vii) additional information required by the insurance commissioner.

(4) Each risk retention group and its agents and representatives shall comply with:

(a) the Unfair Claims Settlement Practices Act, including Section 31A-15-207;

(b)Chapter 26, Part 3, Claim Practices; and

(c) any other provision of law relating to claims settlement practices.

(5) Each risk retention group shall comply with the laws of this state regarding deceptive, false, and fraudulent acts, practices regulated under Chapter 23a, Part 4, Marketing Practices, and any other provision of law relating to deceptive, false, or fraudulent practices. The commissioner may only obtain an injunction regarding the conduct described in this subsection from a court of competent jurisdiction.

(6) If the commissioner of the jurisdiction in which the group is chartered and licensed has not initiated an examination or does not initiate an examination within 60 days after a request by the commissioner of this state, the risk retention group shall submit to an examination by the commissioner of this state to determine its financial condition. Any examination conducted under this subsection shall be coordinated to avoid unjustified repetition and shall be conducted in an expeditious manner and in accordance with the National Association of Insurance Commissioner's Examiner Handbook.

(7) Each application form for insurance from a risk retention group and each policy and certificate issued by a risk retention group shall contain the following notice in ten-point type on its front and declaration pages:

"NOTICE

This policy is issued by your risk retention group. Your risk retention group may not be subject to all of the insurance laws and regulations of your state. State insurance insolvency guaranty funds are not available for your risk retention group."

(8) The following acts by a risk retention group are prohibited:

(a) the solicitation or sale of insurance by a risk retention group to any person who is not eligible for membership in the group; and

(b) the solicitation or sale of insurance by, or operation of, a risk retention group that is in hazardous financial condition or financially impaired.

(9) A risk retention group may not do business in this state if an insurance company is directly or indirectly a member or owner of the risk retention group, unless all members of the group are insurance companies.

(10) The terms of any insurance policy issued by a risk retention group may not provide, or be construed to provide, coverage prohibited generally by statute of this state or declared unlawful by the Utah Supreme Court.

(11) A risk retention group not chartered in this state and doing business in this state shall comply with a lawful order issued in a voluntary dissolution proceeding or in a delinquency proceeding commenced by any state's insurance commissioner if there has been a finding of financial impairment after an examination under Subsection (6).

(12) A risk retention group that violates any provision of this part is subject to fines and penalties applicable to licensed insurers generally, including revocation of its right to do business in this state.
(13) In addition to complying with the requirements of this section, each risk retention group operating in this state before the effective date of this part shall comply with Subsection (1)(a) within 30 days after the effective date of this part.

Amended by Chapter 138, 2016 General Session

31A-15-205 Guaranty associations.
(1) A risk retention group may not be required to join or contribute financially to the Insurance Guaranty Fund created under Title 31A, Chapter 28, Part 2, Property and Casualty Guaranty Association, nor may any risk retention group, or its insureds or claimants against its insureds, receive any benefit from any such fund for claims arising under the insurance policies issued by the risk retention group.
(2) When a purchasing group obtains insurance covering its members' risks from an insurer not authorized in this state or from a risk retention group, the risks, wherever resident or located, may not be covered by any insurance guaranty fund or similar mechanism in this state.
(3) When a purchasing group obtains insurance covering its members' risks from an authorized insurer, only risks resident or located in this state shall be covered by the Utah Property and Casualty Insurance Guaranty Association created under Title 31A, Chapter 28, Guaranty Associations.

Enacted by Chapter 258, 1992 General Session

31A-15-206.5 Countersignatures not required.
A policy of insurance issued to a risk retention group or any member of the risk retention group may not be required to be countersigned.

Enacted by Chapter 138, 2016 General Session

31A-15-207 Purchasing groups -- Exemption from certain laws.
A purchasing group and its insurers are subject to all applicable laws of this state, except that a purchasing group and its insurers are exempt, in regard to liability insurance for the purchasing group, from any law that would:
(1) prohibit the establishment of a purchasing group;
(2) make it unlawful for an insurer to provide, or offer to provide, to a purchasing group or its members insurance on a basis providing advantages based on their loss and expense experience not afforded to other persons with respect to rates, policy forms, coverages, or other matters;
(3) prohibit a purchasing group or its members from purchasing insurance on a group basis described in Subsection (2);
(4) prohibit a purchasing group from obtaining insurance on a group basis because the group has not been in existence for a minimum period of time or because any member has not belonged to the group for a minimum period of time;
(5) require that a purchasing group have a minimum number of members, common ownership or affiliation, or certain legal form;
(6) require that a certain percentage of a purchasing group obtain insurance on a group basis;

(7) otherwise discriminate against a purchasing group or any of its members; or
(8) require that any insurance policy issued to a purchasing group or any of its members be countersigned by an insurance producer residing in this state.

Amended by Chapter 297, 2011 General Session

31A-15-208 Purchasing groups -- Notice and registration requirements.

(1) A purchasing group that intends to do business in this state shall, before doing business, furnish reasonable notice to the insurance commissioner in this state. The notice shall be on forms prescribed by the National Association of Insurance Commissioners and shall:
  (a) identify the state in which the group is domiciled;
  (b) identify the other states in which the group intends to do business;
  (c) specify the lines and classifications of liability insurance that the group intends to purchase;
  (d) identify the one or more insurance companies from which the group intends to purchase its insurance and the domicile of the insurers;
  (e) specify the method by which, and the one or more persons, if any, through whom, insurance will be offered to its members whose risks are resident or located in this state;
  (f) identify the principal place of business of the group; and
  (g) provide any other information as may be required by the commissioner to verify that the group is a qualified "purchasing group," as defined in Section 31A-15-202.
(2) A purchasing group shall notify the commissioner of a change in an item listed in Subsection (1) within 10 days of the change.
(3)
  (a) A purchasing group shall annually register with the commissioner and pay a filing fee.
  (b) A purchasing group shall designate the commissioner as its agent solely for the purpose of receiving service of legal documents or process.
  (c) The registration and fee requirements of this Subsection (3) do not apply to a purchasing group that only purchases insurance that was authorized under the Product Liability Risk Retention Act of 1981, and that:
    (i) in any state of the United States:
      (A) was domiciled before April 1, 1986; and
      (B) is domiciled after October 27, 1986;
    (ii)
      (A) before October 27, 1986, purchased insurance from an insurer licensed in any state; and
      (B) since October 27, 1986, purchased its insurance from an insurer licensed in any state; or
    (iii) was a purchasing group under the requirements of the Product Liability Risk Retention Act of 1981 before October 27, 1986.
(4) Each purchasing group that is required to give notice under Subsection (1) shall also furnish the information required by the commissioner to:
  (a) verify that the entity qualifies as a purchasing group;
  (b) determine where the purchasing group is located; and
  (c) determine appropriate tax treatment of the purchasing group.

Amended by Chapter 138, 2016 General Session

31A-15-209 Restrictions on purchasing groups.

(1) A purchasing group may not purchase insurance from a risk retention group that is not chartered in a state or from an insurer not admitted in the state in which the purchasing group

is located, unless the purchase is effected through a licensed producer acting pursuant to the surplus lines laws and regulations of the state in which the purchasing group is located.

(2) A purchasing group that obtains liability insurance from an insurer not admitted in this state or a risk retention group shall inform each of the members of the purchasing group or risk retention group that have a risk resident or located in this state that:

(a) the risk is not protected by an insurance insolvency guaranty fund in this state; and

(b) the risk retention group or insurer may not be subject to all insurance laws and regulations of this state.

(3)

(a) A purchasing group may not purchase insurance providing for a deductible or self-insured retention applicable to the group as a whole.

(b) Notwithstanding Subsection (3)(a), coverage may provide for a deductible or self-insured retention applicable to individual members.

(4) Purchases of insurance by purchasing groups are subject to the same standards regarding aggregate limits which are applicable to all purchases of group insurance.

Amended by Chapter 138, 2016 General Session

31A-15-210 Purchasing group taxation.

Premium taxes and taxes on premiums paid for coverage of risks resident or located in this state by a purchasing group or any members of the purchasing groups are imposed and shall be paid as follows:

(1) If the insurer is an admitted insurer, taxes are imposed on the insurer at the same rate and in the same manner and subject to the same procedures, interest, and penalties that apply to premium taxes and other taxes imposed on other admitted liability insurers relative to coverage of risks resident or located in this state.

(2) If the insurer is an approved, nonadmitted surplus lines insurer, taxes are imposed on the licensed producer who effected coverage on risks resident or located in this state at the same rate and in the same manner and subject to the same procedures, interest, and penalties that apply to taxes imposed on other licensed producers effecting coverage with approved, nonadmitted surplus lines insurers on risks resident or located in this state.

Amended by Chapter 297, 2011 General Session

Superseded 7/1/2024

31A-15-211 Enforcement authority.

(1) The commissioner is authorized to use the powers established for the department under this title to enforce the laws of this state not specifically preempted by the Liability Risk Retention Act of 1986, including the commissioner's administrative authority to investigate, issue subpoena, conduct depositions and hearings, issue orders, impose monetary penalties and seek injunctive relief. With regard to any investigation, administrative proceedings, or litigation, the commissioner shall rely on the procedural laws of this state.

(2) Whenever the commissioner determines that any person, risk retention group, purchasing group, or insurer of a purchasing group has violated, is violating, or is about to violate any provision of this part or any other insurance law of this state applicable to the person or entity, or that the person or entity has failed to comply with a lawful order of the commissioner, he may, in addition to any other lawful remedies or penalties, file a complaint in the Third District Court of Salt Lake County to enjoin and restrain any person, risk retention group, purchasing

group, or insurer from engaging in the violation, or to compel compliance with the order of the commissioner. The court has jurisdiction of the proceeding and has the power to enter a judgment and order for injunctive or other relief. In any action by the commissioner under this subsection, service of process shall be made upon the director of the Division of Corporations and Commercial Code who shall forward the order, pleadings, or other process to the person, risk retention group, purchasing group, or insurer in accordance with the procedures specified in Section 31A-14-204. Nothing in this section may be construed to limit or abridge the authority of the commissioner to seek injunctive relief in any district court of the United States as provided in Section 31A-15-213.

Enacted by Chapter 258, 1992 General Session

Effective 7/1/2024

31A-15-211 Enforcement authority.

(1)

(a) The commissioner is authorized to use the powers established for the department under this title to enforce the laws of this state not specifically preempted by the Liability Risk Retention Act of 1986, including the commissioner's administrative authority to investigate, issue subpoena, conduct depositions and hearings, issue orders, impose monetary penalties and seek injunctive relief.

(b) With regard to any investigation, administrative proceedings, or litigation, the commissioner shall rely on the procedural laws of this state.

(2)

(a) Whenever the commissioner determines that any person, risk retention group, purchasing group, or insurer of a purchasing group has violated, is violating, or is about to violate any provision of this part or any other insurance law of this state applicable to the person or entity, or that the person or entity has failed to comply with a lawful order of the commissioner, the commissioner may, in addition to any other lawful remedies or penalties, bring an action in a court with jurisdiction under Title 78A, Judiciary and Judicial Administration, to enjoin and restrain any person, risk retention group, purchasing group, or insurer from engaging in the violation, or to compel compliance with the order of the commissioner.

(b) In an action by the commissioner under Subsection (2)(a), service of process shall be made upon the director of the Division of Corporations and Commercial Code who shall forward the order, pleadings, or other process to the person, risk retention group, purchasing group, or insurer in accordance with the procedures specified in Section 31A-14-204.

(c) Nothing in this section may be construed to limit or abridge the authority of the commissioner to seek injunctive relief in any district court of the United States as provided in Section 31A-15-213.

(3) In an action under this section, a court has the power to enter a judgment and order for injunctive or other relief.

Amended by Chapter 401, 2023 General Session

31A-15-212 Duty of producers to obtain license -- Risk retention groups -- Purchasing groups.

(1) A person may do the following only if the person is licensed as an insurance producer or is exempt from licensure under Chapter 23a, Insurance Marketing - Licensing Producers, Consultants, and Reinsurance Intermediaries:

(a) solicit, negotiate, or procure liability insurance in this state from a risk retention group;
(b) solicit, negotiate, or procure liability insurance in this state for a purchasing group from an authorized insurer or a risk retention group; and
(c) solicit, negotiate, or procure liability insurance coverage in this state for any member of a purchasing group under a purchasing group's policy.

(2)
(a) A person may not act or aid in any manner in soliciting, negotiating, or procuring liability insurance in this state for a purchasing group from an authorized insurer or a risk retention group chartered in a state unless that person is licensed as an insurance producer, or is exempt from licensure under Chapter 23a, Insurance Marketing - Licensing Producers, Consultants, and Reinsurance Intermediaries.
(b) A person may not act or aid in any manner in soliciting, negotiating, or procuring liability insurance coverage in this state for any member of a purchasing group under a purchasing group's policy unless that person is licensed as an insurance producer, or is exempt from licensure under Chapter 23a, Insurance Marketing - Licensing Producers, Consultants, and Reinsurance Intermediaries.
(c) A person may not act or aid in any manner in soliciting, negotiating, or procuring liability insurance from an insurer not authorized to do business in this state on behalf of a purchasing group located in this state unless that person is licensed as a surplus lines producer or excess lines producer or is exempt from licensure under Chapter 23a, Insurance Marketing - Licensing Producers, Consultants, and Reinsurance Intermediaries.

(3) For purposes of acting as a producer for a risk retention group or purchasing group pursuant to Subsections (1) and (2), the requirement of residence in this state does not apply.

(4) A person licensed pursuant to Chapter 23a, Insurance Marketing - Licensing Producers, Consultants, and Reinsurance Intermediaries, on business placed with a risk retention group or written through a purchasing group, shall inform each prospective insured of the provisions of the notice required by Subsection 31A-15-204(7) in the case of a purchasing group.

Amended by Chapter 138, 2016 General Session

31A-15-213 Effect of orders issued in U.S. District Court.

An order issued by any district court of the United States shall be enforceable in the courts of this state to enjoin a risk retention group from soliciting or selling insurance, or operating in any state, in all states, or in any territory or possession of the United States, upon a finding that the group is in hazardous financial condition or financially impaired condition.

Enacted by Chapter 258, 1992 General Session

31A-15-213.5 Rulemaking.

In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commissioner may make and from time to time amend rules relating to risk retention groups as may be necessary or desirable to carry out this part.

Enacted by Chapter 138, 2016 General Session

31A-15-214 Severability.

If any provision of this part, or the application of any provision to any person or circumstances, is held invalid, the remainder of this part shall be given effect without the invalid provision or application.

Enacted by Chapter 258, 1992 General Session