

Chapter 20

Underwriting Restrictions

31A-20-101 Underwriting limitations.

No insurer may insure or attempt to insure against:

- (1) a wager or gaming risk;
- (2) loss of an election;
- (3) the penal consequences of a crime; or
- (4) punitive damages.

Amended by Chapter 204, 1986 General Session

31A-20-102 Joint underwriting.

- (1) Every group, association, or other organization of insurers that engages in joint underwriting or joint reinsurance shall file with the commissioner:
 - (a) a copy of its constitution, articles of incorporation, or agreement of association, and its bylaws or rules governing its activities, all certified by the custodian of the originals;
 - (b) a list of its members; and
 - (c) the name and address of its resident process agent.
- (2) Every group, association, or other organization shall promptly notify the commissioner of every change in its constitution, articles of incorporation, agreement of association, bylaws, rules, its list of members, and its resident process agent.
- (3)
 - (a) If all members of a group of insurers under this section are authorized to do business in Utah, the business done by the group shall be allocated for regulatory purposes to individual members of the group.
 - (b) The group itself is subject only to:
 - (i) Chapter 1, General Provisions;
 - (ii) Chapter 2, Administration of the Insurance Laws;
 - (iii) Chapter 4, Insurers in General;
 - (iv) Chapter 20, Underwriting Restrictions;
 - (v) Chapter 21, Insurance Contracts in General;
 - (vi) Chapter 22, Contracts in Specific Lines;
 - (vii) Chapter 23a, Insurance Marketing - Licensing Producers, Consultants, and Reinsurance Intermediaries; and
 - (viii) Chapter 26, Insurance Adjusters.
 - (c) If any member of the group is not authorized to do business in Utah, the group shall obtain authorization to do business under Chapter 14, Foreign Insurers, and is subject to regulation under that chapter.

Amended by Chapter 340, 2011 General Session

31A-20-103 Classifications of insurance.

The commissioner may by rule define lines and classes of insurance which are not already defined under Section 31A-1-301. These definitions may be used for any purposes within the commissioner's regulatory power, including:

- (1) providing instructions for reports and replies under Section 31A-2-202;

- (2) controlling combinations of lines or classes of insurance; and
- (3) determining which rules under Chapter 22, Contracts in Specific Lines, are applicable.

Amended by Chapter 91, 1987 General Session

31A-20-104 Combinations of policies.

Except as otherwise provided in this chapter, the commissioner may by rule establish standards for the combination of different coverages in policies and may specify whether premiums shall be separately stated for each.

Enacted by Chapter 242, 1985 General Session

31A-20-105 Indemnity agreements for surety corporation.

In assessing the financial condition of a surety insurer and its underwriting capacity and limits, the commissioner shall take into account the existence of a systematic underwriting practice of indemnity or security arrangements under Section 31A-22-104.

Enacted by Chapter 242, 1985 General Session

31A-20-106 Variable contracts.

- (1)
 - (a) An insurer may not deliver or issue for delivery within this state an insurance policy that provides a life or annuity benefit in a variable amount until the insurer:
 - (i) is licensed to do a life insurance or annuity business in this state; and
 - (ii) satisfies the commissioner that the insurer's condition and methods of operation in connection with those types of insurance policies do not render the insurer's operation hazardous to the public or its policyholders in this state.
 - (b) Notwithstanding any other provision of law, the commissioner has sole authority to:
 - (i) regulate the issuance and sale of a variable contract; and
 - (ii) make rules necessary and appropriate to carry out this chapter in relation to a variable contract.
- (2) In determining the qualification of an insurer requesting authority to deliver an insurance policy described in Subsection (1) in this state, the commissioner shall consider:
 - (a) the history and financial condition of the insurer;
 - (b) the character, responsibility, and general fitness of the insurer's officers and directors; and
 - (c) in the case of a foreign insurer, whether the regulation provided by the state of its domicile or the jurisdiction in which its head office is located provides protection to policyholders and the public substantially equal to that provided by this title and the rules issued under this title.
- (3) If an insurer is a subsidiary of an admitted life insurer, or affiliated with an admitted life insurer through common management or ownership, the commissioner may consider the insurer to have met the requirements of this section if:
 - (a) the insurer meets the requirements of this section; or
 - (b) the parent or the affiliated insurer meets the requirements of this section.
- (4) This title applies to a separate account or a contract relating to the separate account, except:
 - (a) Sections 31A-22-402, 31A-22-407, and 31A-22-409, in the case of a variable annuity policy;
 - (b) Sections 31A-22-402, 31A-22-407, and 31A-22-408, in the case of a variable life insurance policy; and
 - (c) as otherwise provided in this title.

Amended by Chapter 10, 2010 General Session

31A-20-107 Reinsurance.

- (1)
 - (a) An authorized insurer writing a nonassessable policy may assume as a reinsurer a risk it may write directly.
 - (b) Subject to Chapter 5, Domestic Stock and Mutual Insurance Corporations, Chapter 6a, Service Contracts, Chapter 6b, Guaranteed Asset Protection Waiver Act, Chapter 7, Nonprofit Health Service Insurance Corporations, Chapter 8, Health Maintenance Organizations and Limited Health Plans, Chapter 8a, Health Discount Program Consumer Protection Act, Chapter 9, Insurance Fraternal, Chapter 10, Annuities, Chapter 11, Motor Clubs, Chapter 12, State Risk Management Fund, Chapter 14, Foreign Insurers, and Chapter 17, Determination of Financial Condition, and to any limitation imposed on a foreign insurer by the law of its domicile, the commissioner may also authorize an insurer to assume, as a reinsurer, one or more designated classes of risks it is not authorized to write directly.
- (2)
 - (a) Subject to Section 31A-5-508, an authorized insurer may cede or retrocede to:
 - (i) an insurer authorized to assume it under Subsection (1) a liability it has undertaken on a risk lawfully written under its certificate of authority; and
 - (ii) an authorized agency of the federal government or of this state.
 - (b) An authorized insurer may cede or retrocede reinsurance to an unauthorized insurer subject to:
 - (i) Sections 31A-17-404 and 31A-17-404.1;
 - (ii) a rule made by the commissioner under a section listed in Subsection (2)(b)(i); and
 - (iii) Subsection (3).
- (3) A person may not knowingly cede reinsurance or permit or assist it to be ceded to a reinsurer not in sound financial condition. If a reinsurer satisfies one or more of the security factors under Section 31A-17-404.1, there is a rebuttable presumption that the reinsurer is in sound financial condition.
- (4)
 - (a) An authorized reinsurer who knowingly assumes from an unauthorized insurer, a risk that may lawfully be written only by an authorized insurer, shall immediately report the facts of the transaction to the commissioner.
 - (b)
 - (i) Subject to Subsection (4)(b)(ii), an assuming reinsurer described in Subsection (4)(a):
 - (A) is liable for all taxes and penalties applicable under Sections 31A-3-301, 31A-3-302, and 31A-3-303; and
 - (B) may take credit for the payment of a tax or penalty lapse under Subsection (4)(b)(i) in its settlement of accounts with the unauthorized ceding insurer.
 - (ii) This Subsection (4)(b) does not apply if the assuming reinsurer's agreement with the ceding insurer takes the taxes described in Subsection (4)(b)(i) into account.
- (5)
 - (a) Except as provided under Subsection (5)(b), an authorized reinsurer proposing to withdraw from writing a class of its business in Utah, except by nonrenewal of an existing contract at its expiration, shall give the commissioner 60 days written notice of its intention. The authorized reinsurer may not withdraw until after those 60 days lapse.

- (b) This Subsection (5) does not apply if the withdrawing reinsurer writes an insignificant market share of that class of business in Utah. The commissioner shall define "insignificant market share" by rule.

Amended by Chapter 257, 2008 General Session

31A-20-108 Single risk limitation.

- (1) This section applies to all lines of insurance, including ocean marine and reinsurance, except:
 - (a) title insurance;
 - (b) workers' compensation insurance;
 - (c) occupational disease insurance;
 - (d) employers' liability insurance; and
 - (e) health insurance.
- (2)
 - (a) Except as provided under Subsections (3) and (4) and under Section 31A-20-109, an insurer authorized to do an insurance business in Utah may not expose itself to loss on a single risk in an amount exceeding 10% of its capital and surplus.
 - (b) The commissioner may adopt rules to calculate surplus under this section.
 - (c) An insurer may deduct the portion of a risk reinsured by a reinsurance contract worthy of a reserve credit under Sections 31A-17-404 through 31A-17-404.4 in determining the limitation of risk under this section.
- (3)
 - (a) The commissioner may adopt rules, after hearings held with notice as required by law, to specify the maximum exposure to which an assessable mutual may subject itself.
 - (b) The rules described in Subsection (3)(a) may provide for classifications of insurance and insurers to preserve the solidity of insurers.
- (4) As used in this section, a "single risk" includes all losses reasonably expected as a result of the same event.
- (5) A company transacting fidelity or surety insurance may expose itself to a risk or hazard in excess of the amount prescribed in Subsection (2), if the commissioner, after considering all the facts and circumstances, approves the risk.

Amended by Chapter 120, 2024 General Session

31A-20-109 Single risk limitation for title insurance.

- (1) As used in this section:
 - (a) "Net retained liability" means the total potential liability retained by a title insurer for a single risk, after deducting liability reinsured for which credit may be taken under Section 31A-17-404.
 - (b) "Single risk" means the sum of the potential liabilities under all title insurance policies issued on any estates in the same real property.
- (2) The net retained liability of a title insurer for a single risk, whether assumed directly or as reinsurance, may not exceed 50% of the capital and surplus of the insurer.

Enacted by Chapter 242, 1985 General Session

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

- (1) A title insurance policy may not be written until the title insurer or its individual title insurance producer or agency title insurance producer has conducted a reasonable examination of the title and has made a determination of insurability of title under sound underwriting principles. Evidence of this examination and reasonable determination shall be retained in the files of the title insurer or its individual title insurance producer or agency title insurance producer for not less than 15 years after the policy has been issued, either in its original form or as recorded by any process which can accurately and reliably reproduce the original. This section does not apply to a company assuming liability through a contract of reinsurance, or to a company acting as coinsurer, if another coinsuring company has complied with this section.
- (2) A title insurance policy may not be issued except by a title insurer, an individual title insurance producer who is appointed by an insurer, or agency title insurance producer licensed under Section 31A-23a-105.
- (3) This section is enforceable only by the commissioner. It does not create, eliminate, or modify any private cause of action or remedy.

Amended by Chapter 330, 2015 General Session