

Part 2 **Organization of Corporations**

31A-5-201 Reservation and registration of corporate name.

The reservation, registration, and renewal of the corporate name of stock corporations and mutuals is governed by Sections 16-10a-402, 16-10a-403, and 31A-1-109. The reservation and registration fees provided in Section 31A-3-103 apply.

Amended by Chapter 344, 1995 General Session

31A-5-202 Incorporators.

- (1) One or more adult natural persons may organize and act as incorporators of a corporation under Section 31A-5-204.
- (2) One to 15 adult natural persons may organize and act as incorporators of a corporation under the accelerated organization procedure of Section 31A-5-213.
- (3) This section does not apply to stock and mutual insurance corporations already in existence on July 1, 1986.

Amended by Chapter 71, 2002 General Session

31A-5-203 Articles and bylaws.

- (1) The articles of incorporation requirements in Section 16-10a-202 apply to the articles of a stock corporation, except that:
 - (a) the name of the corporation shall comply with Sections 16-10a-401 and 31A-1-109 and the name of any new or renamed corporation shall include the word "insurance" or a term of equivalent meaning;
 - (b) authorized shares shall conform to Subsection 31A-5-305(1) and the capital provided for shall conform to Section 31A-5-211; and
 - (c) beginning on July 1, 1988, the purposes of the corporation are limited to those permitted by Section 31A-4-107.
- (2) The articles of incorporation requirements in Section 16-6a-202, except Subsections 16-6a-202(1)(f) and (g), apply to the articles of a mutual except that:
 - (a) The name of the corporation shall comply with Sections 16-6a-401 and 31A-1-109 and the name of any new or renamed corporation shall include the words "mutual" and "insurance" or terms of equivalent meaning.
 - (b) If any mutual bonds are authorized, they shall comply with Subsection 31A-5-305(2)(a).
 - (c) The purposes of the corporation may not include doing a title insurance business, and shall be limited to those purposes permitted by Section 31A-4-107.
 - (d) If assessable policies are permitted, the articles shall contain provisions giving assessment liabilities and procedures, including a provision specifying the classes of business on which assessment may be separately levied.
 - (e) The articles may specify those classes of persons who may be policyholders, or prescribe the procedure for establishing or removing restrictions on the classes of persons who may be policyholders. The articles shall also state that each policyholder is a member of the corporation.
- (3) Sections 16-10a-830 and 16-10a-831 apply to stock corporations and Section 16-6a-818 applies to mutuals. The articles or bylaws shall designate three or more principal offices the

principal officers of the corporation shall hold. The principal offices shall be held by at least three separate natural persons.

(4) The bylaws of a domestic corporation shall comply with this chapter. A copy of the bylaws, and any amendments to them, shall be filed with the commissioner within 60 days after their adoption. Subject to this Subsection (4), Subsections 31A-5-204(2)(c) and (5), Subsection 31A-5-213(4), and Section 16-10a-206 apply to stock corporations and Section 16-6a-206 applies to mutuals.

Amended by Chapter 364, 2008 General Session

31A-5-204 Organization permit -- Certificate of incorporation.

(1) Subject to Section 31A-5-213, a person, including a stock insurance corporation, insurance holding company, stock corporation to finance an insurer or insurance production for an insurer, corporation to provide management or administrative services for any of the entities named above, or mutual insurer, may not solicit subscriptions for its securities, or in the case of a mutual insurance corporation, solicit applications for qualifying insurance policies or subscriptions for mutual bonds or contribution notes, until the commissioner has issued an organization permit.

(2) The application for an organization permit shall give the name of the insurer to be formed and shall be signed and acknowledged by or on behalf of each incorporator. The application shall include or have attached:

- (a) the names, and for the preceding 10 years all addresses, and all occupations of the incorporators and the proposed directors and officers;
- (b) for all persons planned by the incorporators to own 10% or more of the capital stock of the corporation, their annual financial statements and reports for the three most recent years, and if the planned shareholders are corporations, their articles and bylaws, and a list of the names, addresses, and occupations of all their directors and principal officers;
- (c) the proposed articles, which shall be signed and acknowledged by or on behalf of each incorporator, and the proposed bylaws;
- (d) all agreements relating to the corporation to which any incorporator, proposed director, or officer is a party;
- (e) the amount and sources of the funds available for organization expenses and the proposed arrangements for reimbursement and compensation of incorporators or other persons;
- (f) the plan for solicitation of applications for qualifying insurance policies and for the corporation's securities;
- (g) the forms to be used for stock subscriptions, certificates for shares, applications for qualifying insurance policies, subscriptions for mutual bonds and contribution notes, and the forms for bonds and notes;
- (h) the capital and initial paid in surplus in the case of a stock insurer, or the minimum permanent surplus and the additional surplus in the case of a mutual insurer;
- (i) the plan for conducting the insurance business, including:
 - (i) the geographical area in which business is intended to be done in the first two years;
 - (ii) the types of insurance intended to be written in the first two years;
 - (iii) the proposed marketing methods;
 - (iv) when requested by the commissioner, the proposed method for establishing premium rates; and
- (v) the proposed aggregate compensation of the five highest compensated officers, directors, and employees;

- (j) a projection certified by a member of the American Academy of Actuaries of the anticipated operating results of the corporation at the end of each of the first two years of operation, based on reasonable assumptions of loss experience, premium and other income, operating expenses, and acquisition costs; and
- (k) any other relevant document or information the commissioner reasonably requires.

(3) The commissioner shall issue an organization permit if:

- (a) all the requirements of law have been met, including the payment of fees;
- (b) all the incorporators, persons listed in Subsection (2)(b), and the proposed directors and officers of the corporation being formed, are trustworthy and collectively have the competence and experience to engage in the particular insurance business proposed;
- (c) the business plan is consistent with the interests of the corporation's potential insureds and the public; and
- (d) the bond required by Section 31A-5-205 is filed.

(4) If the commissioner denies the application for a permit, the commissioner shall state the reasons for the denial.

(5)

- (a) The organization permit shall:
 - (i) specify the minimum capital or minimum permanent surplus required under Section 31A-5-211; and
 - (ii) describe the securities or policies to be solicited under the permit.
- (b) The organization permit may contain any other information the commissioner considers necessary.

(6) The director of the Division of Corporations and Commercial Code shall accept the filing of the corporation's articles of incorporation upon notice from the insurance commissioner that all the applicable requirements of law have been met, including the payment of fees.

(7)

- (a) When the director of the Division of Corporations and Commercial Code accepts the articles of incorporation:
 - (i) the legal existence of the corporation begins;
 - (ii) the articles and bylaws become effective; and
 - (iii) the proposed directors and officers take office.
- (b) The certificate is conclusive evidence of compliance with this section, except in a proceeding by the state against the corporation.

(8) Notwithstanding Title 63G, Chapter 2, Government Records Access and Management Act, the permit applicant may request that any part of the information supplied under Subsection (2) be kept confidential. The information shall then be kept confidential unless the commissioner expressly finds, after a hearing, that the interest of the corporation or the public requires that the information be open to the public.

Amended by Chapter 382, 2008 General Session

31A-5-205 Bond.

(1) No organization permit may be issued until the commissioner receives from the applicants a bond of an authorized corporate surety, or a deposit of cash or approved securities under Section 31A-2-206. This bond or deposit shall be in an amount the commissioner determines is sufficient, but in no event may it be less than \$20,000, nor more than \$100,000. The bond or deposit shall be in favor of the state of Utah and of any subscribers and creditors of the applicant, for the payment of costs incurred by the state by reason of dissolution of the

corporation before the issuance of a certificate of authority and for the payment of other debts incurred in the organizational period. The bond shall be discharged or the deposit returned upon issuance of the certificate of authority under Section 31A-5-212.

(2) This section does not apply to stock or mutual insurance corporations already in existence on July 1, 1986.

Enacted by Chapter 242, 1985 General Session

31A-5-206 Sale of securities by authorized insurer.

A domestic insurer that has already received a certificate of authority may issue additional securities to obtain further financing, after obtaining a solicitation permit from the commissioner. The organizational permit requirements in Section 31A-5-204 apply if the commissioner prescribes its application. The phrase "organization permit" in Section 31A-5-204 means "solicitation permit" when being applied to this section. The solicitation permit terminates one year from the date of its issuance. However, this permit may be extended for not more than one additional year by the commissioner on terms the commissioner considers sufficient to protect the policyholders, the shareholders, and the public.

Amended by Chapter 302, 2025 General Session

31A-5-207 Powers under organization permit.

(1) While its organization permit is in effect a stock corporation may:

- (a) register stock under Section 31A-5-302, solicit subscriptions subject to Section 16-10a-620, accept payment for the subscriptions in cash or, with the approval of the commissioner, in other property constituting a permitted investment under Chapter 18, Investments, and issue receipts for payments made at values approved by the commissioner, but no certificates for shares may be issued until a certificate of authority has been issued; and
- (b) transact all other business necessary and appropriate in the organization of the planned insurance enterprise.

(2) While its organization permit is in effect a mutual may:

- (a) register mutual bonds under Section 31A-5-302, solicit applications for qualifying insurance policies under Subsection 31A-5-211(5), solicit subscriptions for mutual bonds and contribution notes and accept payment for the subscriptions in cash or, with the approval of the commissioner, in property constituting a permitted investment under Chapter 18, Investments, and issue receipts for payments made at values approved by the commissioner, but no policies or bonds are effective or may be issued until a certificate of authority has been issued; and
- (b) transact all other business necessary and appropriate in the organization of the planned insurance enterprise.

(3)

- (a) The existence of the organization permit may not be used as an inducement in any solicitation.
- (b) No person may knowingly, with intent to deceive, exhibit any false document or account regarding the affairs of any organization under Section 31A-5-204 or make any misrepresentation about its affairs.

(4) Solicitations under this section may be made for stock or bond subscriptions only by persons registered under Title 61, Chapter 1, Utah Uniform Securities Act, as broker-dealers or agents. Solicitations under this section may be made for qualifying insurance policies only by persons

licensed under Chapter 23a, Insurance Marketing - Licensing Producers, Consultants, and Reinsurance Intermediaries, as insurance producers. Before any solicitation, the solicitor shall obtain from the commissioner a license to solicit, after paying the fee applicable under Section 31A-3-103.

(5) This section does not apply to stock or mutual insurance corporations already in existence on July 1, 1986.

Amended by Chapter 298, 2003 General Session

31A-5-208 Deposit of proceeds of subscriptions.

(1) All funds, and the securities and documents representing interests in property, received by a stock corporation for stock subscriptions or by a mutual for applications for insurance policies or for mutual bond or contribution note subscriptions, shall be deposited in the name of the corporation with a custodian financial institution qualified under Subsection 31A-2-206(1). This deposit is subject to an escrow agreement approved by the commissioner under which withdrawals may be made only in accordance with conditions specified in the agreement, and with the commissioner's approval. Securities may be held as authorized in Subsection 31A-2-206(2) and are required to be approved by the commissioner.

(2) This section does not apply to stock or mutual insurance corporations already in existence on July 1, 1986.

Amended by Chapter 297, 2011 General Session

31A-5-209 Termination and revocation of organization permit and payment of organization expenses.

(1) The organization permit terminates upon:

- (a) issuance of a certificate of authority under Section 31A-5-212;
- (b) revocation of the organization permit under Subsection (2); or
- (c) expiration of one year after issuance, except that:
 - (i) filing with the commissioner a good-faith application for a certificate of authority tolls the running of the expiration period for 30 days or until the commissioner rejects the application, whichever is earlier; and
 - (ii) on application before expiration of the year the commissioner may grant a reasonable extension if the commissioner states that the commissioner expects the corporation to be able to satisfy the requirements for a certificate of authority within the extended period.

(2) The commissioner may revoke an organization permit if:

- (a) he finds, after a hearing, that because of changes in circumstances, or because the facts are not as represented in the application, the conditions for issuance of a permit are not satisfied; or
- (b) he denies an application for a certificate of authority and finds that the corporation cannot reasonably be expected to satisfy the requirements for a certificate of authority within the remaining term of the organization permit or extension allowable under Subsection (1)(c).

(3)

- (a) Except in cases under Subsections (3)(b) and (3)(c), if the organization permit is revoked or expires before a certificate of authority is granted, after payment of the expenses of the state and payments to creditors under Section 31A-5-205, incorporators who have advanced money for the reasonable and authorized expenses of organization, including underwriting expenses, may be reimbursed in cash from the proceeds of share, mutual bond,

or contribution note subscriptions under the organization permit, on itemized receipts audited by the commissioner. The total reimbursement may not exceed 5% of the amount received from subscribers. The remainder in the escrow account shall then be distributed among the subscribers in proportion to their contributions, valued as of the time the contributions were made. The bond under Section 31A-5-205 shall be discharged or the deposits under Section 31A-5-205 shall be released to the extent they are not needed for other purposes.

- (b) Reimbursement may be refused to any incorporator under Subsection (3), if the commissioner finds that in connection with the organization of the corporation, the incorporator has wilfully or negligently violated in a material way any provision of this chapter.
- (c) No reimbursement may be made under Subsection (3)(a) to an incorporator of an assessable mutual until all advance premiums collected under Subsection 31A-5-211(5) have been repaid in full.
- (4) The legal existence of the corporation terminates upon completion of the payments under Subsection (3).
- (5) This section does not apply to stock or mutual insurance corporations already in existence on July 1, 1986.

Amended by Chapter 302, 2025 General Session

31A-5-210 Incorporators' liability and organization expenses.

- (1) The incorporators are jointly and severally liable for all organizational and promotional expenses and obligations incurred prior to the issuance of the certificate of authority. Upon issuance of the certificate, the insurer may pay those outstanding expenses and obligations lawfully incurred.
- (2)
 - (a)
 - (i) After issuance of the certificate of authority, incorporators of a stock corporation who have advanced money or incurred obligations for the reasonable and authorized expenses of organization, including underwriting of securities, may be reimbursed in cash from the proceeds of shares subscribed to under the organization permit, or in shares at the public offering price, on itemized receipts audited by the commissioner.
 - (ii) Promotional securities in connection with the financing of a stock corporation which is in the promotional, exploratory, or developmental stage may be issued in an amount and for a consideration which is not unreasonable. In this regard, the commissioner may adopt rules setting forth standards with respect to promotional securities allowed to be issued and the considerations to be received for them. The reimbursement for expenses under Subsection (2)(a)(i) has priority over the issuance of promotional securities under Subsection (2)(a)(ii).
 - (iii) In no event may securities issued under Subsection (2)(a)(i) or promotional securities issued under Subsection (2)(a)(ii) be issued in a manner which would, in the aggregate, cause the dilution in the net tangible asset value of the insurer's securities proposed to be issued to the public to exceed 25%.
 - (b) After issuance of the certificate of authority, incorporators of a mutual who have advanced money or incurred obligations for the reasonable and authorized expenses of organization may be reimbursed in cash from the proceeds of subscriptions for mutual bonds and contribution notes, on itemized receipts audited by the commissioner. The total reimbursement may not exceed 15% of the amount received for the bonds and notes.
- (3) This section does not apply to stock or mutual insurance corporations already in existence on July 1, 1986.

Enacted by Chapter 242, 1985 General Session

31A-5-211 Minimum capital or permanent surplus requirements.

(1)

- (a) Except as provided in Subsections (4) and (5), insurers being organized or operating under this chapter shall maintain minimum capital or permanent surplus for a mutual, in amounts specified in Subsection (2).
- (b) The certificate of authority issued under Section 31A-5-212 does not permit an insurer to transact types of insurance for which the insurer does not have the required minimum capital or permanent surplus for a mutual, in at least the amounts specified under Subsection (2).
- (c) Minimum capital and permanent surplus requirements under this section are based upon all types of insurance transacted by the insurer in any and all areas which it operates, whether or not only a portion of those types of insurance is or is to be transacted in this state.

(2) The minimum capital, or permanent surplus for a nonassessable mutual, is as follows for the indicated types of insurance:

- (a) life, annuity, accident and health, or any combination of these.....\$400,000
- (b) subject to an aggregate maximum of \$1,000,000 for more than one of the following types of coverages:
 - (i) property insurance.....200,000
 - (ii) surety insurance.....300,000
 - (iii) bail bonds insurance only.....100,000
 - (iv) marine and transportation insurance.....200,000
 - (v) vehicle liability insurance, residential dwelling liability insurance, or both.....400,000
 - (vi) liability insurance.....600,000
 - (vii) workers' compensation insurance.....300,000
- (c) title insurance.....200,000
- (d) professional liability insurance, excluding medical malpractice.....700,000
- (e) professional liability, including medical malpractice.....1,000,000
- (f) all types of insurance, except life, annuity, or title.....2,000,000

(3) Prior to beginning operations, an insurer licensed under this chapter shall have total adjusted capital in excess of the company action level RBC as defined in Subsection 31A-17-601(8)(b).

(4)

- (a) Subject to Subsections (4)(b) and (4)(c), an insurer holding a valid certificate of authority to transact insurance in this state prior to July 1, 1986, continues to be authorized to transact the same kinds of insurance as permitted by that certificate of authority, if the insurer maintains not less than the amount of minimum capital or permanent surplus required for that authority under the laws of this state in force immediately prior to July 1, 1986.
- (b) If, after July 1, 1986, an insurer ever has minimum capital or permanent surplus that meets or exceeds the requirements of Subsections (2) and (3), then Subsection (4)(a) is inapplicable to that insurer and it shall comply with Subsections (2) and (3).
- (c) Any insurer satisfying the minimum capital or permanent surplus requirement through application of Subsection (4)(a) shall comply with Subsections (2) and (3) by July 1, 1990.
- (d) Beginning July 1, 1987, former county mutuals shall comply with the capital and surplus requirements of this section.

(5)

- (a)

- (i) An assessable mutual may be organized under this chapter, but it may not issue life insurance or annuities.
- (ii) An assessable mutual need not have a permanent surplus if the assessment liability of its policyholders is unlimited and all insurance policies clearly state that.
- (iii) If assessments are limited to a specified amount or a specified multiple of annual advance premiums, the minimum permanent surplus is the amount that would be required under Subsections (2) and (3) if the corporation were not assessable, reduced by an amount that reasonably reflects the value of the policyholders' assessment liability in satisfying the financial needs of the corporation.
- (iv) The liability of members in an assessable mutual is joint and several up to the limits provided by:
 - (A) the articles of incorporation of the assessable mutual; or
 - (B) this title.

(b)

- (i) Except as provided in Subsections (5)(c) and (d), a certificate of authority may not be issued to an assessable mutual until it has at least 400 bona fide applications for insurance from not less than 400 separate applicants, on separate risks located in this state, in each of the classes of business upon which assessments may be separately levied. A full year's premium shall be paid with each application and the aggregate premium is at least \$50,000 for each class.
- (ii) If at any time while the corporation is an assessable mutual, the business plan is amended to include an additional class of business on which assessments may be separately levied, identical requirements of Subsection (5)(b)(i) are applicable to each additional class.

(c) Five or more employers may join in the formation of an assessable mutual to write only workers' compensation insurance if, instead of the requirements of Subsection (5)(b), policies are simultaneously put into effect that cover at least 1,500 employees, with no single employer having more than 1/5 of the employees insured by the assessable mutual. A full year's premium shall be paid by each employer, aggregating at least \$200,000.

(d)

- (i) The number and amount of required initial applications and premium payments may be reduced by substituting surplus for the applications or premium payments.
- (ii) The commissioner shall determine the reduction in required initial applications and premium payments that is appropriate for a given amount of surplus.
- (iii) The insurer shall continue to be assessable until conversion under Subsection 31A-5-507(1) to a nonassessable mutual.

(6)

- (a) The capital or permanent surplus requirements of Subsection (2) apply to persons seeking certificates of authority under this chapter to write reinsurance.
- (b) This Subsection (6) may not be construed as requiring reinsurers to obtain a certificate of authority.
- (c) Section 31A-17-404 imposes alternate safety prerequisites to reserve credit being granted for reinsurance ceded to a reinsurer without a certificate of authority.

Amended by Chapter 123, 2005 General Session

31A-5-212 Certificate of authority.

(1) The corporation may apply for a certificate of authority at any time prior to the expiration of its organization permit. The application shall include a detailed statement by a principal officer

about any material changes that have taken place or are likely to take place in the facts on which the issuance of the organization permit was based, and if any material changes are proposed in the business plan, the information about the changes that would be required if an organization permit were being applied for.

- (2)
 - (a) The commissioner shall issue a certificate of authority if the commissioner finds:
 - (i) enough cash or property authorized under Subsection 31A-5-207(1)(a) or (2)(a) has been received to satisfy the requirements of Section 31A-5-211;
 - (ii) there is no basis for revoking the organization permit under Subsection 31A-5-209(2); and
 - (iii) all other applicable requirements of the law have been met.
 - (b) The certificate of authority shall specify any limits placed on the insurance business the corporation may carry on and may, within the powers given the commissioner under this title, specify limits on the corporation's methods of operation.
- (3) After the issuance of the certificate of authority the following action shall take place:
 - (a) The board shall authorize and direct the issuance of certificates for shares, bonds, or notes subscribed to under the organization permit, and of insurance policies upon qualifying applications obtained under the organization permit.
 - (b) The commissioner shall authorize the release to the corporation of all funds held in escrow under Section 31A-5-208.
- (4)
 - (a) A corporation may apply to the commissioner for a new or amended certificate of authority altering limits on its business or methods of operation. The application shall contain or be accompanied by information in Subsection 31A-5-204(2) as the commissioner reasonably requires. The commissioner shall issue the new certificate if the commissioner finds:
 - (i) the corporation's capital and surplus satisfy the requirements of Section 31A-5-211 as to the operations proposed under the new certificate of authority; and
 - (ii) the proposed business would not be contrary to law or to the interests of insureds or the public.
 - (b) If the commissioner issues an order under Chapter 27, Part 5, Administrative Actions, against a corporation, the commissioner may also revoke the corporation's certificate and issue a new one with any limitation the commissioner considers necessary.
- (5) Except as to Subsection (4), this section does not apply to stock or mutual insurance corporations already in existence on July 1, 1986.

Amended by Chapter 309, 2007 General Session

31A-5-213 Accelerated organization procedure.

- (1) The incorporators may apply for a certificate of authority without first obtaining an organization permit if:
 - (a) their number is not more than 15;
 - (b) no compensation is paid directly or indirectly for soliciting any of them;
 - (c) they purchase for their own accounts all the shares proposed to be issued in the case of a stock corporation, or in the case of a mutual, they supply all the minimum permanent surplus and initial expendable surplus by contribution notes or otherwise; and
 - (d) the shares are promotional securities and are subject to Subsections 31A-5-304(3) and (4).
- (2) The application for a certificate of authority shall include:
 - (a) proof that the purchase price for the shares or the proceeds of contribution notes have been deposited on behalf of the proposed corporation;

- (b) a statement concerning whether and what property other than money is held in trust for the proposed corporation; and
- (c) the information which the commissioner reasonably requires under Subsection 31A-5-204(2).

(3) The commissioner shall issue a certificate of authority if the commissioner finds that:

- (a) all requirements of law have been met;
- (b) all natural persons who are incorporators, the directors and principal officers of corporate incorporators, and the proposed directors and officers of the corporation being formed are trustworthy and collectively have the competence and experience to engage in the particular insurance business proposed; and
- (c) the business plan is consistent with the interests of the corporation's potential insureds and of the public.

(4) The director of the Division of Corporations and Commercial Code shall issue a certificate of incorporation upon notice from the insurance commissioner that all the applicable requirements of law have been met, including the payment of fees.

(5) When the certificate of incorporation is issued, the corporation's legal existence begins, the articles and bylaws become effective, and the proposed directors and officers take office. The certificate is conclusive evidence of compliance with this section, except in a proceeding by the state against the corporation.

(6) This section does not apply to stock or mutual insurance corporations already in existence on July 1, 1986.

Amended by Chapter 302, 2025 General Session

31A-5-216 Change of domicile.

- (1) A foreign insurance corporation may become a Utah insurance corporation if it submits an application which evidences that the corporation complies with all of the requirements imposed on domestic Utah corporations. The commissioner may, by order after a hearing, relax the requirements of this chapter applicable to corporations in the process of organization that, because of the developed status of the insurer, the commissioner finds unnecessary to protect policyholders and the public. The commissioner shall simultaneously issue a certificate of organization under Subsection 31A-5-204(3) and a certificate of authority under Subsection 31A-5-212(2) when the conditions for both have been satisfied.
- (2) Upon approval by the commissioner, a domestic insurer may transfer its domicile to any other state in which it is admitted. The commissioner shall approve the transfer of domicile unless the commissioner finds that the transfer will prejudice the interests of policyholders, creditors, or the public in Utah. The commissioner may require a special deposit, reinsurance, or other protective measures as an alternative to rejecting the insurer's application to move. After or simultaneous with the removal of the corporation, it may seek entry into this state as a foreign corporation under Chapter 14, Foreign Insurers.
- (3) The transfer of domicile of an insurance corporation under either Subsection (1) or Subsection (2) does not affect the obligations of the corporation under its existing insurance contracts or any other existing contracts.

Amended by Chapter 302, 2025 General Session

31A-5-217 Separate accounts for variable contracts.

- (1) Separate accounts under this section may be designated by any appropriate name the corporation wishes to use, except that the commissioner may by rule provide guidelines for the naming of separate accounts.
- (2) With the approval of the commissioner, any corporation may establish, or at the direction of the commissioner shall establish, one or more separate accounts and allocate to them any amounts paid or remitted to, or held by, the corporation under designated contracts or classes of contracts. These amounts are to be applied to provide benefits payable partly or wholly in variable dollar amounts, and to provide benefits in fixed and guaranteed dollar amounts and other incidental benefits.
- (3) To the extent necessary to comply with the federal Investment Company Act of 1940, 15 U.S.C. Sec. 80a-1 et seq., or its interpretive rules, the corporation may:
 - (a) adopt special procedures for the conduct of the business and affairs of a separate account; and
 - (b) for persons having beneficial interests in a separate account, provide special voting and other rights, including special rights and procedures relating to investment policy, investment advisory services, selection of certified public accountants, and selection of a committee, the members of which need not be otherwise affiliated with the corporation, to manage the business and affairs of the account.
- (4) The commissioner may specify in the certificate of authority of a newly organized corporation the minimum required capital or the minimum required permanent surplus to be provided for each separate account. If a separate account is established after a certificate of authority has been issued, the commissioner shall require the corporation to allocate an adequate amount of capital and surplus to the separate account. An insurer may not be required to allocate more capital and surplus to a separate account than would be required of a separate insurer under Section 31A-5-211 and Chapter 17, Part 6, Risk-Based Capital.
- (5) The income and assets attributable to a separate account shall always remain identified with the particular account, but unless the commissioner so orders, the assets need not be kept physically separate from other assets of the corporation. The income and gains and losses, whether or not realized, from assets attributable to a separate account shall be credited to or charged against the account without regard to other income, gains, or losses of the corporation.
- (6) Except as provided in Subsection (7), liabilities arising out of any other business of the corporation are not to be allocated to a separate account, nor are any liabilities arising out of a separate account to be allocated to any other account of the corporation, except as provided in Subsection (11).
- (7)
 - (a) Each separate account shall be considered as an insurer within the meaning of Subsection 31A-27a-102(23).
 - (b) A liquidation order under Section 31A-27a-401 for the general account or for any separate account shall have effect as a rehabilitation order under Section 31A-27a-301 for all other accounts of the corporation. Claims remaining unpaid after completion of the liquidation under Chapter 27a, Insurer Receivership Act, shall be liens on the interests of shareholders, if any, but not on any other interests, in all of the corporation's assets that are not liquidated. The rehabilitator may transform these liens into ownership interests under Section 31A-27a-302.
- (8) Assets in excess of the liabilities allocated to separate accounts are the property of the corporation.
- (9) A corporation may own a particular asset in determinate proportions for separate accounts, for its general account, or as a trustee when acting as such within its legal powers.

- (10) The corporation may by an identifiable act transfer assets among the separate accounts, the general account, and any trust accounts of the corporation, for fair consideration as defined in Section 31A-27a-102.
- (11) The general account of the corporation, or any separate account, may, for a fair consideration as defined in Section 31A-27a-102, provide guarantees in connection with, perform services for, or reinsure other accounts, subject to rules adopted by the commissioner. The determination of a fair consideration shall be made by applying generally accepted accounting principles and realistic actuarial tables.
- (12) Section 31A-18-102 deals with separate account investments. Section 31A-20-106 requires the commissioner's approval before delivery of certain variable contracts. Section 31A-22-411 and Subsection 31A-21-301(1)(d) deal with policy provisions in separate account contracts.

Amended by Chapter 309, 2007 General Session

31A-5-217.5 Variable contract law.

- (1) This section applies to a separate account that is used to support one or more of the following:
 - (a) a variable life insurance policy that satisfies the requirements of Section 817, Internal Revenue Code;
 - (b) a variable annuity policy, including a modified guaranteed annuity; or
 - (c) benefits under a plan governed by the Employee Retirement Income Security Act of 1974.
- (2) If there is a conflict between this section and another section of this title as it relates to a separate account described in Subsection (1), this section prevails.
- (3)
 - (a) Subject to the other provisions of this Subsection (3), a domestic life insurer may:
 - (i) establish one or more separate accounts; and
 - (ii) allocate to those separate accounts amounts, which include:
 - (A) proceeds applied under optional modes of settlement or under dividend options, to provide for life insurance or annuities; and
 - (B) benefits incidental to life insurance or annuities, payable in fixed, variable, or both fixed and variable amounts.
 - (b) An insurer shall credit to or charge against a separate account the income, gains, and losses, realized or unrealized, from assets allocated to the separate account, without regard to other income, gains, or losses of the insurer.
 - (c) Except as may be provided with respect to reserves for guaranteed benefits and funds referred to in Subsection (3)(d):
 - (i) an insurer may invest or reinvest amounts allocated to a separate account and accumulations on those amounts without regard to the requirements or limitations prescribed by the laws of this state governing the investments of a life insurer; and
 - (ii) an insurer may not take into account the investments in a separate account in applying the investment limitations that otherwise apply to the investments of the insurer.
 - (d) Except with the approval of the commissioner and under any condition the commissioner prescribes as to investments and other matters, which shall recognize the guaranteed nature of the benefits provided, an insurer may not maintain in a separate account reserves for:
 - (i) benefits guaranteed as to dollar amount and duration; and
 - (ii) funds guaranteed as to principal amount or stated rate of interest.
 - (e)
 - (i) Except as provided in Subsection (3)(e)(ii) and unless otherwise approved by the commissioner, assets allocated to a separate account shall be valued:

- (A) at their market value on the date of valuation; or
- (B) if there is no readily available market, then as provided under the terms of the contract, rules, or other written agreement that applies to the separate account.

(ii) Unless otherwise approved by the commissioner, the portion of the assets of a separate account that are equal to the insurer's reserve liability with regard to the guaranteed benefits and funds referred to in Subsection (3)(d) shall be valued in accordance with the rules that otherwise apply to the company's assets.

(f)

- (i) An insurer owns the amounts it allocates to a separate account in the exercise of the power granted by this section, and the insurer may not be, nor hold itself out to be, a trustee with respect to those amounts.
- (ii) To the extent provided under the applicable insurance policy, an insurer may not charge the portion of the assets of a separate account that is equal to the reserves and other insurance liabilities with respect to the separate account with liabilities arising out of any other business the insurer may conduct.

(g)

- (i) A sale, exchange, or other transfer of assets may not be made by an insurer between any of its separate accounts or between any other investment account and one or more of its separate accounts unless:
 - (A) in case of a transfer into a separate account, the transfer is made solely to establish the account or to support the operation of the insurance policies with respect to the separate account to which the transfer is made; and
 - (B) the transfer, whether into or from a separate account, is made by:
 - (I) a transfer of cash; or
 - (II) if the transfer of securities is approved by the commissioner, a transfer of securities having a readily determinable market value.
- (ii) The commissioner may approve a transfer not described in Subsection (3)(g)(i) among the accounts described in Subsection (3)(g)(i) if, in the commissioner's opinion, the transfer would not be inequitable.

(h) To the extent an insurer considers it necessary to comply with an applicable federal or state law, the insurer with respect to a separate account, including a separate account which is a management investment company or a unit investment trust, may provide for a person having an interest in the separate account to have appropriate voting and other rights and special procedures for the conduct of the business of the separate account, including:

- (i) special rights and procedures relating to investment policy;
- (ii) investment advisory services;
- (iii) selection of independent public accountants; and
- (iv) the selection of a committee, the members of which need not be otherwise affiliated with the insurer, to manage the business of the separate account.

Amended by Chapter 10, 2010 General Session

Amended by Chapter 324, 2010 General Session

31A-5-218 Subsidiaries.

- (1) Subject to the limitations under Subsection 31A-18-106(1)(k), an insurance corporation may form or acquire subsidiaries to do any lawful insurance business.
- (2) An insurance corporation may form or acquire subsidiaries to hold or manage any assets that it might hold or manage directly.

(3)

- (a) An insurance corporation may form or acquire subsidiaries to perform functions or provide services that are ancillary to its insurance operations.
- (b) A subsidiary is an ancillary subsidiary if it is engaged principally in one or more of the following:
 - (i) acting as an insurance producer;
 - (ii) investing, reinvesting, or trading in securities, or acting as a securities broker, dealer, or marketing representative;
 - (iii) managing investment companies registered under the federal Investment Company Act of 1940, as amended, including related sales and services;
 - (iv) providing investment advice and services;
 - (v) acting as administrative agent for a government instrumentality performing an insurance, public assistance, or related function;
 - (vi) providing services related to insurance operations, including accounting, actuarial, pension administration, appraisal, auditing, claims adjusting, collection, data processing, communications, loss prevention, premium financing, safety engineering, and underwriting services;
 - (vii) holding or managing property used by the corporation, alone or with its affiliates for the convenient transaction of its business;
 - (viii) engaging in the motor club business under Chapter 11, Motor Clubs;
 - (ix) engaging in the business of any institution subject to the jurisdiction of the Department of Financial Institutions under Title 7, Financial Institutions Act;
 - (x) providing similar services or performing similar activities which the commissioner declares ancillary by rule; and
 - (xi) owning corporations that would be authorized as subsidiaries under Subsections (3)(b)(i) through (3)(b)(ix) and under Subsections (1) and (2).

(4) An insurance corporation may form or acquire subsidiaries other than those under Subsections (1) through (3), but only to the extent the insurer has excess surplus as defined under Section 31A-1-301.

(5)

- (a) An insurance corporation shall notify the commissioner immediately following the formation or acquisition of a subsidiary under this section.
- (b) Chapter 16, Insurance Holding Companies, provides additional requirements that are applicable to the acquisition of certain subsidiaries.

Amended by Chapter 298, 2003 General Session

31A-5-219 Amendment of articles.

- (1) Subject to Subsection (3) and to the requirements of the Insurance Code, a stock corporation may amend its articles under Sections 16-10a-1001 through 16-10a-1009 and a mutual may amend its articles under Sections 16-6a-1001 through 16-6a-1005 in any manner, including substantial changes of its original purposes. No amendment may be made contrary to Subsections 31A-5-203(1) through (3).
- (2) An amendment becomes effective when the properly adopted and filed articles of amendment are approved by the commissioner.
- (3) Section 16-10a-1009 applies to stock corporations and the second paragraph of Section 16-6a-1009 applies to mutuals.

Amended by Chapter 300, 2000 General Session