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1	INSURANCE LAW CHANGES
2	1998 GENERAL SESSION
3	STATE OF UTAH
4	Sponsor: L. Steven Poulton
5	AN ACT RELATING TO INSURANCE; ALLOWING REPLACEMENT OF CERTAIN
6	POLICIES OR ANNUITIES; AMENDING DEFINITIONS; AMENDING PROVISIONS FOR
7	LICENSING AGENTS; AMENDING ELIGIBILITY FOR HEALTH INSURANCE POOL;
8	EXPANDING USE OF CERTAIN FEES; AMENDING WORKERS' COMPENSATION
9	FRAUD PROVISIONS; AND MAKING TECHNICAL CORRECTIONS.
10	This act affects sections of Utah Code Annotated 1953 as follows:
11	AMENDS:
12	31A-1-104, as last amended by Chapter 20, Laws of Utah 1995
13	31A-1-301, as last amended by Chapter 185, Laws of Utah 1997
14	31A-22-423, as last amended by Chapter 261, Laws of Utah 1989
15	31A-23-102, as last amended by Chapter 9, Laws of Utah 1996, Second Special Session
16	31A-23-215, as last amended by Chapter 9, Laws of Utah 1996, Second Special Session
17	31A-29-111, as last amended by Chapter 265, Laws of Utah 1997
18	31A-30-108, as last amended by Chapter 265, Laws of Utah 1997
19	31A-31-108, as last amended by Chapters 185 and 375, Laws of Utah 1997
20	34A-2-110, as last amended by Chapter 185 and renumbered and amended by Chapter 375,
21	Laws of Utah 1997
22	Be it enacted by the Legislature of the state of Utah:
23	Section 1. Section 31A-1-104 is amended to read:
24	31A-1-104. Authorization to do insurance business.
25	[No] A person may not engage in the following without complying with this [code] title:
26	(1) do an insurance business as defined under Subsection 31A-1-301 (44);
27	(2) act as an insurance agent, broker, or consultant as defined under Section [31A-23-102]

1	<u>31A-1-301;</u> or
2	(3) engage in insurance adjusting as defined under Section 31A-26-102.
3	Section 2. Section 31A-1-301 is amended to read:
4	31A-1-301. Definitions.
5	As used in this title, unless otherwise specified:
6	(0.5) "Administrator" is defined in Subsection (77).
7	(1) "Adult" means a natural person who has attained the age of at least 18 years.
8	(2) "Affiliate" means any person who controls, is controlled by, or is under common
9	control with, another person. A corporation is an affiliate of another corporation, regardless of
10	ownership, if substantially the same group of natural persons manages the corporations.
11	(3) "Alien insurer" means an insurer domiciled outside the United States.
12	(4) "Annuities" means all agreements to make periodical payments for a period certain or
13	over the lifetime of one or more natural persons if the making or continuance of all or some of the
14	series of the payments, or the amount of the payment, is dependent upon the continuance of human
15	life.
16	(5) "Articles" or "articles of incorporation" means the original articles, special laws,
17	charters, amendments, restated articles, articles of merger or consolidation, trust instruments, and
18	other constitutive documents for trusts and other entities that are not corporations, and
19	amendments to any of these. Refer also to "bylaws" in this section and Section 31A-5-203.
20	(6) "Bail bond insurance" means a guarantee that a person will attend court when required,
21	or will obey the orders or judgment of the court, as a condition to the release of that person from
22	confinement.
23	(7) "Binder" is defined in Section 31A-21-102.
24	(8) "Board," "board of trustees," or "board of directors" means the group of persons with
25	responsibility over, or management of, a corporation, however designated. Refer also to "trustee"
26	in this section.
27	(9) "Business of insurance" is defined in Subsection (44).
28	(10) "Business plan" means the information required to be supplied to the commissioner
29	under Subsections 31A-5-204(2)(i) and (j), including the information required when these
30	subsections are applicable by reference under Section 31A-7-201, Section 31A-8-205, or
31	Subsection 31A-9-205(2).

(11) "Bylaws" means the rules adopted for the regulation or management of a corporation's
 affairs, however designated. It includes comparable rules for trusts and other entities that are not
 corporations. Refer also to "articles" and Section 31A-5-203.

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(12) "Casualty insurance" means liability insurance as defined in Subsection (50).

5 (13) "Certificate" means the evidence of insurance given to an insured under a group6 policy.

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(14) "Certificate of authority" is included within the term "license."

8 (14.5) "Claim," unless the context otherwise requires, means a request or demand on an
9 insurer for payment of benefits according to the terms of an insurance policy.

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

(15) "Commissioner" or "commissioner of insurance" means Utah's insurance
 commissioner. Where appropriate, these terms apply to the equivalent supervisory official of
 another jurisdiction.

16 (16) "Control," "controlling," "controlled," or "under common control" means the direct 17 or indirect possession of the power to direct or cause the direction of the management and policies 18 of a person. This control may be by contract, by common management, through the ownership 19 of voting securities, or otherwise. There is no presumption that an individual holding an official 20 position with another person controls that person solely by reason of the position. A person having 21 a contract or arrangement giving control is considered to have control despite the illegality or 22 invalidity of the contract or arrangement. There is a rebuttable presumption of control in a person 23 who directly or indirectly owns, controls, holds with the power to vote, or holds proxies to vote 24 10% or more of the voting securities of another person. Refer also to "affiliate" in this section. 25 (17) (a) "Corporation" means insurance corporation, except where referring under Chapter 26 23, Insurance Marketing - Licensing Agents, Brokers and Consultants, and Reinsurance

27 Intermediaries, and Chapter 26, Insurance Adjusters, to corporations doing business as insurance

agents, brokers, consultants, or adjusters, or where referring under Chapter 16, Insurance Holding

29 Companies, to a noninsurer which is part of a holding company system.

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- (b) "Stock corporation" means stock insurance corporation.
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(c) "Mutual" or "mutual corporation" means mutual insurance corporation.

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1 (18) "Credit disability insurance" means insurance on a debtor to provide indemnity for 2 payments coming due on a specific loan or other credit transaction while the debtor is disabled. 3 Refer also to Subsection 31A-22-802(1). 4 (19) "Credit insurance" means surety insurance under which mortgagees and other 5 creditors are indemnified against losses caused by the default of debtors. 6 (20) "Credit life insurance" means insurance on the life of a debtor in connection with a 7 loan or other credit transaction. Refer also to Subsection 31A-22-802(2). 8 (21) "Creditor" means a person, including an insured, having any claim, whether matured, 9 unmatured, liquidated, unliquidated, secured, unsecured, absolute, fixed, or contingent. 10 (22) "Deemer clause" means a provision under this title under which upon the occurrence 11 of a condition precedent, the commissioner is deemed to have taken a specific action. If the statute 12 so provides, the condition precedent may be the commissioner's failure to take a specific action. 13 Refer also to Section 31A-2-302. 14 (23) "Degree of relationship" means the number of steps between two persons determined by counting the generations separating one person from a common ancestor and then counting the 15 16 generations to the other person. 17 (24) "Department" means the Insurance Department. 18 (25) "Director" means a member of the board of directors of a corporation. 19 (26) "Disability insurance" means insurance written to indemnify for losses and expenses 20 resulting from accident or sickness, to provide payments to replace income lost from accident or 21 sickness, and to pay for services resulting directly from accident or sickness, including medical, 22 surgical, hospital, and other ancillary expenses. 23 (27) "Domestic insurer" means an insurer organized under the laws of this state. 24 (28) "Domiciliary state" means the state in which an insurer is incorporated or organized 25 or, in the case of an alien insurer, the state of entry into the United States. (29) "Employee benefits" means one or more benefits or services provided employees or 26 27 their dependents. 28 (30) "Employee welfare fund" means a fund established or maintained by one or more 29 employers, one or more labor organizations, or a combination of employers and labor 30 organizations, whether directly or through trustees. This fund is to provide employee benefits paid 31 or contracted to be paid, other than income from investments of the fund, by or on behalf of an - 4 -

1	employer doing business in this state or for the benefit of any person employed in this state. It
2	includes plans funded or subsidized by user fees or tax revenues.
3	(31) "Excludes" is not exhaustive and does not mean that other things are not also
4	excluded. The items listed are representative examples for use in interpretation of this title.
5	(31.5) "Fidelity insurance" means insurance guaranteeing the fidelity of persons holding
6	positions of public or private trust.
7	(31.7) "First party insurance" means an insurance policy or contract in which the insurer
8	agrees to pay claims submitted to it by the insured for the insured's losses.
9	(32) "Foreign insurer" means an insurer domiciled outside of this state, including an alien
10	insurer.
11	(33) "Form" means a policy, certificate, or application prepared for general use. It does
12	not include one specially prepared for use in an individual case. Refer also to "policy" in this
13	section.
14	(34) "Franchise insurance" means individual insurance policies provided through a mass
15	marketing arrangement involving a defined class of persons related in some way other than
16	through the purchase of insurance.
17	(35) "Health care insurance" or "health insurance" means disability insurance providing
18	benefits solely of medical, surgical, hospital, or other ancillary services or payment of medical,
19	surgical, hospital, or other ancillary expenses incurred. "Health care insurance" or "health
20	insurance" does not include disability insurance providing benefits for:
21	(a) replacement of income;
22	(b) short-term accident;
23	(c) fixed indemnity;
24	(d) credit disability;
25	(e) supplements to liability;
26	(f) workers' compensation;
27	(g) automobile medical payment;
28	(h) no-fault automobile;
29	(i) equivalent self-insurance; or
30	(j) any type of disability insurance coverage that is a part of or attached to another type of
31	policy.

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1	(35.5) "Indemnity" means the payment of an amount to offset all or part of an insured loss.
2	(36) "Independent adjuster" means an insurance adjuster required to be licensed under
3	Section 31A-26-201 who engages in insurance adjusting as a representative of insurers. Refer also
4	to Section 31A-26-102.
5	(37) "Independently procured insurance" means insurance procured under Section
6	31A-15-104.
7	(37.5) "Individual" means a natural person.
8	(38) "Inland marine insurance" includes insurance covering:
9	(a) property in transit on or over land;
10	(b) property in transit over water by means other than boat or ship;
11	(c) bailee liability;
12	(d) fixed transportation property such as bridges, electric transmission systems, radio and
13	television transmission towers and tunnels; and
14	(e) personal and commercial property floaters.
15	(39) "Insolvency" means that:
16	(a) an insurer is unable to pay its debts or meet its obligations as they mature;
17	(b) an insurer's total adjusted capital is less than the insurer's mandatory control level RBC
18	under Subsection 31A-17-601(7)(c); or
19	(c) an insurer is determined to be hazardous under this title.
20	(40) "Insurance" means any arrangement, contract, or plan for the transfer of a risk or risks
21	from one or more persons to one or more other persons, or any arrangement, contract, or plan for
22	the distribution of a risk or risks among a group of persons that includes the person seeking to
23	distribute his risk. "Insurance" includes:
24	(a) risk distributing arrangements providing for compensation or replacement for damages
25	or loss through the provision of services or benefits in kind;
26	(b) contracts of guaranty or suretyship entered into by the guarantor or surety as a business
27	and not as merely incidental to a business transaction; and
28	(c) plans in which the risk does not rest upon the person who makes the arrangements, but
29	with a class of persons who have agreed to share it.
30	(41) "Insurance adjuster" means a person who directs the investigation, negotiation, or
31	settlement of a claim under an insurance policy other than life insurance or an annuity, on behalf

1 of an insurer, policyholder, or a claimant under an insurance policy. Refer also to Section 2 31A-26-102. 3 (41.5) "Interinsurance exchange" is defined in Subsection (69). 4 (42) "Insurance agent" or "agent" means a person who represents insurers in soliciting, 5 negotiating, or placing insurance. Refer to Subsection 31A-23-102[(3)] (2) for exceptions to this 6 definition. 7 (43) "Insurance broker" or "broker" means a person who acts in procuring insurance on 8 behalf of an applicant for insurance or an insured, and does not act on behalf of the insurer except 9 by collecting premiums or performing other ministerial acts. Refer [also] to Subsection 10 31A-23-102[(3)] (2) for exceptions to this definition. 11 (44) "Insurance business" or "business of insurance" includes: 12 (a) providing health care insurance, as defined in Subsection (35), by organizations that 13 are or should be licensed under this title: 14 (b) providing benefits to employees in the event of contingencies not within the control 15 of the employees, in which the employees are entitled to the benefits as a right, which benefits may 16 be provided either by single employers or by multiple employer groups through trusts, 17 associations, or other entities; 18 (c) providing annuities, including those issued in return for gifts, except those provided 19 by persons specified in Subsections 31A-22-1305(2) and (3); 20 (d) providing the characteristic services of motor clubs as outlined in Subsection (56); (e) providing other persons with insurance as defined in Subsection (40): 21 22 (f) making as insurer, guarantor, or surety, or proposing to make as insurer, guarantor, or surety, any contract or policy of title insurance; 23 24 (g) transacting or proposing to transact any phase of title insurance, including solicitation, 25 negotiation preliminary to execution, execution of a contract of title insurance, insuring, and 26 transacting matters subsequent to the execution of the contract and arising out of it, including 27 reinsurance; and 28 (h) doing, or proposing to do, any business in substance equivalent to Subsections (44)(a)29 through (g) in a manner designed to evade the provisions of this title. 30 (45) "Insurance consultant" or "consultant" means a person who advises other persons 31 about insurance needs and coverages, is compensated by the person advised on a basis not directly

related to the insurance placed, and is not compensated directly or indirectly by an insurer, agent,
or broker for advice given. Refer [also] to Subsection 31A-23-102[(3)] (2) for exceptions to this
definition.

4 (46) "Insurance holding company system" means a group of two or more affiliated
5 persons, at least one of whom is an insurer.

6 (47) "Insured" means a person to whom or for whose benefit an insurer makes a promise 7 in an insurance policy. The term includes policyholders, subscribers, members, and beneficiaries. 8 This definition applies only to the provisions of this title and does not define the meaning of this 9 word as used in insurance policies or certificates.

(48) (a) "Insurer" means any person doing an insurance business as a principal, including
fraternal benefit societies, issuers of gift annuities other than those specified in Subsections
31A-22-1305(2) and (3), motor clubs, employee welfare plans, and any person purporting or
intending to do an insurance business as a principal on his own account. It does not include a
governmental entity, as defined in Subsection 63-30-2(3), to the extent it is engaged in the
activities described in Section 31A-12-107.

- 16 (b) "Admitted insurer" is defined in Subsection (80)(b).
- 17 (c) "Alien insurer" is defined in Subsection (3).
- 18 (d) "Authorized insurer" is defined in Subsection (80)(b).
- 19 (e) "Domestic insurer" is defined in Subsection (27).
- 20 (f) "Foreign insurer" is defined in Subsection (32).
- 21 (g) "Nonadmitted insurer" is defined in Subsection (80)(a).

22 (h) "Unauthorized insurer" is defined in Subsection (80)(a).

(49) "Legal expense insurance" means insurance written to indemnify or pay for specified
legal expenses. It includes arrangements that create reasonable expectations of enforceable rights,
but it does not include the provision of, or reimbursement for, legal services incidental to other
insurance coverages. Refer to Section 31A-1-103 for a list of exemptions.

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(50) (a) "Liability insurance" means insurance against liability:

(i) for death, injury, or disability of any human being, or for damage to property, exclusive
of the coverages under Subsection (53) for medical malpractice insurance, Subsection (66) for

30 professional liability insurance, and Subsection (83) for workers' compensation insurance;

31 (ii) for medical, hospital, surgical, and funeral benefits to persons other than the insured

who are injured, irrespective of legal liability of the insured, when issued with or supplemental to
insurance against legal liability for the death, injury, or disability of human beings, exclusive of
the coverages under Subsection (53) for medical malpractice insurance, Subsection (66) for
professional liability insurance, and Subsection (83) for workers' compensation insurance;

5 (iii) for loss or damage to property resulting from accidents to or explosions of boilers,
6 pipes, pressure containers, machinery, or apparatus;

7 (iv) for loss or damage to any property caused by the breakage or leakage of sprinklers,
8 water pipes and containers, or by water entering through leaks or openings in buildings; or

9 (v) for other loss or damage properly the subject of insurance not within any other kind 10 or kinds of insurance as defined in this chapter, if such insurance is not contrary to law or public 11 policy.

(b) "Liability insurance" includes vehicle liability insurance as defined in Subsection (81),
residential dwelling liability insurance as defined in Subsection (70.3), and also includes making
inspection of, and issuing certificates of inspection upon, elevators, boilers, machinery, and
apparatus of any kind when done in connection with insurance on them.

(51) "License" means the authorization issued by the insurance commissioner under this
title to engage in some activity that is part of or related to the insurance business. It includes
certificates of authority issued to insurers.

(52) "Life insurance" means insurance on human lives and insurances pertaining to or
connected with human life. The business of life insurance includes granting annuity benefits,
granting endowment benefits, granting additional benefits in the event of death by accident or
accidental means, granting additional benefits in the event of the total and permanent disability of
the insured, and providing optional methods of settlement of proceeds.

(53) "Medical malpractice insurance" means insurance against legal liability incident to
the practice and provision of medical services other than the practice and provision of dental
services.

27 (54) "Member" means a person having membership rights in an insurance corporation.
28 Refer also to "insured" in Subsection (47).

(55) "Minimum capital" or "minimum required capital" means the capital that must be
constantly maintained by a stock insurance corporation as required by statute. Refer also to
"permanent surplus" under Subsection (76)(a) and Sections 31A-5-211, 31A-8-209, and

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31A-9-209.

1	JIA-7-207.
2	(56) "Motor club" means a person licensed under Chapter 5, Domestic Stock and Mutual
3	Insurance Corporations, Chapter 11, Motor Clubs, or Chapter 14, Foreign Insurers, that promises
4	for an advance consideration to provide legal services under Subsection 31A-11-102(1)(b), bail
5	services under Subsection 31A-11-102(1)(c), trip reimbursement, towing services, emergency road
6	services, stolen automobile services, a combination of these services, or any other services given
7	in Subsections 31A-11-102(1)(b) through (f) for a stated period of time.
8	(57) "Mutual" means mutual insurance corporation.
9	(57.5) "Nonparticipating" means a plan of insurance under which the insured is not entitled
10	to receive dividends representing shares of the surplus of the insurer.
11	(58) "Ocean marine insurance" means insurance against loss of or damage to:
12	(a) ships or hulls of ships;
13	(b) goods, freight, cargoes, merchandise, effects, disbursements, profits, moneys,
14	securities, choses in action, evidences of debt, valuable papers, bottomry, respondentia interests,
15	or other cargoes in or awaiting transit over the oceans or inland waterways;
16	(c) earnings such as freight, passage money, commissions, or profits derived from
17	transporting goods or people upon or across the oceans or inland waterways; or
18	(d) a vessel owner or operator as a result of liability to employees, passengers, bailors,
19	owners of other vessels, owners of fixed objects, customs or other authorities, or other persons in
20	connection with maritime activity.
21	(59) "Order" means an order of the commissioner.
22	(59.5) "Participating" means a plan of insurance under which the insured is entitled to
23	receive dividends representing shares of the surplus of the insurer.
24	(60) "Person" includes an individual, partnership, corporation, incorporated or
25	unincorporated association, joint stock company, trust, reciprocal, syndicate, or any similar entity
26	or combination of entities acting in concert.
27	(61) (a) "Policy" means any document, including attached endorsements and riders,
28	purporting to be an enforceable contract, which memorializes in writing some or all of the terms
29	of an insurance contract. Service contracts issued by motor clubs under Chapter 11, Motor Clubs,
30	and by corporations licensed under Chapter 7, Nonprofit Health Service Insurance Corporations,
31	or Chapter 8, Health Maintenance Organizations and Limited Health Plans, are policies. A

certificate under a group insurance contract is not a policy. A document which does not purport
 to have legal effect is not a policy.

3 (b) "Group insurance policy" means a policy covering a group of persons that is issued to 4 a policyholder on behalf of the group, for the benefit of group members who are selected under 5 procedures defined in the policy or in agreements which are collateral to the policy. This type of 6 policy may, but is not required to, include members of the policyholder's family or dependents.

(c) "Blanket insurance policy" means a group policy covering classes of persons without
individual underwriting, where the persons insured are determined by definition of the class with
or without designating the persons covered.

(62) "Policyholder" means the person who controls a policy, binder, or oral contract by
ownership, premium payment, or otherwise. Refer also to "insured" in Subsection (47).

(63) "Premium" means the monetary consideration for an insurance policy, and includes
 assessments, membership fees, required contributions, or monetary consideration, however

14 designated. Consideration paid to third party administrators for their services is not "premium,"

15 though amounts paid by third party administrators to insurers for insurance on the risks

16 administered by the third party administrators are "premium."

17 (64) "Principal officers" of a corporation means the officers designated under Subsection
18 31A-5-203(3).

19 (65) "Proceedings" includes actions and special statutory proceedings.

20 (66) "Professional liability insurance" means insurance against legal liability incident to
21 the practice of a profession and provision of any professional services.

(67) "Property insurance" means insurance against loss or damage to real or personal
property of every kind and any interest in that property, from all hazards or causes, and against loss
consequential upon the loss or damage including vehicle comprehensive and vehicle physical
damage coverages, but excluding inland marine insurance and ocean marine insurance as defined
under Subsections (38) and (58).

(67.5) "Public agency insurance mutual" means any entity formed by joint venture or
interlocal cooperation agreement by two or more political subdivisions or public agencies of the
state for the purpose of providing insurance coverage for the political subdivisions or public
agencies. Any public agency insurance mutual created under this title and Title 11, Chapter 13,
Interlocal Cooperation Act, is considered to be a governmental entity and political subdivision of

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subdivision of the state. 3 (68) (a) Except as provided in Subsection (68)(b), "rate service organization" means any person who assists insurers in rate making or filing by: 5 (i) collecting, compiling, and furnishing loss or expense statistics; 6 (ii) recommending, making, or filing rates or supplementary rate information; or 7 (iii) advising about rate questions, except as an attorney giving legal advice. Refer also to Subsection 31A-19-102(2). (b) "Rate service organization" does not mean an employee of an insurer, a single insurer 10 or group of insurers under common control, a joint underwriting group, or a natural person serving as an actuarial or legal consultant. 12 (69) "Reciprocal" or "interinsurance exchange" means any unincorporated association of 13 persons operating through an attorney-in-fact common to all of them and exchanging insurance 14 contracts with one another that provide insurance coverage on each other. 15 (70) "Reinsurance" means an insurance transaction where an insurer, for consideration, 16 transfers any portion of the risk it has assumed to another insurer. In referring to reinsurance 17 transactions, this title sometimes refers to the insurer transferring the risk as the "ceding insurer," 18 and to the insurer assuming the risk as the "assuming insurer" or the "assuming reinsurer." 19 (70.3) "Residential dwelling liability insurance" means insurance against liability resulting from or incident to the ownership, maintenance, or use of a residential dwelling that is a detached 20 single family residence or multifamily residence up to four units. 22 (71) "Retrocession" means reinsurance with another insurer of a liability assumed under 23 a reinsurance contract. A reinsurer "retrocedes" when it reinsures with another insurer part of a 24 liability assumed under a reinsurance contract. 25 (72) (a) "Security" means any: 26 (i) note; 27 (ii) stock; 28 (iii) bond; 29 (iv) debenture; 30 (v) evidence of indebtedness; 31 (vi) certificate of interest or participation in any profit-sharing agreement; - 12 -

the state with all of the rights, privileges, and immunities of a governmental entity or political

2(viii) preorganization certificate or subscription;3(ix) transferable share;4(x) investment contract;5(xi) voting trust certificate;6(xii) certificate of deposit for a security;7(xiii) certificate of interest of participation in an oil, gas, or mining title or lease or in8payments out of production under such a title or lease;9(xiv) commodity contract or commodity option;10(xv) any certificate of interest or participation in, temporary or interim certificate for,11receipt for, guarantee of, or warrant or right to subscribe to or purchase any of the items listed in12Subsections (72)(a)(i) through (xiv); or13(xvi) any other interest or instrument commonly known as a security.14(b) "Security" does not include:15(i) any insurance or endowment policy or annuity contract under which an insurance16company promises to pay money in a specific lump sum or periodically for life or some other15specified period; or16(ii) a burial certificate or burial contract.17specified period; or18(a) Except as provided in this subsection, self-insurance does not include an arrangement19under which a number of persons spread their risks among themselves.10(b) Self-insurance does include an arrangement by which a governmental entity, as defined19in Section 63-30-2, undertakes to indemnify its employees for liability arising out of the11employment.12(c) Self-insurance does include an arrangement by which	1	(vii) collateral-trust certificate;
4(x) investment contract;5(xi) voting trust certificate;6(xii) certificate of deposit for a security;7(xiii) certificate of interest of participation in an oil, gas, or mining title or lease or in8payments out of production under such a title or lease;9(xiv) commodity contract or commodity option;10(xv) any certificate of interest or participation in, temporary or interim certificate for,11receipt for, guarantee of, or warrant or right to subscribe to or purchase any of the items listed in12Subsections (72)(a)(i) through (xiv); or13(xvi) any other interest or instrument commonly known as a security.14(b) "Security" does not include:15(i) any insurance or endowment policy or annuity contract under which an insurance16company promises to pay money in a specific lump sum or periodically for life or some other17specified period; or18(ii) a burial certificate or burial contract.19(73) "Self-insurance" means any arrangement under which a person provides for spreading20its own risks by a systematic plan.21(a) Except as provided in this subsection, self-insurance does not include an arrangement23(b) Self-insurance does include an arrangement by which a governmental entity, as defined24in Section 63-30-2, undertakes to indemnify its employees for liability arising out of the25employees' employment.26(c) Self-insurance does include an arrangement by which a person with a managed27program of self-insurance and risk	2	(viii) preorganization certificate or subscription;
5(xi) voting trust certificate;6(xii) certificate of deposit for a security;7(xiii) certificate of interest of participation in an oil, gas, or mining title or lease or in8payments out of production under such a title or lease;9(xiv) commodity contract or commodity option;10(xv) any certificate of interest or participation in, temporary or interim certificate for,11receipt for, guarantee of, or warrant or right to subscribe to or purchase any of the items listed in12Subsections (72)(a)(i) through (xiv); or13(xvi) any other interest or instrument commonly known as a security.14(b) "Security" does not include:15(i) any insurance or endowment policy or annuity contract under which an insurance16company promises to pay money in a specific lump sum or periodically for life or some other17specified period; or18(ii) a burial certificate or burial contract.19(73) "Self-insurance" means any arrangement under which a person provides for spreading20its own risks by a systematic plan.21(a) Except as provided in this subsection, self-insurance does not include an arrangement22under which a number of persons spread their risks among themselves.23(b) Self-insurance does include an arrangement by which a governmental entity, as defined24in Section 63-30-2, undertakes to indemnify its employees for liability arising out of the25employees' employment.26(c) Self-insurance does include an arrangement by which a person with a managed	3	(ix) transferable share;
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28 directors, officers, or employees for liability or risk which is related to the relationship or	26	(c) Self-insurance does include an arrangement by which a person with a managed
	27	program of self-insurance and risk management undertakes to indemnify its affiliates, subsidiaries,
29 employment. Self-insurance does not include any arrangement with independent contractors.	28	directors, officers, or employees for liability or risk which is related to the relationship or
	29	employment. Self-insurance does not include any arrangement with independent contractors.
30 (74) (a) "Subsidiary" of a person means an affiliate controlled by that person either directly	30	(74) (a) "Subsidiary" of a person means an affiliate controlled by that person either directly
31 or indirectly through one or more affiliates or intermediaries.	31	or indirectly through one or more affiliates or intermediaries.

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1	(b) "Wholly owned subsidiary" of a person is a subsidiary of which all of the voting shares
2	are owned by that person either alone or with its affiliates, except for the minimum number of
3	shares the law of the subsidiary's domicile requires to be owned by directors or others.
4	(75) Subject to Subsection (40)(b), "surety insurance" includes:
5	(a) a guarantee against loss or damage resulting from failure of principals to pay or
6	perform their obligations to a creditor or other obligee;
7	(b) bail bond insurance; and
8	(c) fidelity insurance.
9	(76) (a) "Surplus" means the excess of assets over the sum of paid-in capital and liabilities.
10	(b) "Permanent surplus" means the surplus of a mutual insurer that has been designated
11	by the insurer as permanent. Sections 31A-5-211, 31A-7-201, 31A-8-209, 31A-9-209, and
12	31A-14-209 require that mutuals doing business in this state maintain specified minimum levels
13	of permanent surplus. Except for assessable mutuals, the minimum permanent surplus requirement
14	is essentially the same as the minimum required capital requirement that applies to stock insurers.
15	Refer also to Subsection (55) on "minimum capital."
16	(c) "Excess surplus" means:
17	(i) for life or disability insurers, as defined in Subsection 31A-17-601(3), and property and
18	casualty insurers, as defined in Subsection 31A-17-601(4), the lesser of:
19	(A) that amount of an insurer's total adjusted capital, as defined in Subsection
20	[31A-1-301](78.5), that exceeds the product of 2.5 and the sum of the insurer's minimum capital
21	or permanent surplus required under Section 31A-5-211, 31A-9-209, or 31A-14-205; or
22	(B) that amount of an insurer's total adjusted capital, as defined in Subsection
23	[31A-1-301](78.5), that exceeds the product of 3.0 and the authorized control level RBC as defined
24	in Subsection 31A-17-601(7)(a); and
25	(ii) for monoline mortgage guaranty insurers, financial guaranty insurers, and title insurers,
26	that amount of an insurer's paid-in-capital and surplus that exceeds the product of 1.5 and the
27	insurer's total adjusted capital required by Subsection 31A-17-609(1).
28	(77) "Third party administrator" or "administrator" means any person who collects charges
29	or premiums from, or who, for consideration, adjusts or settles claims of residents of the state in
30	connection with life or disability insurance coverage, annuities, or service insurance coverage,
31	except:

1 (a) a union on behalf of its members; 2 (b) a person exempt as a trust under Section 514 of the federal Employee Retirement 3 Income Security Act of 1974; 4 (c) an employer on behalf of his employees or the employees of one or more of the 5 subsidiary or affiliated corporations of the employer; 6 (d) an insurer licensed under Chapter 5, 7, 8, 9, or 14, but only with respect to insurance 7 issued by the insurer; or 8 (e) a person licensed or exempt from licensing under Chapter 23 or 26 whose activities are 9 limited to those authorized under the license the person holds or for which the person is exempt. 10 Refer also to Section 31A-25-101. (78) "Title insurance" means the insuring, guaranteeing, or indemnifying of owners of real 11 12 or personal property or the holders of liens or encumbrances on that property, or others interested 13 in the property against loss or damage suffered by reason of liens or encumbrances upon, defects 14 in, or the unmarketability of the title to the property, or invalidity or unenforceability of any liens 15 or encumbrances on the property. 16 (78.5) "Total adjusted capital" means the sum of an insurer's statutory capital and surplus 17 as determined in accordance with: 18 (a) the statutory accounting applicable to the annual financial statements required to be 19 filed under Section 31A-4-113: and (b) any other items provided by the RBC instructions, as RBC instructions is defined in 20 21 Subsection 31A-17-601(6). 22 (79) (a) "Trustee" means "director" when referring to the board of directors of a 23 corporation. 24 (b) "Trustee," when used in reference to an employee welfare fund, means an individual, 25 firm, association, organization, joint stock company, or corporation, whether acting individually 26 or jointly and whether designated by that name or any other, that is charged with or has the overall 27 management of an employee welfare fund. (80) (a) "Unauthorized insurer," "unadmitted insurer," or "nonadmitted insurer" means an 28 29 insurer not holding a valid certificate of authority to do an insurance business in this state, or an 30 insurer transacting business not authorized by a valid certificate. (b) "Admitted insurer" or "authorized insurer" means an insurer holding a valid certificate 31

1	of authority to do an insurance business in this state and transacting business as authorized by a
2	valid certificate.
3	(81) "Vehicle liability insurance" means insurance against liability resulting from or
4	incident to ownership, maintenance, or use of any land vehicle or aircraft, exclusive of vehicle
5	comprehensive and vehicle physical damage coverages under Subsection (67).
6	(82) "Voting security" means a security with voting rights, and includes any security
7	convertible into a security with a voting right associated with it.
8	(83) "Workers' compensation insurance" means:
9	(a) insurance for indemnification of employers against liability for compensation:
10	(i) based upon compensable accidental injuries; and
11	(ii) based on occupational disease disability;
12	(b) employer's liability insurance incidental to workers' compensation insurance and
13	written in connection with it; and
14	(c) insurance assuring to the persons entitled to workers' compensation benefits the
15	compensation provided by law.
16	Section 3. Section 31A-22-423 is amended to read:
17	31A-22-423. Policy and annuity examination period.
17 18	31A-22-423. Policy and annuity examination period.(1) (a) Except as provided under Subsection (2), all life insurance policies and annuities
18	(1) (a) Except as provided under Subsection (2), all life insurance policies and annuities
18 19	(1) (a) Except as provided under Subsection (2), all life insurance policies and annuities shall contain a notice prominently printed on or attached to the cover or front page stating that the
18 19 20	(1) (a) Except as provided under Subsection (2), all life insurance policies and annuities shall contain a notice prominently printed on or attached to the cover or front page stating that the policyholder has the right to return the policy for any reason [within] on or before:
18 19 20 21	 (1) (a) Except as provided under Subsection (2), all life insurance policies and annuities shall contain a notice prominently printed on or attached to the cover or front page stating that the policyholder has the right to return the policy for any reason [within] on or before: (i) ten days after delivery; or
18 19 20 21 22	 (1) (a) Except as provided under Subsection (2), all life insurance policies and annuities shall contain a notice prominently printed on or attached to the cover or front page stating that the policyholder has the right to return the policy for any reason [within] on or before: (i) ten days <u>after delivery; or</u> (ii) in case of a replacement policy, 20 days after [its delivery] the replacement policy is
 18 19 20 21 22 23 	 (1) (a) Except as provided under Subsection (2), all life insurance policies and annuities shall contain a notice prominently printed on or attached to the cover or front page stating that the policyholder has the right to return the policy for any reason [within] on or before: (i) ten days <u>after delivery; or</u> (ii) in case of a replacement policy, 20 days after [its delivery] the replacement policy is delivered. ["Return"]
 18 19 20 21 22 23 24 	 (1) (a) Except as provided under Subsection (2), all life insurance policies and annuities shall contain a notice prominently printed on or attached to the cover or front page stating that the policyholder has the right to return the policy for any reason [within] on or before: (i) ten days <u>after delivery; or</u> (ii) in case of a replacement policy, 20 days after [its delivery] the replacement policy is delivered. ["Return"] (b) For purposes of this section, "return" means [delivery to the insurer or its agent, or
 18 19 20 21 22 23 24 25 	 (1) (a) Except as provided under Subsection (2), all life insurance policies and annuities shall contain a notice prominently printed on or attached to the cover or front page stating that the policyholder has the right to return the policy for any reason [within] on or before: (i) ten days <u>after delivery; or</u> (ii) in case of a replacement policy, 20 days after [its delivery] the replacement policy is delivered. ["Return"] (b) For purposes of this section, "return" means [delivery to the insurer or its agent, or mailing of the policy to either, properly addressed and stamped for first class handling, with] a
 18 19 20 21 22 23 24 25 26 	 (1) (a) Except as provided under Subsection (2), all life insurance policies and annuities shall contain a notice prominently printed on or attached to the cover or front page stating that the policyholder has the right to return the policy for any reason [within] on or before: (i) ten days <u>after delivery</u>; or (ii) in case of a replacement policy, 20 days after [its delivery] the replacement policy is delivered. ["Return"] (b) For purposes of this section, "return" means [delivery to the insurer or its agent, or mailing of the policy to either, properly addressed and stamped for first class handling, with] a written statement on the policy or an accompanying writing that [it] the policy is being returned
 18 19 20 21 22 23 24 25 26 27 	 (1) (a) Except as provided under Subsection (2), all life insurance policies and annuities shall contain a notice prominently printed on or attached to the cover or front page stating that the policyholder has the right to return the policy for any reason [within] on or before: (i) ten days <u>after delivery; or</u> (ii) in case of a replacement policy, 20 days after [its delivery] the replacement policy is delivered. ["Return"] (b) For purposes of this section, "return" means [delivery to the insurer or its agent, or mailing of the policy to either, properly addressed and stamped for first class handling, with] a written statement on the policy or an accompanying writing that [it] the policy is being returned for termination of coverage that is delivered to or mailed first class to the insurer or its agent.
 18 19 20 21 22 23 24 25 26 27 28 	 (1) (a) Except as provided under Subsection (2), all life insurance policies and annuities shall contain a notice prominently printed on or attached to the cover or front page stating that the policyholder has the right to return the policy for any reason [within] on or before: (i) ten days <u>after delivery; or</u> (ii) in case of a replacement policy, 20 days after [its delivery] the replacement policy is delivered. ["Return"] (b) For purposes of this section, "return" means [delivery to the insurer or its agent, or mailing of the policy to either, properly addressed and stamped for first class handling, with] a written statement on the policy or an accompanying writing that [it] the policy is being returned for termination of coverage that is delivered to or mailed first class to the insurer or its agent.
 18 19 20 21 22 23 24 25 26 27 28 29 	 (1) (a) Except as provided under Subsection (2), all life insurance policies and annuities shall contain a notice prominently printed on or attached to the cover or front page stating that the policyholder has the right to return the policy for any reason [within] on or before: (i) ten days <u>after delivery; or</u> (ii) in case of a replacement policy, 20 days after [its delivery] the replacement policy is delivered. ["Return"] (b) For purposes of this section, "return" means [delivery to the insurer or its agent, or mailing of the policy to either, properly addressed and stamped for first class handling, with] a written statement on the policy or an accompanying writing that [it] the policy is being returned for termination of coverage that is delivered to or mailed first class to the insurer or its agent. [Policies] (c) A policy returned under this section [are] is void from the date of return.

1	premium paid, except that the insurer may retain an amount not exceeding that determined by rule
2	adopted by the commissioner.
3	(2) This section does not apply to:
4	(a) group policies; and
5	(b) other classes of life insurance policies [which] that the commissioner specifies by rule
6	after finding that a right to return those policies would be impracticable or unnecessary to protect
7	the policyholder's interests.
8	Section 4. Section 31A-23-102 is amended to read:
9	31A-23-102. Definitions.
10	As used in this chapter:
11	(1) Except as provided in Subsection (3):
12	(a) "escrow" is a license category that allows a person to conduct escrows, settlements, or
13	closings on behalf of a title insurance agency or a title insurer[-];
14	[(b) "Insurance agent" or "agent" means a person who represents an insurer or insurers in
15	soliciting, negotiating, or placing insurance.]
16	[(c) "Insurance broker" or "broker" means a broker as defined in Subsection (5) or any
17	other person, firm, association, or corporation, that for any compensation, commission, or any
18	other thing of value acts or aids in any manner in soliciting, negotiating, or procuring the making
19	of any insurance contract on behalf of an insured other than himself or itself.]
20	[(d)] (b) "limited license" means a license that is issued for a specific product of insurance
21	and limits an individual or agency to transact only for those products[-]:
22	[(e)] (c) "search" is a license category that allows a person to issue title insurance
23	commitments or policies on behalf of a title insurer[-];
24	[(f)] (d) "title marketing representative" means a person who:
25	(i) represents a title insurer in soliciting, requesting, or negotiating the placing of:
26	(A) title insurance; or
27	(B) escrow, settlement, or closing services; and [who]
28	(ii) does not have a search or escrow license.
29	[(2) Except as provided in Subsection (3) and Subsection 31A-23-301(1)(b), "insurance
30	consultant" or "consultant" means a person who advises other persons about insurance needs and
31	coverages, who is compensated by the person advised on a basis which is not directly related to

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1 the insurance placed, and who is not compensated directly or indirectly by an insurer, agent, or 2 broker for the advice given.] 3 [(3)] (2) The following persons are not acting as agents, brokers, title marketing 4 representatives, or consultants when acting in the following capacities: 5 (a) any regular salaried officer, employee, or other representative of an insurer or licensee 6 under this chapter who devotes substantially all of [his] the officer's, employee's, or 7 representative's working time to activities other than those described in [Subsections] Subsection 8 (1)[, (2), and (3),] and Subsection 31A-1-301(42), (43), and (45) including the clerical employees 9 of persons required to be licensed under this chapter; 10 (b) a regular salaried officer or employee of a person seeking to purchase insurance, who 11 receives no compensation that is directly dependent upon the amount of insurance coverage 12 purchased; 13 (c) a person who gives incidental advice in the normal course of a business or professional 14 activity, other than insurance consulting, if neither that person nor that person's employer receives 15 direct or indirect compensation on account of any insurance transaction that results from that 16 advice; 17 (d) a person who, without special compensation, performs incidental services for another 18 at the other's request, without providing advice or technical or professional services of a kind 19 normally provided by an agent, broker, or consultant; 20 (e) (i) a holder of a group insurance policy, or any other person involved in mass 21 marketing, but only: 22 (A) with respect to administrative activities in connection with that type of policy, 23 including the collection of premiums; and 24 [(ii) only] (B) if the person receives no compensation for the activities described in 25 Subsection (3)(e)(i) beyond reasonable expenses including a fair payment for the use of capital; 26 and 27 (f) a person who gives advice or assistance without direct or indirect compensation or any 28 expectation of direct or indirect compensation. 29 $\left[\frac{4}{2}\right]$ (3) "Actuary" means a person who is a member in good standing of the American 30 Academy of Actuaries. 31 [(5)] (4) "Agency" means a person other than an individual, and includes a sole

1	proprietorship by which a natural person does business under an assumed name.
2	[(6)] (5) "Broker" means an insurance broker or any other person, firm, association, or
3	corporation that for any compensation, commission, or other thing of value acts or aids in any
4	manner in soliciting, negotiating, or procuring the making of any insurance contract on behalf of
5	an insured other than itself.
6	(6) "Captive insurer" means:
7	(a) an insurance company owned by another organization whose exclusive purpose is to
8	insure risks of the parent organization and affiliated companies; or
9	(b) in the case of groups and associations, an insurance organization owned by the insureds
10	whose exclusive purpose is to insure risks of member organizations, group members, and their
11	affiliates.
12	(7) "Controlled insurer" means a licensed insurer that is either directly or indirectly
13	controlled by a broker.
14	(8) "Controlling broker" means a broker who either directly or indirectly controls an
15	insurer.
16	(9) "Controlling person" means any person, firm, association, or corporation that directly
17	or indirectly has the power to direct or cause to be directed, the management, control, or activities
18	of a reinsurance intermediary.
19	(10) "Insurer" is <u>as</u> defined in Subsection 31A-1-301(48)[. The], except the following
20	persons or similar persons are not insurers for purposes of Part 6 of this chapter:
21	(a) all risk retention groups as defined in:
22	(i) the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499[,
23	and];
24	(ii) the Risk Retention Act, 15 U.S.C. Sec. 3901 et seq.[,]; and
25	(iii) Title 31A, Chapter 15, Part 2, Risk Retention Groups;
26	(b) all residual market pools and joint underwriting authorities or associations; and
27	(c) all captive insurers[; for the purposes of this chapter, captive insurers are insurance
28	companies owned by another organization whose exclusive purpose is to insure risks of the parent
29	organization and affiliated companies or, in the case of groups and associations, insurance
30	organizations owned by the insureds whose exclusive purpose is to insure risks of member
31	organizations, group members, and their affiliates].

1	(11) (a) "Managing general agent" means any person, firm, association, or corporation
2	that:
3	(i) manages all or part of the insurance business of an insurer, including the management
4	of a separate division, department, or underwriting office[, and that];
5	(ii) acts as an agent for the insurer whether it is known as a managing general agent,
6	manager, or other similar term[, and that,] ;
7	(iii) with or without the authority, either separately or together with affiliates, directly or
8	indirectly produces and underwrites an amount of gross direct written premium equal to, or more
9	than 5% of, the policyholder surplus as reported in the last annual statement of the insurer in any
10	one quarter or year[, and that also]; and
11	(iv) either adjusts or pays claims in excess of an amount determined by the commissioner,
12	or that negotiates reinsurance on behalf of the insurer.
13	(b) Notwithstanding Subsection (11)(a), the following persons may not be considered as
14	managing general agent for the purposes of this chapter:
15	(i) an employee of the insurer;
16	(ii) a U.S. manager of the United States branch of an alien insurer;
17	(iii) an underwriting manager [which] that, pursuant to contract:
18	(A) manages all the insurance operations of the insurer;
19	(B) is under common control with the insurer;
20	(C) is subject to Title 31A, Chapter 16, Insurance Holding Companies; and
21	(D) [whose compensation] is not <u>compensated</u> based on the volume of premiums written;
22	and
23	[(c)] (iv) the attorney-in-fact authorized by and acting for the subscribers of a reciprocal
24	insurer or inter-insurance exchange under powers of attorney.
25	(12) "Producer" is a person who arranges for insurance coverages between insureds and
26	insurers.
27	(13) "Qualified U.S. financial institution" means an institution that:
28	(a) is organized or, in the case of a U.S. office of a foreign banking organization licensed,
29	under the laws of the United States or any state;
30	(b) is regulated, supervised, and examined by U.S. federal or state authorities having
31	regulatory authority over banks and trust companies; and

1	(c) has been determined by either the commissioner, or the Securities Valuation Office of
2	the National Association of Insurance Commissioners, to meet the standards of financial condition
3	and standing [which] that are considered necessary and appropriate to regulate the quality of
4	financial institutions whose letters of credit will be acceptable to the commissioner.
5	(14) "Reinsurance intermediary" means a reinsurance intermediary-broker or a reinsurance
6	intermediary-manager as these terms are defined in Subsections (15) and (16).
7	(15) "Reinsurance intermediary-broker" means a person other than an officer or employee
8	of the ceding insurer, firm, association, or corporation who solicits, negotiates, or places
9	reinsurance cessions or retrocessions on behalf of a ceding insurer without the authority or power
10	to bind reinsurance on behalf of the insurer.
11	(16) (a) "Reinsurance intermediary-manager" means a person, firm, association, or
12	corporation who:
13	(i) has authority to bind or who manages all or part of the assumed reinsurance business
14	of a reinsurer, including the management of a separate division, department, or underwriting
15	office; and [who]
16	(ii) acts as an agent for the reinsurer whether [he] the person, firm, association, or
17	corporation is known as a reinsurance intermediary-manager, manager, or other similar term.
18	(b) Notwithstanding Subsection (16)(a), the following persons may not be considered
19	reinsurance intermediary-managers for the purpose of this chapter with respect to the reinsurer:
20	(i) an employee of the reinsurer;
21	(ii) a U.S. manager of the United States branch of an alien reinsurer;
22	(iii) an underwriting manager that, pursuant to contract[,]:
23	(\underline{A}) manages all the reinsurance operations of the reinsurer[,];
24	(B) is under common control with the reinsurer $[,];$
25	(C) is subject to Title 31A, Chapter 16, Insurance Holding Companies[,]; and [whose
26	compensation]
27	(D) is not <u>compensated</u> based on the volume of premiums written; and
28	(iv) the manager of a group, association, pool, or organization of insurers that:
29	(A) engage in joint underwriting or joint reinsurance; and
30	(B) are subject to examination by the insurance commissioner of the state in which the
31	manager's principal business office is located.

1	(17) "Reinsurer" means any person, firm, association, or corporation duly licensed in this
2	state as an insurer with the authority to assume reinsurance.
3	(18) "Surplus lines broker" means a person licensed under Subsection 31A-23-204(5) to
4	place insurance with unauthorized insurers in accordance with Section 31A-15-103.
5	(19) "Underwrite" means the authority to accept or reject risk on behalf of the insurer.
6	Section 5. Section 31A-23-215 is amended to read:
7	31A-23-215. Agency licensees Reports Suspension, revocation, or limitation of
8	license.
9	(1) (a) Every two years[, on a date specified by rule,] each agency licensed as an agent,
10	managing general agent, broker, or consultant shall report to the commissioner[, in a form the
11	commissioner establishes by rule,] all natural person agents, brokers, or consultants acting in those
12	capacities for the organization.
13	(b) The report required by Subsection (1)(a) shall be made:
14	(i) on a date specified by rule; and
15	(ii) in a form the commissioner establishes by rule.
16	(2) An agency licensed under this chapter shall report to the commissioner promptly, in
17	the detail and form prescribed by rule, every change in the list of natural person agents, managing
18	general agents, brokers, or consultants authorized to act in those capacities for the agency.
19	(3) (a) An agency licensed under this chapter shall report to the commissioner the cause
20	of termination of a designated licensee's appointment. The information provided the commissioner
21	shall remain confidential.
22	(b) An agency is immune from civil action, civil penalty, or damages if the agency
23	complies in good faith with Subsection $(3)(a)$ in reporting to the commissioner the cause of
24	termination of licensees' appointments.
25	(c) Notwithstanding any other provision in this section, an agency is not immune from any
26	action or resulting penalty imposed on the reporting agency as a result of proceedings brought by
27	or on behalf of the department if the action is based on evidence other than the report submitted
28	in compliance with <u>this</u> Subsection (3).
29	(4) [Agencies] An agency licensed under this chapter may act in the capacities for which
30	it is licensed only through natural persons who are licensed under this chapter to act in the same
31	manner.

1	(5) [Agencies] An agency licensed under this chapter shall designate and report promptly
2	to the commissioner the name of at least one natural person who has authority to act on behalf of
3	the agency in all matters pertaining to compliance with this title and orders of the commissioner.
4	(6) [When] For purposes of this section, if a license is held by an agency, both the agency
5	itself and any [persons] natural person named on the license [shall, for purposes of this section, be]
6	are considered to be the holders of the license.
7	(7) If a <u>natural</u> person named on the agency license commits any act or fails to perform
8	any duty that is a ground for suspending, revoking, or limiting the [agency] natural person's
9	license, the commissioner may suspend, revoke, or limit the license of:
10	(a) that <u>natural</u> person [or of];
11	(b) the agency $[,]$; or
12	(c) both the natural person and the agency.
13	Section 6. Section 31A-29-111 is amended to read:
14	31A-29-111. Eligibility Limitations.
15	(1) (a) [Any person who has resided in this state for at least 12 consecutive months
16	immediately preceding the date of application or who is a dependent child 25 years of age or less
17	of such] Except as provided in Subsection (1)(b), a person is eligible for pool coverage if:
18	(i) (A) the person pays the established premium[, unless:]; and
19	(B) is a resident of this state; or
20	(ii) is a dependent child 25 years of age or less of a person described in Subsection
21	<u>(1)(a)(i).</u>
22	(b) Notwithstanding Subsection (1)(a), a person is not eligible for pool coverage if one of
23	the following conditions apply:
24	[(a)] (i) at the time of $[pool]$ application, the person is eligible for health care benefits
25	under Medicaid or Medicare, except as provided in Section 31A-29-112;
26	[(b)] (ii) the person has terminated coverage in the pool, unless:
27	[(i)] (A) 12 months have elapsed since the termination date; or
28	[(ii)] (B) the person demonstrates that continuous other coverage has been involuntarily
29	terminated for any reason other than nonpayment of premium;
30	[(c)] (iii) the pool has paid the maximum lifetime benefit to or on behalf of the person;
31	[(d)] (iv) the person is an inmate of a public institution;

1	[(e)] (v) the person is eligible for other public programs for which medical care is
2	provided;
3	[(f)] (vi) the person's health condition does not meet the criteria established under
4	Subsection (4); [or]
5	[(g)] (vii) the person is an eligible employee or a member of an employer group that offers
6	health insurance or a self-insurance arrangement to all its eligible employees or members[-]; or
7	(viii) at the time of application, the person:
8	(A) is not eligible for coverage that is subject to the Health Insurance Portability and
9	Accountability Act, P.L. 104-91, 110 Stat. 1962; and
10	(B) has not resided in Utah for at least 12 consecutive months preceding the date of
11	application.
12	(2) (a) If otherwise eligible under [Subsections (1)(a) through (1)(g)] Subsection (1), a
13	person whose health insurance coverage from a state health risk pool with similar coverage is
14	terminated because of nonresidency in another state may apply for coverage under the pool subject
15	to the conditions of Subsection (1)(b).
16	(b) If the coverage is applied for under Subsection (2)(a) within 31 days after the
17	termination and if premiums are paid for the entire coverage period under the pool, the effective
18	date of the pool's coverage shall be the date of termination of previous coverage.
19	(c) The waiting period of a person with a preexisting condition applying for coverage
20	under this chapter shall be waived if:
21	(i) the waiting period was satisfied under a similar plan from another state; and [that]
22	(ii) the other state's benefit limitation was not reached.
23	(3) If an eligible person applies for pool coverage within 30 days of being denied coverage
24	by an individual carrier, the effective date for pool coverage shall be set at the first day of the
25	month following the submission of the completed insurance application to the carrier.
26	(4) (a) The board shall establish and adjust, as necessary, underwriting criteria based on:
27	(i) health condition; and
28	(ii) expected claims so that [such] the expected claims are anticipated to remain within
29	available funding.
30	(b) The commissioner may contract with one or more providers under Title 63, Chapter
31	56, Utah Procurement Code, to develop underwriting criteria under Subsection (4)(a).

1	(c) If a person is denied coverage under the criteria established in Subsection (4)(a), the
2	pool shall issue a certificate to the applicant for coverage under Subsection 31A-30-108(3).
3	Section 7. Section 31A-30-108 is amended to read:
4	31A-30-108. Eligibility for small employer and individual market.
5	(1) (a) Small employer carriers shall accept residents for small group coverage as set forth
6	in the Health Insurance Portability and Accountability Act, P.L. 104-191, 110 Stat. 1962, Sec.
7	2711(a).
8	(b) Individual carriers shall accept residents for individual coverage pursuant to P.L.
9	104-191, 110 Stat. 1979, Sec. 2741(a)-(b) and Subsection (3).
10	(2) (a) Small employer carriers shall offer to accept all eligible employees and their
11	dependents at the same level of benefits under any health benefit plan provided to a small
12	employer.
13	(b) Small employer carriers may:
14	(i) request a small employer to submit a copy of its quarterly income tax withholdings to
15	determine whether the employees for whom coverage is provided or requested are bona fide
16	employees of the small employer; and
17	(ii) deny or terminate coverage if the small employer refuses to provide documentation
18	requested under Subsection (2)(b)(i).
19	(3) Except as provided in Subsection (5) and Section 31A-30-110, individual carriers shall
20	accept for coverage individuals to whom all of the following conditions apply:
21	(a) the individual is not covered or eligible for coverage, as an employee of an employer,
22	as a member of an association, or as a member of any other group under:
23	(i) a health benefit plan; or
24	(ii) a self-insured arrangement that provides coverage similar to that provided by a health
25	benefit plan as defined in Section 31A-30-103;
26	(b) the individual is not covered and is not eligible for coverage under any public health
27	benefits arrangement including the Medicare program established under Title XVIII or the
28	Medicaid program established under Title XIX of the Social Security Act, or any other act of
29	congress or law of this or any other state that provides benefits comparable to the benefits provided
30	under this part, including coverage under the Comprehensive Health Insurance Pool Act created
31	in Chapter 29;

1	(c) the individual is not covered or eligible for coverage under any Medicare supplement
2	policy, conversion option, continuation or extension under COBRA, or state extension unless the
3	maximum benefit has been reached;
4	(d) the individual has not terminated or declined coverage described in Subsection (a), (b),
5	or (c) within 93 days of application for coverage, unless the individual is eligible for individual
6	coverage under P.L. 104-191, 110 Stat. 1979, Sec. 2741(b), in which case, the requirement of this
7	Subsection (3)(d) does not apply; and
8	(e) the individual is certified as ineligible for the Health Insurance Pool if:
9	(i) the individual applies for coverage with the Comprehensive Health Insurance Pool
10	within 30 days after being rejected or refused coverage by the covered carrier and reapplies for
11	coverage with that covered carrier within 30 days after the date of issuance of a certificate under
12	Subsection $31A-29-111(4)[(b)](c);$ or
13	(ii) the individual applies for coverage with any individual carrier within 45 days after:
14	(A) notice of cancellation of coverage under Subsection 31A-29-115(1); or
15	(B) the date of issuance of a certificate under Subsection $31A-29-111(4)[(b)](c)$ if the
16	individual applied first for coverage with the Comprehensive Health Insurance Pool.
17	(4) (a) If coverage is obtained under Subsection (3)(e)(i) and the required premium is paid,
18	the effective date of coverage shall be the first day of the month following the individual's
19	submission of a completed insurance application to that covered carrier.
20	(b) If coverage is obtained under Subsection (3)(e)(ii) and the required premium is paid,
21	the effective date of coverage shall be the day following the:
22	(i) cancellation of coverage under Subsection 31A-29-115(1); or
23	(ii) submission of a completed insurance application to the Comprehensive Health
24	Insurance Pool.
25	(5) (a) An individual carrier is not required to accept individuals for coverage under
26	Subsection (3) if the carrier issues no new individual policies in the state after July 1, 1997.
27	(b) A carrier described in Subsection (5)(a) may not issue new individual policies in the
28	state for five years from July 1, 1997.
29	(c) Notwithstanding Subsection (5)(b), a carrier may request permission to issue new
30	policies after July 1, 1999, which may only be granted if:
31	(i) the carrier accepts uninsurables as is required of a carrier entering the market under

1	Subsection 31A-30-110; and
2	(ii) the commissioner finds that the carrier's issuance of new individual policies:
3	(A) is in the best interests of the state; and
4	(B) does not provide an unfair advantage to the carrier.
5	Section 8. Section 31A-31-108 is amended to read:
6	31A-31-108. Assessment of insurers.
7	(1) To implement [this chapter, Section 34A-2-110, and Section 76-6-521] the statutes
8	listed in Subsections (2)(a) through (d), the commissioner may assess each admitted insurer and
9	each nonadmitted insurer transacting insurance under Chapter 15, Parts 1 and 2, an annual fee as
10	follows:
11	(a) \$75 for an insurer with total premiums for Utah risks of \$1,000,000 or less;
12	(b) \$263 for an insurer with total premiums for Utah risks of less than \$2,500,000 but more
13	than \$1,000,000;
14	(c) \$563 for an insurer with total premiums for Utah risks of less than \$5,000,000 but more
15	than \$2,500,000;
16	(d) \$1,125 for an insurer with total premiums for Utah risks of less than \$10,000,000 but
17	more than \$5,000,000;
18	(e) \$4,500 for an insurer with total premiums for Utah risks of less than \$50,000,000 but
19	more than \$10,000,000; and
20	(f) \$11,250 for an insurer with total premiums for Utah risks of \$50,000,000 or more.
21	(2) All money received by the state under this section shall be deposited in the General
22	Fund as a nonlapsing dedicated credit of the Insurance Department for the purpose of providing
23	funds to pay for any costs and expenses incurred by the Insurance Department in the
24	administration, investigation, and enforcement of:
25	(a) this chapter $[,];$
26	(b) Section 34A-2-110[,];
27	(c) Section 41-6-149.5; and
28	(d) Section 76-6-521.
29	(3) As used in this section, "Utah risks" means insurance coverage on the lives, health, or
30	against the liability of persons residing in Utah, or on property located in Utah, other than property

31 temporarily in transit through Utah.

1	Section 9. Section 34A-2-110 is amended to read:
2	34A-2-110. Workers' compensation insurance fraud Elements Penalties
3	Notice.
4	(1) As used in this section:
5	(a) "Corporation" has the same meaning as in Subsection 76-2-201(3).
6	(b) "Intentionally" has the same meaning as in Subsection 76-2-103(1).
7	(c) "Knowingly" has the same meaning as in Subsection 76-2-103(2).
8	(d) "Person" has the same meaning as in Subsection 76-1-601(8).
9	(e) "Recklessly" has the same meaning as in Subsection 76-2-103(3).
10	(2) (a) Any person is guilty of workers' compensation insurance fraud if that person
11	intentionally, knowingly, or recklessly:
12	(i) devises any scheme or artifice to obtain workers' compensation insurance coverage,
13	disability compensation, medical benefits, goods, professional services, fees for professional
14	services, or anything of value under this chapter or Chapter 3, Utah Occupational Disease Act, by
15	means of false or fraudulent pretenses, representations, promises, or material omissions; and
16	(ii) communicates or causes a communication with another in furtherance of the scheme
17	or artifice.
18	(b) Workers' compensation insurance fraud under Subsection (2)(a) is punishable in the
19	manner prescribed by Section 76-10-1801 for communication fraud.
20	(3) A corporation or association is guilty of the offense of workers' compensation
21	insurance fraud under the same conditions as those set forth in Section 76-2-204.
22	(4) The determination of the degree of any offense under Subsection (2) shall be measured
23	by the total value of all property, money, or other things obtained or sought to be obtained by the
24	scheme or artifice described in Subsection (2), except as provided in Subsection 76-10-1801(1)(e).
25	(5) Reliance on the part of any person is not a necessary element of the offense described
26	in Subsection (2).
27	(6) An intent on the part of the perpetrator of any offense described in Subsection (2) to
28	permanently deprive any person of property, money, or anything of value is not a necessary
29	element of this offense.
30	(7) An insurer or self-insured employer giving written notice in accordance with
31	Subsection (10) that workers' compensation insurance fraud is a crime is not a necessary element

1 of the offense described in Subsection (2).

(8) A scheme or artifice to obtain workers' compensation insurance coverage includes any
scheme or artifice to make or cause to be made any false written or oral statement or business
reorganization, incorporation, or change in ownership intended to obtain insurance coverage as
mandated by this chapter or Chapter 3, Utah Occupational Disease Act, at rates that do not reflect
the risk, industry, employer, or class codes actually covered by the policy.

7 (9) A scheme or artifice to obtain disability compensation includes a scheme or artifice
8 to collect or make a claim for temporary disability compensation as provided in Section 34A-2-410
9 while working for gain.

10 (10) (a) Each insurer or self-insured employer who, in connection with this chapter or 11 Chapter 3, Utah Occupational Disease Act, prints, reproduces, or furnishes a form to any person 12 upon which that person applies for insurance coverage, reports payroll, makes a claim by reason 13 of accident, injury, death, disease, or other claimed loss, or otherwise reports or gives notice to the 14 insurer or self-insured employer, shall cause to be printed or displayed in comparative prominence with other content the statement: "Any person who knowingly presents false or fraudulent 15 16 underwriting information, files or causes to be filed a false or fraudulent claim for disability 17 compensation or medical benefits, or submits a false or fraudulent report or billing for health care fees or other professional services is guilty of a crime and may be subject to fines and confinement 18 19 in state prison."

(b) Each insurer or self-insured employer who issues a check, warrant, or other financial
instrument in payment of compensation issued under this chapter or Chapter 3, Utah Occupational
Disease Act, shall cause to be printed or displayed in comparative prominence above the area for
endorsement [the] <u>a</u> statement <u>substantially similar to the following</u>: "Workers' compensation
insurance fraud is a crime punishable by Utah law."

25 (c) (i) [The provisions of] Subsections (10)(a) and (b) apply only to the legal obligations
26 of an insurer or a self-insured employer.

(ii) A person who violates Subsection (2) is guilty of workers' compensation insurance
fraud, and the failure of an insurer or a self-insured employer to fully comply with [the provisions
of] Subsections (10)(a) and (b) may not be:

- 30 (A) a defense to violating Subsection (2); or
- 31 (B) grounds for suppressing evidence.

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- (11) In the absence of malice, a person, employer, insurer, or governmental entity that
 reports a suspected fraudulent act relating to a workers' compensation insurance policy or claim
 is not subject to any civil liability for libel, slander, or any other relevant cause of action.
 (12) In any action involving workers' compensation, this section supersedes Title 31A,
- 5 Chapter 31, Insurance Fraud Act.

Legislative Review Note as of 11-13-97 3:29 PM

A limited legal review of this bill raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel

Committee Note

The Business, Labor, and Economic Development Interim Committee recommended this bill.

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