

**Senator L. Steven Poulton** proposes to substitute the following bill:

**INSURANCE LAW CHANGES**

1998 GENERAL SESSION

STATE OF UTAH

**Sponsor: L. Steven Poulton**

AN ACT RELATING TO INSURANCE; ALLOWING REPLACEMENT OF CERTAIN POLICIES OR ANNUITIES; AMENDING DEFINITIONS; AMENDING PROVISIONS FOR LICENSING AGENTS; REQUIRING AN INSURANCE COMPANY FILE A PLAN IF IT INTENDS TO WITHDRAW FROM THE UTAH MARKET; MODIFYING FEE PROVISIONS; REPLACING EXISTING HEALTH BENEFITS FOR AN ADOPTED CHILD WITH AN INDEMNITY BENEFIT; MAKING CONVERSION COVERAGE BENEFITS THE SAME AS BASIC COVERAGE OFFERED THROUGH OPEN ENROLLMENT; EXPANDING HIGH RISK POOL COVERAGE FOR PREEXISTING CONDITIONS; CLARIFYING PERMISSIBLE SURCHARGES TO SMALL GROUPS WHO CHANGE HEALTH COVERAGE; REQUIRING AN INSURED GIVE NOTICE OF PREVIOUS HEALTH INSURANCE FOR COVERAGE OF PREEXISTING CONDITIONS; AMENDING ELIGIBILITY FOR HEALTH INSURANCE POOL; EXPANDING USE OF CERTAIN FEES; ADDRESSING MARKETING ISSUES; AMENDING WORKERS' COMPENSATION FRAUD PROVISIONS; AND MAKING TECHNICAL CORRECTIONS; AND REPEALING PROVISIONS ON CONVERSION COVERAGE.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

**31A-1-104**, as last amended by Chapter 20, Laws of Utah 1995

**31A-1-301**, as last amended by Chapter 185, Laws of Utah 1997

**31A-3-103**, as last amended by Chapter 10, Laws of Utah 1997

**31A-8-105**, as last amended by Chapter 261, Laws of Utah 1989

**\*SB0076S4\***

- 1           **31A-22-423**, as last amended by Chapter 261, Laws of Utah 1989
- 2           **31A-22-610.1**, as enacted by Chapter 206, Laws of Utah 1996
- 3           **31A-22-703**, as last amended by Chapter 230, Laws of Utah 1992
- 4           **31A-22-711**, as enacted by Chapter 242, Laws of Utah 1985
- 5           **31A-22-714**, as last amended by Chapters 102 and 344, Laws of Utah 1995
- 6           **31A-23-102**, as last amended by Chapter 9, Laws of Utah 1996, Second Special Session
- 7           **31A-23-204**, as last amended by Chapter 316, Laws of Utah 1994
- 8           **31A-23-215**, as last amended by Chapter 9, Laws of Utah 1996, Second Special Session
- 9           **31A-29-111**, as last amended by Chapter 265, Laws of Utah 1997
- 10          **31A-29-113**, as enacted by Chapter 232, Laws of Utah 1990
- 11          **31A-30-106.7**, as enacted by Chapter 265, Laws of Utah 1997
- 12          **31A-30-107**, as last amended by Chapter 265, Laws of Utah 1997
- 13          **31A-30-108**, as last amended by Chapter 265, Laws of Utah 1997
- 14          **31A-31-108**, as last amended by Chapters 185 and 375, Laws of Utah 1997
- 15          **34A-2-110**, as last amended by Chapter 185 and renumbered and amended by Chapter 375,
- 16   Laws of Utah 1997

17   ENACTS:

- 18           **31A-4-115**, Utah Code Annotated 1953
- 19           **31A-23-315**, Utah Code Annotated 1953

20   REPEALS AND REENACTS:

- 21           **31A-22-708**, as enacted by Chapter 242, Laws of Utah 1985

22   REPEALS:

- 23           **31A-22-706**, as enacted by Chapter 242, Laws of Utah 1985
- 24           **31A-22-707**, as last amended by Chapter 20, Laws of Utah 1995

25   *Be it enacted by the Legislature of the state of Utah:*

26           Section 1. Section **31A-1-104** is amended to read:

27           **31A-1-104. Authorization to do insurance business.**

28           [No] A person may not engage in the following without complying with this [code] title:

- 29           (1) do an insurance business as defined under Subsection 31A-1-301 (44);
- 30           (2) act as an insurance agent, broker, or consultant as defined under Section [31A-23-102]
- 31   31A-1-301; or

1 (3) engage in insurance adjusting as defined under Section 31A-26-102.

2 Section 2. Section **31A-1-301** is amended to read:

3 **31A-1-301. Definitions.**

4 As used in this title, unless otherwise specified:

5 (0.5) "Administrator" is defined in Subsection (77).

6 (1) "Adult" means a natural person who has attained the age of at least 18 years.

7 (2) "Affiliate" means any person who controls, is controlled by, or is under common  
8 control with, another person. A corporation is an affiliate of another corporation, regardless of  
9 ownership, if substantially the same group of natural persons manages the corporations.

10 (3) "Alien insurer" means an insurer domiciled outside the United States.

11 (4) "Annuities" means all agreements to make periodical payments for a period certain or  
12 over the lifetime of one or more natural persons if the making or continuance of all or some of the  
13 series of the payments, or the amount of the payment, is dependent upon the continuance of human  
14 life.

15 (5) "Articles" or "articles of incorporation" means the original articles, special laws,  
16 charters, amendments, restated articles, articles of merger or consolidation, trust instruments, and  
17 other constitutive documents for trusts and other entities that are not corporations, and  
18 amendments to any of these. Refer also to "bylaws" in this section and Section 31A-5-203.

19 (6) "Bail bond insurance" means a guarantee that a person will attend court when required,  
20 or will obey the orders or judgment of the court, as a condition to the release of that person from  
21 confinement.

22 (7) "Binder" is defined in Section 31A-21-102.

23 (8) "Board," "board of trustees," or "board of directors" means the group of persons with  
24 responsibility over, or management of, a corporation, however designated. Refer also to "trustee"  
25 in this section.

26 (9) "Business of insurance" is defined in Subsection (44).

27 (10) "Business plan" means the information required to be supplied to the commissioner  
28 under Subsections 31A-5-204(2)(i) and (j), including the information required when these  
29 subsections are applicable by reference under Section 31A-7-201, Section 31A-8-205, or  
30 Subsection 31A-9-205(2).

31 (11) "Bylaws" means the rules adopted for the regulation or management of a corporation's

1 affairs, however designated. It includes comparable rules for trusts and other entities that are not  
2 corporations. Refer also to "articles" and Section 31A-5-203.

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

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

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

7 (14.5) "Claim," unless the context otherwise requires, means a request or demand on an  
8 insurer for payment of benefits according to the terms of an insurance policy.

9 (14.6) "Claims-made coverage" means any insurance contract or provision limiting  
10 coverage under a policy insuring against legal liability to claims that are first made against the  
11 insured while the policy is in force.

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

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

24 (17) (a) "Corporation" means insurance corporation, except where referring under Chapter  
25 23, Insurance Marketing - Licensing Agents, Brokers and Consultants, and Reinsurance  
26 Intermediaries, and Chapter 26, Insurance Adjusters, to corporations doing business as insurance  
27 agents, brokers, consultants, or adjusters, or where referring under Chapter 16, Insurance Holding  
28 Companies, to a noninsurer which is part of a holding company system.

29 (b) "Stock corporation" means stock insurance corporation.

30 (c) "Mutual" or "mutual corporation" means mutual insurance corporation.

31 (18) "Credit disability insurance" means insurance on a debtor to provide indemnity for

1 payments coming due on a specific loan or other credit transaction while the debtor is disabled.

2 Refer also to Subsection 31A-22-802(1).

3 (19) "Credit insurance" means surety insurance under which mortgagees and other  
4 creditors are indemnified against losses caused by the default of debtors.

5 (20) "Credit life insurance" means insurance on the life of a debtor in connection with a  
6 loan or other credit transaction. Refer also to Subsection 31A-22-802(2).

7 (21) "Creditor" means a person, including an insured, having any claim, whether matured,  
8 unmatured, liquidated, unliquidated, secured, unsecured, absolute, fixed, or contingent.

9 (22) "Deemer clause" means a provision under this title under which upon the occurrence  
10 of a condition precedent, the commissioner is deemed to have taken a specific action. If the statute  
11 so provides, the condition precedent may be the commissioner's failure to take a specific action.  
12 Refer also to Section 31A-2-302.

13 (23) "Degree of relationship" means the number of steps between two persons determined  
14 by counting the generations separating one person from a common ancestor and then counting the  
15 generations to the other person.

16 (24) "Department" means the Insurance Department.

17 (25) "Director" means a member of the board of directors of a corporation.

18 (26) "Disability insurance" means insurance written to indemnify for losses and expenses  
19 resulting from accident or sickness, to provide payments to replace income lost from accident or  
20 sickness, and to pay for services resulting directly from accident or sickness, including medical,  
21 surgical, hospital, and other ancillary expenses.

22 (27) "Domestic insurer" means an insurer organized under the laws of this state.

23 (28) "Domiciliary state" means the state in which an insurer is incorporated or organized  
24 or, in the case of an alien insurer, the state of entry into the United States.

25 (29) "Employee benefits" means one or more benefits or services provided employees or  
26 their dependents.

27 (30) "Employee welfare fund" means a fund established or maintained by one or more  
28 employers, one or more labor organizations, or a combination of employers and labor  
29 organizations, whether directly or through trustees. This fund is to provide employee benefits paid  
30 or contracted to be paid, other than income from investments of the fund, by or on behalf of an  
31 employer doing business in this state or for the benefit of any person employed in this state. It

1 includes plans funded or subsidized by user fees or tax revenues.

2 (31) "Excludes" is not exhaustive and does not mean that other things are not also  
3 excluded. The items listed are representative examples for use in interpretation of this title.

4 (31.5) "Fidelity insurance" means insurance guaranteeing the fidelity of persons holding  
5 positions of public or private trust.

6 (31.7) "First party insurance" means an insurance policy or contract in which the insurer  
7 agrees to pay claims submitted to it by the insured for the insured's losses.

8 (32) "Foreign insurer" means an insurer domiciled outside of this state, including an alien  
9 insurer.

10 (33) "Form" means a policy, certificate, or application prepared for general use. It does  
11 not include one specially prepared for use in an individual case. Refer also to "policy" in this  
12 section.

13 (34) "Franchise insurance" means individual insurance policies provided through a mass  
14 marketing arrangement involving a defined class of persons related in some way other than  
15 through the purchase of insurance.

16 (35) "Health care insurance" or "health insurance" means disability insurance providing  
17 benefits solely of medical, surgical, hospital, or other ancillary services or payment of medical,  
18 surgical, hospital, or other ancillary expenses incurred. "Health care insurance" or "health  
19 insurance" does not include disability insurance providing benefits for:

20 (a) replacement of income;

21 (b) short-term accident;

22 (c) fixed indemnity;

23 (d) credit disability;

24 (e) supplements to liability;

25 (f) workers' compensation;

26 (g) automobile medical payment;

27 (h) no-fault automobile;

28 (i) equivalent self-insurance; or

29 (j) any type of disability insurance coverage that is a part of or attached to another type of  
30 policy.

31 (35.5) "Indemnity" means the payment of an amount to offset all or part of an insured loss.

1 (36) "Independent adjuster" means an insurance adjuster required to be licensed under  
2 Section 31A-26-201 who engages in insurance adjusting as a representative of insurers. Refer also  
3 to Section 31A-26-102.

4 (37) "Independently procured insurance" means insurance procured under Section  
5 31A-15-104.

6 (37.5) "Individual" means a natural person.

7 (38) "Inland marine insurance" includes insurance covering:

8 (a) property in transit on or over land;

9 (b) property in transit over water by means other than boat or ship;

10 (c) bailee liability;

11 (d) fixed transportation property such as bridges, electric transmission systems, radio and  
12 television transmission towers and tunnels; and

13 (e) personal and commercial property floaters.

14 (39) "Insolvency" means that:

15 (a) an insurer is unable to pay its debts or meet its obligations as they mature;

16 (b) an insurer's total adjusted capital is less than the insurer's mandatory control level RBC  
17 under Subsection 31A-17-601(7)(c); or

18 (c) an insurer is determined to be hazardous under this title.

19 (40) "Insurance" means any arrangement, contract, or plan for the transfer of a risk or risks  
20 from one or more persons to one or more other persons, or any arrangement, contract, or plan for  
21 the distribution of a risk or risks among a group of persons that includes the person seeking to  
22 distribute his risk. "Insurance" includes:

23 (a) risk distributing arrangements providing for compensation or replacement for damages  
24 or loss through the provision of services or benefits in kind;

25 (b) contracts of guaranty or suretyship entered into by the guarantor or surety as a business  
26 and not as merely incidental to a business transaction; and

27 (c) plans in which the risk does not rest upon the person who makes the arrangements, but  
28 with a class of persons who have agreed to share it.

29 (41) "Insurance adjuster" means a person who directs the investigation, negotiation, or  
30 settlement of a claim under an insurance policy other than life insurance or an annuity, on behalf  
31 of an insurer, policyholder, or a claimant under an insurance policy. Refer also to Section

1 31A-26-102.

2 (41.5) "Interinsurance exchange" is defined in Subsection (69).

3 (42) "Insurance agent" or "agent" means a person who represents insurers in soliciting,  
4 negotiating, or placing insurance. Refer to Subsection 31A-23-102[(3)] (2) for exceptions to this  
5 definition.

6 (43) "Insurance broker" or "broker" means a person who acts in procuring insurance on  
7 behalf of an applicant for insurance or an insured, and does not act on behalf of the insurer except  
8 by collecting premiums or performing other ministerial acts. Refer [also] to Subsection  
9 31A-23-102[(3)] (2) for exceptions to this definition.

10 (44) "Insurance business" or "business of insurance" includes:

11 (a) providing health care insurance, as defined in Subsection (35), by organizations that  
12 are or should be licensed under this title;

13 (b) providing benefits to employees in the event of contingencies not within the control  
14 of the employees, in which the employees are entitled to the benefits as a right, which benefits may  
15 be provided either by single employers or by multiple employer groups through trusts,  
16 associations, or other entities;

17 (c) providing annuities, including those issued in return for gifts, except those provided  
18 by persons specified in Subsections 31A-22-1305(2) and (3);

19 (d) providing the characteristic services of motor clubs as outlined in Subsection (56);

20 (e) providing other persons with insurance as defined in Subsection (40);

21 (f) making as insurer, guarantor, or surety, or proposing to make as insurer, guarantor, or  
22 surety, any contract or policy of title insurance;

23 (g) transacting or proposing to transact any phase of title insurance, including solicitation,  
24 negotiation preliminary to execution, execution of a contract of title insurance, insuring, and  
25 transacting matters subsequent to the execution of the contract and arising out of it, including  
26 reinsurance; and

27 (h) doing, or proposing to do, any business in substance equivalent to Subsections (44)(a)  
28 through (g) in a manner designed to evade the provisions of this title.

29 (45) "Insurance consultant" or "consultant" means a person who advises other persons  
30 about insurance needs and coverages, is compensated by the person advised on a basis not directly  
31 related to the insurance placed, and is not compensated directly or indirectly by an insurer, agent,



1 or broker for advice given. Refer [also] to Subsection 31A-23-102[~~(3)~~] (2) for exceptions to this  
2 definition.

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

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

9 (48) (a) "Insurer" means any person doing an insurance business as a principal, including  
10 fraternal benefit societies, issuers of gift annuities other than those specified in Subsections  
11 31A-22-1305(2) and (3), motor clubs, employee welfare plans, and any person purporting or  
12 intending to do an insurance business as a principal on his own account. It does not include a  
13 governmental entity, as defined in Subsection 63-30-2(3), to the extent it is engaged in the  
14 activities described in Section 31A-12-107.

15 (b) "Admitted insurer" is defined in Subsection (80)(b).

16 (c) "Alien insurer" is defined in Subsection (3).

17 (d) "Authorized insurer" is defined in Subsection (80)(b).

18 (e) "Domestic insurer" is defined in Subsection (27).

19 (f) "Foreign insurer" is defined in Subsection (32).

20 (g) "Nonadmitted insurer" is defined in Subsection (80)(a).

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

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

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

27 (i) for death, injury, or disability of any human being, or for damage to property, exclusive  
28 of the coverages under Subsection (53) for medical malpractice insurance, Subsection (66) for  
29 professional liability insurance, and Subsection (83) for workers' compensation insurance;

30 (ii) for medical, hospital, surgical, and funeral benefits to persons other than the insured  
31 who are injured, irrespective of legal liability of the insured, when issued with or supplemental to

1 insurance against legal liability for the death, injury, or disability of human beings, exclusive of  
2 the coverages under Subsection (53) for medical malpractice insurance, Subsection (66) for  
3 professional liability insurance, and Subsection (83) for workers' compensation insurance;

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

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

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

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

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

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

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

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

28 (55) "Minimum capital" or "minimum required capital" means the capital that must be  
29 constantly maintained by a stock insurance corporation as required by statute. Refer also to  
30 "permanent surplus" under Subsection (76)(a) and Sections 31A-5-211, 31A-8-209, and  
31 31A-9-209.

1 (56) "Motor club" means a person licensed under Chapter 5, Domestic Stock and Mutual  
2 Insurance Corporations, Chapter 11, Motor Clubs, or Chapter 14, Foreign Insurers, that promises  
3 for an advance consideration to provide legal services under Subsection 31A-11-102(1)(b), bail  
4 services under Subsection 31A-11-102(1)(c), trip reimbursement, towing services, emergency road  
5 services, stolen automobile services, a combination of these services, or any other services given  
6 in Subsections 31A-11-102(1)(b) through (f) for a stated period of time.

7 (57) "Mutual" means mutual insurance corporation.

8 (57.5) "Nonparticipating" means a plan of insurance under which the insured is not entitled  
9 to receive dividends representing shares of the surplus of the insurer.

10 (58) "Ocean marine insurance" means insurance against loss of or damage to:

11 (a) ships or hulls of ships;

12 (b) goods, freight, cargoes, merchandise, effects, disbursements, profits, moneys,  
13 securities, choses in action, evidences of debt, valuable papers, bottomry, respondentia interests,  
14 or other cargoes in or awaiting transit over the oceans or inland waterways;

15 (c) earnings such as freight, passage money, commissions, or profits derived from  
16 transporting goods or people upon or across the oceans or inland waterways; or

17 (d) a vessel owner or operator as a result of liability to employees, passengers, bailors,  
18 owners of other vessels, owners of fixed objects, customs or other authorities, or other persons in  
19 connection with maritime activity.

20 (59) "Order" means an order of the commissioner.

21 (59.5) "Participating" means a plan of insurance under which the insured is entitled to  
22 receive dividends representing shares of the surplus of the insurer.

23 (60) "Person" includes an individual, partnership, corporation, incorporated or  
24 unincorporated association, joint stock company, trust, reciprocal, syndicate, or any similar entity  
25 or combination of entities acting in concert.

26 (61) (a) "Policy" means any document, including attached endorsements and riders,  
27 purporting to be an enforceable contract, which memorializes in writing some or all of the terms  
28 of an insurance contract. Service contracts issued by motor clubs under Chapter 11, Motor Clubs,  
29 and by corporations licensed under Chapter 7, Nonprofit Health Service Insurance Corporations,  
30 or Chapter 8, Health Maintenance Organizations and Limited Health Plans, are policies. A  
31 certificate under a group insurance contract is not a policy. A document which does not purport

1 to have legal effect is not a policy.

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

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

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

11 (63) "Premium" means the monetary consideration for an insurance policy, and includes  
12 assessments, membership fees, required contributions, or monetary consideration, however  
13 designated. Consideration paid to third party administrators for their services is not "premium,"  
14 though amounts paid by third party administrators to insurers for insurance on the risks  
15 administered by the third party administrators are "premium."

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

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

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

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

26 (67.5) "Public agency insurance mutual" means any entity formed by joint venture or  
27 interlocal cooperation agreement by two or more political subdivisions or public agencies of the  
28 state for the purpose of providing insurance coverage for the political subdivisions or public  
29 agencies. Any public agency insurance mutual created under this title and Title 11, Chapter 13,  
30 Interlocal Cooperation Act, is considered to be a governmental entity and political subdivision of  
31 the state with all of the rights, privileges, and immunities of a governmental entity or political

1 subdivision of the state.

2 (68) (a) Except as provided in Subsection (68)(b), "rate service organization" means any  
3 person who assists insurers in rate making or filing by:

- 4 (i) collecting, compiling, and furnishing loss or expense statistics;
- 5 (ii) recommending, making, or filing rates or supplementary rate information; or
- 6 (iii) advising about rate questions, except as an attorney giving legal advice. Refer also  
7 to Subsection 31A-19-102(2).

8 (b) "Rate service organization" does not mean an employee of an insurer, a single insurer  
9 or group of insurers under common control, a joint underwriting group, or a natural person serving  
10 as an actuarial or legal consultant.

11 (69) "Reciprocal" or "interinsurance exchange" means any unincorporated association of  
12 persons operating through an attorney-in-fact common to all of them and exchanging insurance  
13 contracts with one another that provide insurance coverage on each other.

14 (70) "Reinsurance" means an insurance transaction where an insurer, for consideration,  
15 transfers any portion of the risk it has assumed to another insurer. In referring to reinsurance  
16 transactions, this title sometimes refers to the insurer transferring the risk as the "ceding insurer,"  
17 and to the insurer assuming the risk as the "assuming insurer" or the "assuming reinsurer."

18 (70.3) "Residential dwelling liability insurance" means insurance against liability resulting  
19 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.

21 (71) "Retrocession" means reinsurance with another insurer of a liability assumed under  
22 a reinsurance contract. A reinsurer "retrocedes" when it reinsures with another insurer part of a  
23 liability assumed under a reinsurance contract.

24 (72) (a) "Security" means any:

- 25 (i) note;
- 26 (ii) stock;
- 27 (iii) bond;
- 28 (iv) debenture;
- 29 (v) evidence of indebtedness;
- 30 (vi) certificate of interest or participation in any profit-sharing agreement;
- 31 (vii) collateral-trust certificate;

- 1 (viii) preorganization certificate or subscription;
- 2 (ix) transferable share;
- 3 (x) investment contract;
- 4 (xi) voting trust certificate;
- 5 (xii) certificate of deposit for a security;
- 6 (xiii) certificate of interest of participation in an oil, gas, or mining title or lease or in
- 7 payments out of production under such a title or lease;
- 8 (xiv) commodity contract or commodity option;
- 9 (xv) any certificate of interest or participation in, temporary or interim certificate for,
- 10 receipt for, guarantee of, or warrant or right to subscribe to or purchase any of the items listed in
- 11 Subsections (72)(a)(i) through (xiv); or
- 12 (xvi) any other interest or instrument commonly known as a security.

13 (b) "Security" does not include:

- 14 (i) any insurance or endowment policy or annuity contract under which an insurance
- 15 company promises to pay money in a specific lump sum or periodically for life or some other
- 16 specified period; or
- 17 (ii) a burial certificate or burial contract.

18 (73) "Self-insurance" means any arrangement under which a person provides for spreading

19 its own risks by a systematic plan.

20 (a) Except as provided in this subsection, self-insurance does not include an arrangement

21 under which a number of persons spread their risks among themselves.

22 (b) Self-insurance does include an arrangement by which a governmental entity, as defined

23 in Section 63-30-2, undertakes to indemnify its employees for liability arising out of the

24 employees' employment.

25 (c) Self-insurance does include an arrangement by which a person with a managed

26 program of self-insurance and risk management undertakes to indemnify its affiliates, subsidiaries,

27 directors, officers, or employees for liability or risk which is related to the relationship or

28 employment. Self-insurance does not include any arrangement with independent contractors.

29 (74) (a) "Subsidiary" of a person means an affiliate controlled by that person either directly

30 or indirectly through one or more affiliates or intermediaries.

31 (b) "Wholly owned subsidiary" of a person is a subsidiary of which all of the voting shares

1 are owned by that person either alone or with its affiliates, except for the minimum number of  
2 shares the law of the subsidiary's domicile requires to be owned by directors or others.

3 (75) Subject to Subsection (40)(b), "surety insurance" includes:

4 (a) a guarantee against loss or damage resulting from failure of principals to pay or  
5 perform their obligations to a creditor or other obligee;

6 (b) bail bond insurance; and

7 (c) fidelity insurance.

8 (76) (a) "Surplus" means the excess of assets over the sum of paid-in capital and liabilities.

9 (b) "Permanent surplus" means the surplus of a mutual insurer that has been designated  
10 by the insurer as permanent. Sections 31A-5-211, 31A-7-201, 31A-8-209, 31A-9-209, and  
11 31A-14-209 require that mutuals doing business in this state maintain specified minimum levels  
12 of permanent surplus. Except for assessable mutuals, the minimum permanent surplus requirement  
13 is essentially the same as the minimum required capital requirement that applies to stock insurers.  
14 Refer also to Subsection (55) on "minimum capital."

15 (c) "Excess surplus" means:

16 (i) for life or disability insurers, as defined in Subsection 31A-17-601(3), and property and  
17 casualty insurers, as defined in Subsection 31A-17-601(4), the lesser of:

18 (A) that amount of an insurer's total adjusted capital, as defined in Subsection  
19 ~~[31A-1-301]~~(78.5), that exceeds the product of 2.5 and the sum of the insurer's minimum capital  
20 or permanent surplus required under Section 31A-5-211, 31A-9-209, or 31A-14-205; or

21 (B) that amount of an insurer's total adjusted capital, as defined in Subsection  
22 ~~[31A-1-301]~~(78.5), that exceeds the product of 3.0 and the authorized control level RBC as defined  
23 in Subsection 31A-17-601(7)(a); and

24 (ii) for monoline mortgage guaranty insurers, financial guaranty insurers, and title insurers,  
25 that amount of an insurer's paid-in-capital and surplus that exceeds the product of 1.5 and the  
26 insurer's total adjusted capital required by Subsection 31A-17-609(1).

27 (77) "Third party administrator" or "administrator" means any person who collects charges  
28 or premiums from, or who, for consideration, adjusts or settles claims of residents of the state in  
29 connection with life or disability insurance coverage, annuities, or service insurance coverage,  
30 except:

31 (a) a union on behalf of its members;

1 (b) a person exempt as a trust under Section 514 of the federal Employee Retirement  
2 Income Security Act of 1974;

3 (c) an employer on behalf of his employees or the employees of one or more of the  
4 subsidiary or affiliated corporations of the employer;

5 (d) an insurer licensed under Chapter 5, 7, 8, 9, or 14, but only with respect to insurance  
6 issued by the insurer; or

7 (e) a person licensed or exempt from licensing under Chapter 23 or 26 whose activities are  
8 limited to those authorized under the license the person holds or for which the person is exempt.

9 Refer also to Section 31A-25-101.

10 (78) "Title insurance" means the insuring, guaranteeing, or indemnifying of owners of real  
11 or personal property or the holders of liens or encumbrances on that property, or others interested  
12 in the property against loss or damage suffered by reason of liens or encumbrances upon, defects  
13 in, or the unmarketability of the title to the property, or invalidity or unenforceability of any liens  
14 or encumbrances on the property.

15 (78.5) "Total adjusted capital" means the sum of an insurer's statutory capital and surplus  
16 as determined in accordance with:

17 (a) the statutory accounting applicable to the annual financial statements required to be  
18 filed under Section 31A-4-113; and

19 (b) any other items provided by the RBC instructions, as RBC instructions is defined in  
20 Subsection 31A-17-601(6).

21 (79) (a) "Trustee" means "director" when referring to the board of directors of a  
22 corporation.

23 (b) "Trustee," when used in reference to an employee welfare fund, means an individual,  
24 firm, association, organization, joint stock company, or corporation, whether acting individually  
25 or jointly and whether designated by that name or any other, that is charged with or has the overall  
26 management of an employee welfare fund.

27 (80) (a) "Unauthorized insurer," "unadmitted insurer," or "nonadmitted insurer" means an  
28 insurer not holding a valid certificate of authority to do an insurance business in this state, or an  
29 insurer transacting business not authorized by a valid certificate.

30 (b) "Admitted insurer" or "authorized insurer" means an insurer holding a valid certificate  
31 of authority to do an insurance business in this state and transacting business as authorized by a



1 valid certificate.

2 (81) "Vehicle liability insurance" means insurance against liability resulting from or  
3 incident to ownership, maintenance, or use of any land vehicle or aircraft, exclusive of vehicle  
4 comprehensive and vehicle physical damage coverages under Subsection (67).

5 (82) "Voting security" means a security with voting rights, and includes any security  
6 convertible into a security with a voting right associated with it.

7 (83) "Workers' compensation insurance" means:

8 (a) insurance for indemnification of employers against liability for compensation:

9 (i) based upon compensable accidental injuries; and

10 (ii) based on occupational disease disability;

11 (b) employer's liability insurance incidental to workers' compensation insurance and  
12 written in connection with it; and

13 (c) insurance assuring to the persons entitled to workers' compensation benefits the  
14 compensation provided by law.

15 Section 3. Section **31A-3-103** is amended to read:

16 **31A-3-103. Fees.**

17 (1) The fees charged by the department shall be set [by the Legislature as part of the  
18 appropriation process] in accordance with Section 63-38-3.2.

19 [~~(2) As part of his annual budget request, the commissioner shall recommend any fee  
20 schedule changes to conform the fees to the standards under Subsection (4). Amendments to the  
21 fees charged by the department shall be made by the Legislature at the time it sets the department's  
22 annual appropriation. The fee schedule approved by the Legislature does not lapse at the time of  
23 each annual appropriation, but continues in force until amended by the Legislature.]~~

24 [(3)] (2) The commissioner shall separately publish the schedule of fees approved by the  
25 Legislature and make it available upon request for \$1 per copy. This fee schedule shall also be  
26 included in any compilation of rules promulgated by the commissioner.

27 [(4)] (3) (a) Fees shall be set and collected for services provided by the department.

28 "Services" include issuing and renewing licenses and certificates of authority, filing policy forms,  
29 reporting agent appointments and terminations, filing annual statements, and other functions that  
30 are reasonable and necessary to enable the commissioner to perform the duties imposed by the  
31 Insurance Code.

1           ~~[(b) The fees shall be sufficient to provide adequate funds to ensure the payment of~~  
2 ~~expenses under Subsection 31A-3-101(1). The fees may not be excessive. The fees are excessive~~  
3 ~~and shall be equitably reduced if the Insurance Department collects more than 120% of its annual~~  
4 ~~appropriation.]~~

5           ~~[(c)]~~ (b) Fees related to the renewal of licenses may be imposed no more frequently than  
6 once each year.

7           ~~[(5)]~~ (4) The commissioner shall, by rule, establish the deadlines for payment of each of  
8 the various fees.

9           Section 4. Section **31A-4-115** is enacted to read:

10           **31A-4-115. Plan of orderly withdrawal.**

11           (1) When an insurer intends to withdraw from writing a line of insurance in this state or  
12 to reduce its total annual premium volume by 75% or more, it shall file with the commissioner a  
13 plan of orderly withdrawal.

14           (2) An insurer's plan of orderly withdrawal shall:

15           (a) indicate the date the insurer intends to begin and complete its withdrawal plan; and

16           (b) include provisions for:

17           (i) meeting the insurer's contractual obligations;

18           (ii) providing services to its Utah policyholders and claimants; and

19           (iii) meeting any applicable statutory obligations.

20           (3) The commissioner shall approve a plan of orderly withdrawal if it adequately  
21 demonstrates that the insurer will:

22           (a) protect the interests of the people of the state;

23           (b) meet its contractual obligations;

24           (c) provide service to its Utah policyholders and claimants; and

25           (d) meet any applicable statutory obligations.

26           (4) The provisions of Section 31A-2-302 govern the commissioner's approval or  
27 disapproval of a plan for orderly withdrawal.

28           (5) The commissioner may require an insurer to increase the deposit maintained in  
29 accordance with Section 31A-4-105 or Section 31A-4-105.5 and place the deposit in trust in the  
30 name of the commissioner upon finding, after an adjudicative proceeding that:

31           (a) there is reasonable cause to conclude that the interests of the people of the state are best

1 served by such action; and

2 (b) the insurer:

3 (i) has filed a plan of orderly withdrawal; or

4 (ii) intends to withdraw from writing a line of insurance in this state or to reduce its total  
5 annual premium volume by 75% or more.

6 (6) An insurer that withdraws from writing insurance in this state or that reduces its total  
7 annual premium volume by 75% or more in any year without having submitted a plan or receiving  
8 the commissioner's approval is subject to the civil penalties under Section 31A-2-308.

9 (7) An insurer that withdraws from writing all lines of insurance in this state may not  
10 resume writing insurance in this state for five years without:

11 (a) the approval of the commissioner; and

12 (b) complying with Subsection 31A-30-109(5), if applicable.

13 (8) The commissioner shall adopt rules necessary to implement the provisions of this  
14 section.

15 Section 5. Section **31A-8-105** is amended to read:

16 **31A-8-105. General powers of organizations.**

17 Organizations may:

18 (1) buy, sell, lease, encumber, construct, renovate, operate, or maintain hospitals, health  
19 care clinics, other health care facilities, and other real and personal property incidental to and  
20 reasonably necessary for the transaction of the business and for the accomplishment of the  
21 purposes of the organization;

22 (2) furnish health care through providers which are under contract with the organization;

23 (3) contract with insurance companies licensed in this state or with health service  
24 corporations authorized to do business in this state for insurance, indemnity, or reimbursement for  
25 the cost of health care furnished by the organization;

26 (4) offer to its enrollees, in addition to health care, insured indemnity benefits, but only  
27 for emergency care, out-of-area coverage, [and] unusual or infrequently used health services as  
28 defined in Section 31A-8-101, and adoption benefits as provided in Section 31A-22-610.1;

29 (5) receive from governmental or private agencies payments covering all or part of the cost  
30 of the health care furnished by the organization;

31 (6) lend money to a medical group under contract with it or with a corporation under its

1 control to acquire or construct health care facilities or for other uses to further its program of  
2 providing health care services to its enrollees;

3 (7) be owned jointly by health care professionals and persons not professionally licensed  
4 without violating Utah law; and

5 (8) do all other things necessary for the accomplishment of the purposes of the  
6 organization.

7 Section 6. Section 31A-22-423 is amended to read:

8 **31A-22-423. Policy and annuity examination period.**

9 (1) (a) Except as provided under Subsection (2), all life insurance policies and annuities  
10 shall contain a notice prominently printed on or attached to the cover or front page stating that the  
11 policyholder has the right to return the policy for any reason ~~[within]~~ on or before:

12 (i) ten days after delivery; or

13 (ii) in case of a replacement policy, 20 days after [its delivery] the replacement policy is  
14 delivered. ["Return"]

15 (b) For purposes of this section, "return" means [delivery to the insurer or its agent, or  
16 mailing of the policy to either, properly addressed and stamped for first class handling, with] a  
17 written statement on the policy or an accompanying writing that [it] the policy is being returned  
18 for termination of coverage that is delivered to or mailed first class to the insurer or its agent.

19 [Policies]

20 (c) A policy returned under this section [are] is void from the date of return.

21 [Policyholders]

22 (d) A policyholder returning [their policies are] a policy is entitled to a refund of any  
23 premium paid, except that the insurer may retain an amount not exceeding that determined by rule  
24 adopted by the commissioner.

25 (2) This section does not apply to:

26 (a) group policies; and

27 (b) other classes of life insurance policies [which] that the commissioner specifies by rule  
28 after finding that a right to return those policies would be impracticable or unnecessary to protect  
29 the policyholder's interests.

30 Section 7. Section 31A-22-610.1 is amended to read:

31 **31A-22-610.1. Adoption indemnity benefit.**

1 (1) (a) If an insured has coverage for maternity benefits, the policy shall ~~[cover any~~  
2 ~~prenatal or maternity expenses of a birth mother or child;]~~ provide an indemnity benefit payable  
3 to the insured upon finalization of adoption, if the child is placed for adoption with the insured  
4 within 30 days of the child's birth and the adoption is finalized within one year of the child's birth.

5 ~~[(b) Subject to Subsection (c), payment under Subsection (a):]~~

6 ~~[(i) may not exceed the contractual benefit for a birth mother and biological child under~~  
7 ~~the policy; and]~~

8 ~~[(ii) may be reduced by any deductible or copayment that would be applicable to the birth~~  
9 ~~of a biological child under the policy.]~~

10 ~~[(c) (i) In the case of a managed care plan or health maintenance organization, if the birth~~  
11 ~~mother is identified and arrangements for adoption begin prior to the child's birth, the insured shall~~  
12 ~~notify the plan or organization. The plan or organization may require compliance by the birth~~  
13 ~~mother with the managed care terms and conditions of the contract in order for the insured to be~~  
14 ~~entitled to the full prenatal and maternity benefit. If the birth mother does not comply, the amount~~  
15 ~~of the reimbursement to the insured may be limited to the applicable out-of-plan benefit.]~~

16 ~~[(ii) If the insured changes insurance policies after medical services have been rendered~~  
17 ~~to a birth mother or child, each insurer shall only be required to reimburse the insured for the~~  
18 ~~expenses that occurred during the time that the insured was covered for maternity benefits under~~  
19 ~~that insurer's policy. If the insured is covered by two or more policies at the same time, expenses~~  
20 ~~shall be divided equally between the insurers, unless the terms of the policies, when considered~~  
21 ~~together, provide for a different division.]~~

22 ~~[(d) If the adoption of the child placed with the insured is not finalized within one year of~~  
23 ~~the child's birth, the insurer may seek reimbursement from the insured for any payment made~~  
24 ~~under Subsection (a).]~~

25 (b) The commissioner shall:

26 (i) establish, by rule, the amount of the adoption indemnity benefit provided under  
27 Subsection (1) at a minimum of \$2,500; and

28 (ii) review the amount of the adoption indemnity benefit every two years to make any  
29 necessary and reasonable adjustments, taking into account the average insurance cost of an  
30 uncomplicated birth.

31 (c) Each insurer shall pay its pro rata share of the adoption indemnity benefit if each

1 adoptive parent:

2 (i) has coverage for maternity benefits with a different insurer; and

3 (ii) makes a claim for the adoption indemnity benefit provided in Subsection (1)(a).

4 (2) If a policy offers optional maternity benefits, ~~[the insurer] it~~ shall also offer~~[, on the~~  
5 ~~same terms and conditions, optional]~~ coverage for ~~[prenatal or maternity expenses of a birth~~  
6 ~~mother and child where]~~ adoption indemnity benefits if:

7 (a) the child is ~~[adopted by the insured]~~ placed for adoption with the insured within 30  
8 days of the child's birth; and

9 (b) the adoption is finalized within ~~[nine months of]~~ one year of the child's birth.

10 ~~[(3) To the extent permissible by law, an adoptive parent's insurer, plan, or organization~~  
11 ~~which provides a benefit under this section shall be a secondary plan for the purpose of~~  
12 ~~coordinating benefits.]~~

13 Section 8. Section **31A-22-703** is amended to read:

14 **31A-22-703. Conversion rights on termination of group disability insurance**  
15 **coverage.**

16 (1) Except as provided in Subsections (2) through (5), all policies of disability insurance  
17 offered on a group basis under this title or Title 49, Chapter 8, Group Insurance Program Act, shall  
18 provide that a person whose insurance under the group policy has been terminated for any reason,  
19 and who has been continuously insured under the group policy or its predecessor for at least six  
20 months immediately prior to termination, is entitled to choose either a converted individual or  
21 group policy of disability insurance from the insurer which conforms to ~~[this part and other~~  
22 ~~applicable provisions of this title,]~~ Section 31A-22-708 or an extension of benefits under the group  
23 policy as provided in Section 31A-22-714.

24 (2) Subsection (1) does not apply if the policy:

25 ~~[(a) has a deductible of \$2,500 or more;]~~

26 ~~[(b)]~~ (a) provides catastrophic, aggregate stop loss, or specific stop loss benefits;

27 ~~[(c)]~~ (b) provides benefits for specific diseases or for accidental injuries only, or for dental  
28 service; or

29 ~~[(d)]~~ (c) is a disability income policy.

30 (3) An employee or group member does not have conversion rights under Subsection (1)  
31 if:

1 (a) termination of the group coverage occurred because of failure of the group member to  
2 pay any required individual contribution;

3 (b) the individual group member acquires other group coverage covering all preexisting  
4 conditions including maternity, if the coverage existed under the replaced group coverage; or

5 (c) the person who would be covered is or could be covered by Medicare.

6 (4) Notwithstanding Subsections (1), (2), and (3), an employee or group member does not  
7 have conversion rights under Subsection (1) if the individual or group member qualifies to  
8 continue coverage under his existing group policy in accordance with the terms of his policy.

9 (5) (a) Notwithstanding Subsection 31A-22-613 (1), an insurer may reduce benefits under  
10 a converted disability policy covering any person to the extent the benefits provided or available  
11 to that person under one or more of the sources listed under Subsection (5)(b), together with the  
12 benefits provided by the converted policy, would result in overinsurance according to the insurer's  
13 standards. The insurer's standards shall bear a reasonable relationship to actual health care costs  
14 in the area in which the insured lives at the time of conversion and shall be filed with the  
15 commissioner prior to their use in denying coverage.

16 (b) The benefits sources referred to under Subsection (5)(a) include:

17 (i) benefits under another insurance policy;

18 (ii) benefits under any arrangement of coverage for individuals in a group, whether on an  
19 insured or an uninsured basis; and

20 (iii) benefits provided for or available to that person, in accordance with the requirements  
21 of any state or federal law.

22 Section 9. Section **31A-22-708** is repealed and reenacted to read:

23 **31A-22-708. Conversion of health benefit plan.**

24 If the group insurance policy from which the conversion is made is a health benefit plan,  
25 as defined in Subsection 31A-30-103(15), the employee or member must be offered basic coverage  
26 as defined in Subsection 31A-30-103(4).

27 Section 10. Section **31A-22-711** is amended to read:

28 **31A-22-711. If conversion plan benefits exceed group policy benefits.**

29 If the benefit levels required under [~~Sections 31A-22-706 through~~] Section 31A-22-708  
30 exceed the benefit levels provided under the group policy, the conversion policy may offer benefits  
31 which are substantially similar to those provided under the group policy in lieu of those required

1 under ~~[Sections 31A-22-706 through]~~ Section 31A-22-708.

2 Section 11. Section **31A-22-714** is amended to read:

3 **31A-22-714. Extension of benefits.**

4 (1) (a) In addition to the right of the employee to have a converted policy issued to the  
5 employee, and on the same bases of eligibility as for conversion of coverage under Sections  
6 31A-22-703 and 31A-22-704, the employee has the right to continue the employee's coverage  
7 under the group policy for a period of six months, unless the employee:

8 (i) was terminated for gross misconduct[-]; or

9 (ii) is eligible for any extension of coverage required by federal law.

10 (b) ~~[When applicable, any extension of coverage required by federal law may run~~  
11 ~~concurrently with the requirements of this section.]~~ This right to continue coverage includes any  
12 dependent coverages.

13 (2) In addition to the terminated insured, those classes of persons defined in Section  
14 31A-22-710 are also entitled to the continuation of coverage as provided in this section.

15 (3) (a) The employer shall provide the terminated insured written notification of the right  
16 to continue group coverage and the payment amounts required for continued coverage, including  
17 the manner, place, and time in which the payments shall be made. The notice may be sent to the  
18 terminated insured's home address as shown on the records of the employer. This notice shall be  
19 given not more than ~~[five]~~ 30 days after the termination date of the group coverage.

20 (b) The payment amount for continued group coverage may not exceed 102% of the group  
21 rate in effect for a group member, including an employer's contribution, if any, for a group  
22 insurance policy~~[-or the amount specified by federal law, whichever is applicable].~~ ~~[The notice~~  
23 ~~may be sent to the terminated insured's home address as shown on the records of the employer.]~~

24 (4) If the terminated insured or, with respect to a minor, the parent or guardian of the  
25 terminated insured elects to continue group coverage and tenders to the employer the amount  
26 required within 30 days after receiving notice as prescribed by this section, coverage of the  
27 terminated insured and coverage of the covered spouse and dependents of the terminated insured  
28 continues without interruption and may not terminate unless:

29 (a) the terminated insured establishes residence outside of this state;

30 (b) the terminated insured fails to make timely payment of a required contribution;

31 (c) the terminated insured violates a material condition of the contract;



1 (d) the terminated insured becomes eligible for similar coverage under another group  
2 policy; or

3 (e) the employer's coverage is terminated.

4 (5) If the employer replaces coverage with similar coverage under another group policy,  
5 without interruption, the terminated insured has the right to obtain coverage under the replacement  
6 group policy for the balance of the period the terminated insured would have continued coverage  
7 under the replaced group policy, provided the terminated insured is otherwise eligible for  
8 continuation of coverage.

9 (6) At the end of the continued benefit period as provided in this section, the covered  
10 person remains eligible for a converted policy under this chapter and shall be so informed by the  
11 employer in the same manner and according to the same terms as required by Section 31A-22-703.

12 Section 12. Section **31A-23-102** is amended to read:

13 **31A-23-102. Definitions.**

14 As used in this chapter:

15 (1) Except as provided in Subsection (3):

16 (a) "Escrow" is a license category that allows a person to conduct escrows, settlements,  
17 or closings on behalf of a title insurance agency or a title insurer.

18 [~~(b) "Insurance agent" or "agent" means a person who represents an insurer or insurers in  
19 soliciting, negotiating, or placing insurance.]~~

20 [~~(c) "Insurance broker" or "broker" means a broker as defined in Subsection (5) or any  
21 other person, firm, association, or corporation, that for any compensation, commission, or any  
22 other thing of value acts or aids in any manner in soliciting, negotiating, or procuring the making  
23 of any insurance contract on behalf of an insured other than himself or itself.]~~

24 [~~(d)~~ (b) "Limited license" means a license that is issued for a specific product of insurance  
25 and limits an individual or agency to transact only for those products.

26 [~~(e)~~ (c) "Search" is a license category that allows a person to issue title insurance  
27 commitments or policies on behalf of a title insurer.

28 [~~(f)~~ (d) "Title marketing representative" means a person who:

29 (i) represents a title insurer in soliciting, requesting, or negotiating the placing of:

30 (A) title insurance; or

31 (B) escrow, settlement, or closing services; and [who]

1           (ii) does not have a search or escrow license.

2           ~~[(2) Except as provided in Subsection (3) and Subsection 31A-23-301(1)(b), "insurance~~  
3 ~~consultant" or "consultant" means a person who advises other persons about insurance needs and~~  
4 ~~coverages, who is compensated by the person advised on a basis which is not directly related to~~  
5 ~~the insurance placed, and who is not compensated directly or indirectly by an insurer, agent, or~~  
6 ~~broker for the advice given.]~~

7           ~~[(3)]~~ (2) The following persons are not acting as agents, brokers, title marketing  
8 representatives, or consultants when acting in the following capacities:

9           (a) any regular salaried officer, employee, or other representative of an insurer or licensee  
10 under this chapter who devotes substantially all of [his] the officer's, employee's, or  
11 representative's working time to activities other than those described in [Subsections] Subsection  
12 (1)[, (2), and (3)], and Subsection 31A-1-301(42), (43), and (45) including the clerical employees  
13 of persons required to be licensed under this chapter;

14           (b) a regular salaried officer or employee of a person seeking to purchase insurance, who  
15 receives no compensation that is directly dependent upon the amount of insurance coverage  
16 purchased;

17           (c) a person who gives incidental advice in the normal course of a business or professional  
18 activity, other than insurance consulting, if neither that person nor that person's employer receives  
19 direct or indirect compensation on account of any insurance transaction that results from that  
20 advice;

21           (d) a person who, without special compensation, performs incidental services for another  
22 at the other's request, without providing advice or technical or professional services of a kind  
23 normally provided by an agent, broker, or consultant;

24           (e) (i) a holder of a group insurance policy, or any other person involved in mass  
25 marketing, but only:

26           (A) with respect to administrative activities in connection with that type of policy,  
27 including the collection of premiums; and

28           ~~[(ii) only]~~ (B) if the person receives no compensation for the activities described in  
29 Subsection (3)(e)(i) beyond reasonable expenses including a fair payment for the use of capital;  
30 and

31           (f) a person who gives advice or assistance without direct or indirect compensation or any

1 expectation of direct or indirect compensation.

2 [(4)] (3) "Actuary" means a person who is a member in good standing of the American  
3 Academy of Actuaries.

4 [(5)] (4) "Agency" means a person other than an individual, and includes a sole  
5 proprietorship by which a natural person does business under an assumed name.

6 [(6)] (5) "Broker" means an insurance broker or any other person, firm, association, or  
7 corporation that for any compensation, commission, or other thing of value acts or aids in any  
8 manner in soliciting, negotiating, or procuring the making of any insurance contract on behalf of  
9 an insured other than itself.

10 (6) "Captive insurer" means:

11 (a) an insurance company owned by another organization whose exclusive purpose is to  
12 insure risks of the parent organization and affiliated companies; or

13 (b) in the case of groups and associations, an insurance organization owned by the insureds  
14 whose exclusive purpose is to insure risks of member organizations, group members, and their  
15 affiliates.

16 (7) "Controlled insurer" means a licensed insurer that is either directly or indirectly  
17 controlled by a broker.

18 (8) "Controlling broker" means a broker who either directly or indirectly controls an  
19 insurer.

20 (9) "Controlling person" means any person, firm, association, or corporation that directly  
21 or indirectly has the power to direct or cause to be directed, the management, control, or activities  
22 of a reinsurance intermediary.

23 (10) "Insurer" is as defined in Subsection 31A-1-301(48)~~[-The]~~, except the following  
24 persons or similar persons are not insurers for purposes of Part 6 of this chapter:

25 (a) all risk retention groups as defined in:

26 (i) the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499~~[-~~  
27 ~~and]~~;

28 (ii) the Risk Retention Act, 15 U.S.C. Sec. 3901 et seq.~~[-]~~; and

29 (iii) Title 31A, Chapter 15, Part 2, Risk Retention Groups;

30 (b) all residual market pools and joint underwriting authorities or associations; and

31 (c) all captive insurers~~[- for the purposes of this chapter, captive insurers are insurance~~

1 companies owned by another organization whose exclusive purpose is to insure risks of the parent  
2 organization and affiliated companies or, in the case of groups and associations, insurance  
3 organizations owned by the insureds whose exclusive purpose is to insure risks of member  
4 organizations, group members, and their affiliates].

5 (11) (a) "Managing general agent" means any person, firm, association, or corporation  
6 that;

7 (i) manages all or part of the insurance business of an insurer, including the management  
8 of a separate division, department, or underwriting office~~[, and that]~~;

9 (ii) acts as an agent for the insurer whether it is known as a managing general agent,  
10 manager, or other similar term~~[, and that,]~~;

11 (iii) with or without the authority, either separately or together with affiliates, directly or  
12 indirectly produces and underwrites an amount of gross direct written premium equal to, or more  
13 than 5% of, the policyholder surplus as reported in the last annual statement of the insurer in any  
14 one quarter or year~~[, and that also]~~; and

15 (iv) either adjusts or pays claims in excess of an amount determined by the commissioner,  
16 or that negotiates reinsurance on behalf of the insurer.

17 (b) Notwithstanding Subsection (11)(a), the following persons may not be considered as  
18 managing general agent for the purposes of this chapter:

19 (i) an employee of the insurer;

20 (ii) a U.S. manager of the United States branch of an alien insurer;

21 (iii) an underwriting manager ~~[which]~~ that, pursuant to contract:

22 (A) manages all the insurance operations of the insurer;

23 (B) is under common control with the insurer;

24 (C) is subject to Title 31A, Chapter 16, Insurance Holding Companies; and

25 (D) ~~[whose compensation]~~ is not compensated based on the volume of premiums written;

26 and

27 ~~[(e)]~~ (iv) the attorney-in-fact authorized by and acting for the subscribers of a reciprocal  
28 insurer or inter-insurance exchange under powers of attorney.

29 (12) "Producer" is a person who arranges for insurance coverages between insureds and  
30 insurers.

31 (13) "Qualified U.S. financial institution" means an institution that:

1 (a) is organized or, in the case of a U.S. office of a foreign banking organization licensed,  
2 under the laws of the United States or any state;

3 (b) is regulated, supervised, and examined by U.S. federal or state authorities having  
4 regulatory authority over banks and trust companies; and

5 (c) has been determined by either the commissioner, or the Securities Valuation Office of  
6 the National Association of Insurance Commissioners, to meet the standards of financial condition  
7 and standing [which] that are considered necessary and appropriate to regulate the quality of  
8 financial institutions whose letters of credit will be acceptable to the commissioner.

9 (14) "Reinsurance intermediary" means a reinsurance intermediary-broker or a reinsurance  
10 intermediary-manager as these terms are defined in Subsections (15) and (16).

11 (15) "Reinsurance intermediary-broker" means a person other than an officer or employee  
12 of the ceding insurer, firm, association, or corporation who solicits, negotiates, or places  
13 reinsurance cessions or retrocessions on behalf of a ceding insurer without the authority or power  
14 to bind reinsurance on behalf of the insurer.

15 (16) (a) "Reinsurance intermediary-manager" means a person, firm, association, or  
16 corporation who:

17 (i) has authority to bind or who manages all or part of the assumed reinsurance business  
18 of a reinsurer, including the management of a separate division, department, or underwriting  
19 office; and [who]

20 (ii) acts as an agent for the reinsurer whether [he] the person, firm, association, or  
21 corporation is known as a reinsurance intermediary-manager, manager, or other similar term.

22 (b) Notwithstanding Subsection (16)(a), the following persons may not be considered  
23 reinsurance intermediary-managers for the purpose of this chapter with respect to the reinsurer:

24 (i) an employee of the reinsurer;

25 (ii) a U.S. manager of the United States branch of an alien reinsurer;

26 (iii) an underwriting manager that, pursuant to contract[;];

27 (A) manages all the reinsurance operations of the reinsurer[;];

28 (B) is under common control with the reinsurer[;];

29 (C) is subject to Title 31A, Chapter 16, Insurance Holding Companies[;]; and [whose  
30 compensation]

31 (D) is not compensated based on the volume of premiums written; and

1 (iv) the manager of a group, association, pool, or organization of insurers that:

2 (A) engage in joint underwriting or joint reinsurance; and

3 (B) are subject to examination by the insurance commissioner of the state in which the  
4 manager's principal business office is located.

5 (17) "Reinsurer" means any person, firm, association, or corporation duly licensed in this  
6 state as an insurer with the authority to assume reinsurance.

7 (18) "Surplus lines broker" means a person licensed under Subsection 31A-23-204(5) to  
8 place insurance with unauthorized insurers in accordance with Section 31A-15-103.

9 (19) "Underwrite" means the authority to accept or reject risk on behalf of the insurer.

10 Section 13. Section **31A-23-204** is amended to read:

11 **31A-23-204. License classifications.**

12 Licenses issued under this chapter shall be issued under the classifications described under  
13 Subsections (1) through (6). These classifications are intended to describe the matters to be  
14 considered under any education, examination, and training required of license applicants under  
15 Sections 31A-23-206 through 31A-23-208.

16 (1) Agent and broker license classifications include:

17 (a) life insurance, including nonvariable annuities;

18 (b) variable annuities;

19 (c) disability insurance, including contracts issued to policyholders under Chapter 7 or

20 8;

21 (d) property/liability insurance, which includes:

22 (i) property insurance;

23 (ii) liability insurance;

24 (iii) surety and other bonds; and

25 (iv) policies containing any combination of these coverages; and

26 (e) title insurance under one of the following categories:

27 (i) search, including authority to act as a title marketing representative;

28 (ii) escrow, including authority to act as a title marketing representative;

29 (iii) search and escrow, including authority to act as a title marketing representative; and

30 (iv) title marketing representative only.

31 (2) Limited license product classification includes:

1 (a) credit life and credit disability insurance;

2 (b) travel; [and]

3 (c) motor club; and

4 (d) car rental related.

5 (3) Consultant license classification includes:

6 (a) life insurance, including nonvariable annuities;

7 (b) variable annuities;

8 (c) disability insurance, including contracts issued to policyholders under Chapter 7 or 8;

9 and

10 (d) property/liability insurance, which includes:

11 (i) property insurance;

12 (ii) liability insurance;

13 (iii) surety and other bonds; and

14 (iv) policies containing any combination of these coverages.

15 (4) A holder of licenses under Subsections (1)(a) and (1)(c) has all qualifications necessary  
16 to act as a holder of a license under Subsection (2)(a).

17 (5) Upon satisfying the additional applicable requirements, a holder of a brokers license  
18 may obtain a license to act as a surplus lines broker. This type of license gives the holder the  
19 authority to arrange insurance contracts with unauthorized insurers under Section 31A-15-103, but  
20 only as to the types of insurance under Subsection (1) for which he holds a brokers license.

21 (6) The commissioner may by rule recognize other agent, broker, limited license, or  
22 consultant license classifications as to kinds of insurance not listed under Subsections (1), (2), and  
23 (3).

24 Section 14. Section **31A-23-215** is amended to read:

25 **31A-23-215. Agency licensees -- Reports -- Suspension, revocation, or limitation of**  
26 **license.**

27 (1) (a) Every two years[~~, on a date specified by rule,~~] each agency licensed as an agent,  
28 managing general agent, broker, or consultant shall report to the commissioner[~~, in a form the~~  
29 ~~commissioner establishes by rule,~~] all natural person agents, brokers, or consultants acting in those  
30 capacities for the organization.

31 (b) The report required by Subsection (1)(a) shall be made:

1 (i) on a date specified by rule; and

2 (ii) in a form the commissioner establishes by rule.

3 (2) An agency licensed under this chapter shall report to the commissioner promptly, in  
4 the detail and form prescribed by rule, every change in the list of natural person agents, managing  
5 general agents, brokers, or consultants authorized to act in those capacities for the agency.

6 (3) (a) An agency licensed under this chapter shall report to the commissioner the cause  
7 of termination of a designated licensee's appointment. The information provided the commissioner  
8 shall remain confidential.

9 (b) An agency is immune from civil action, civil penalty, or damages if the agency  
10 complies in good faith with Subsection (3)(a) in reporting to the commissioner the cause of  
11 termination of licensees' appointments.

12 (c) Notwithstanding any other provision in this section, an agency is not immune from any  
13 action or resulting penalty imposed on the reporting agency as a result of proceedings brought by  
14 or on behalf of the department if the action is based on evidence other than the report submitted  
15 in compliance with this Subsection (3).

16 (4) [~~Agencies~~] An agency licensed under this chapter may act in the capacities for which  
17 it is licensed only through natural persons who are licensed under this chapter to act in the same  
18 manner.

19 (5) [~~Agencies~~] An agency licensed under this chapter shall designate and report promptly  
20 to the commissioner the name of at least one natural person who has authority to act on behalf of  
21 the agency in all matters pertaining to compliance with this title and orders of the commissioner.

22 (6) [~~When~~] For purposes of this section, if a license is held by an agency, both the agency  
23 itself and any [~~persons~~] natural person named on the license [~~shall, for purposes of this section, be~~]  
24 are considered to be the holders of the license.

25 (7) If a natural person named on the agency license commits any act or fails to perform  
26 any duty that is a ground for suspending, revoking, or limiting the [~~agency~~] natural person's  
27 license, the commissioner may suspend, revoke, or limit the license of:

28 (a) that natural person [~~or of~~];

29 (b) the agency, if the agency:

30 (i) is reckless or negligent in its supervision of the natural person; or

31 (ii) knowingly participated in the act or failure to act that is the ground for suspending,



1 revoking, or limiting the license; or

2 (c) both the natural person and the agency.

3 Section 15. Section **31A-23-315** is enacted to read:

4 **31A-23-315. Solicitations to loan applicants.**

5 (1) (a) A person authorized to engage in insurance activities in this state shall prominently  
6 disclose in writing the information described in Subsection (1)(c) to a person seeking an extension  
7 of credit if:

8 (i) the person authorized to engage in insurance activities also extends credit directly or  
9 through a subsidiary or an affiliate;

10 (ii) the person requires a customer to obtain insurance in connection with an extension of  
11 credit; and

12 (iii) the person offers to the person seeking an extension of credit the line of insurance  
13 required in connection with the extension of credit.

14 (b) The disclosure required by Subsection (1)(a) shall be in a form substantially similar  
15 to the following. "You may obtain insurance required in connection with your extension of credit  
16 from any insurer, insurance agent, broker, or producer that sells such insurance. Your choice of  
17 insurance provider will not affect our credit decision or your credit terms."

18 (c) The person shall make the required disclosure under Subsection (1)(a):

19 (i) at the time of written application for an extension of credit; or

20 (ii) if there is no written application, at the closing of the extension of credit.

21 (2) This section does not apply when a person is contacting a person in the course of direct  
22 or mass marketing to a group of persons in a manner that bears no relation to the person's  
23 application for an extension of credit or credit decision.

24 Section 16. Section **31A-29-111** is amended to read:

25 **31A-29-111. Eligibility -- Limitations.**

26 (1) (a) [~~Any person who has resided in this state for at least 12 consecutive months~~  
27 ~~immediately preceding the date of application or who is a dependent child 25 years of age or less~~  
28 ~~of such]~~ Except as provided in Subsection (1)(b), a person is eligible for pool coverage if:

29 (i) (A) the person pays the established premium[~~, unless~~]; and

30 (B) is a resident of this state; or

31 (ii) is a dependent child 25 years of age or less of a person described in Subsection

1 (1)(a)(i).

2 (b) Notwithstanding Subsection (1)(a), a person is not eligible for pool coverage if one of  
3 the following conditions apply:

4 ~~[(a)]~~ (i) at the time of ~~[pool]~~ application, the person is eligible for health care benefits  
5 under Medicaid or Medicare, except as provided in Section 31A-29-112;

6 ~~[(b)]~~ (ii) the person has terminated coverage in the pool, unless:

7 ~~[(i)]~~ (A) 12 months have elapsed since the termination date; or

8 ~~[(ii)]~~ (B) the person demonstrates that continuous other coverage has been involuntarily  
9 terminated for any reason other than nonpayment of premium;

10 ~~[(c)]~~ (iii) the pool has paid the maximum lifetime benefit to or on behalf of the person;

11 ~~[(d)]~~ (iv) the person is an inmate of a public institution;

12 ~~[(e)]~~ (v) the person is eligible for other public programs for which medical care is  
13 provided;

14 ~~[(f)]~~ (vi) the person's health condition does not meet the criteria established under  
15 Subsection (4); ~~[or]~~

16 ~~[(g)]~~ (vii) the person is an eligible employee or a member of an employer group that offers  
17 health insurance or a self-insurance arrangement to all its eligible employees or members~~[-]; or~~

18 (viii) at the time of application, the person:

19 (A) is not eligible for coverage that is subject to the Health Insurance Portability and  
20 Accountability Act, P.L. 104-91, 110 Stat. 1962; and

21 (B) has not resided in Utah for at least 12 consecutive months preceding the date of  
22 application.

23 (2) (a) If otherwise eligible under ~~[Subsections (1)(a) through (1)(g)]~~ Subsection (1), a  
24 person whose health insurance coverage from a state health risk pool with similar coverage is  
25 terminated because of nonresidency in another state may apply for coverage under the pool subject  
26 to the conditions of Subsection (1)(b).

27 (b) If the coverage is applied for under Subsection (2)(a) within 31 days after the  
28 termination and if premiums are paid for the entire coverage period under the pool, the effective  
29 date of the pool's coverage shall be the date of termination of previous coverage.

30 (c) The waiting period of a person with a preexisting condition applying for coverage  
31 under this chapter shall be waived if:

1 (i) the waiting period was satisfied under a similar plan from another state; and [that]

2 (ii) the other state's benefit limitation was not reached.

3 (3) If an eligible person applies for pool coverage within 30 days of being denied coverage  
4 by an individual carrier, the effective date for pool coverage shall be set at the first day of the  
5 month following the submission of the completed insurance application to the carrier.

6 (4) (a) The board shall establish and adjust, as necessary, underwriting criteria based on:

7 (i) health condition; and

8 (ii) expected claims so that [such] the expected claims are anticipated to remain within  
9 available funding.

10 (b) The commissioner may contract with one or more providers under Title 63, Chapter  
11 56, Utah Procurement Code, to develop underwriting criteria under Subsection (4)(a).

12 (c) If a person is denied coverage under the criteria established in Subsection (4)(a), the  
13 pool shall issue a certificate to the applicant for coverage under Subsection 31A-30-108(3).

14 Section 17. Section **31A-29-113** is amended to read:

15 **31A-29-113. Benefits -- Additional types of pool insurance -- Preexisting conditions**  
16 **-- Waiver -- Maximum benefits.**

17 (1) (a) The pool policy shall pay for eligible expenses rendered or furnished for the  
18 diagnoses or treatment of illness or injury which exceed the deductible and copayment amounts  
19 applicable under Section 31A-29-114 and which are not otherwise limited or excluded.

20 (b) Eligible expenses are the charges for the health care services and items rendered during  
21 times for which benefits are extended under the pool policy.

22 (2) The coverage to be issued by the pool, its schedule of benefits, exclusions, and other  
23 limitations shall be established by the board.

24 (3) The commissioner shall approve the benefit package developed by the board to ensure  
25 its compliance with this chapter.

26 (4) The pool shall offer at least one benefit plan through a managed care program as  
27 authorized under Section 31A-29-106.

28 (5) This chapter shall not be construed to prohibit the pool from issuing additional types  
29 of health insurance policies with different types of benefits which in the opinion of the board may  
30 be of benefit to the citizens of Utah.

31 (6) The board shall design and require an administrator to employ cost containment

1 measures and requirements including preadmission certification and concurrent inpatient review  
2 for the purpose of making the pool more cost effective. The provisions of Sections 31A-22-617  
3 and 31A-22-618 of this title do not apply to coverage issued under this chapter.

4 (7) A pool policy may contain provisions under which coverage is excluded during a  
5 six-month period following the effective date of plan coverage as to a given individual for a  
6 preexisting condition, as long as either of the following exists:

7 (a) the condition has manifested itself within a period of six months before the effective  
8 date of coverage in such a manner as would cause an ordinary, prudent person to seek diagnosis  
9 or treatment; or

10 (b) medical advice or treatment was recommended or received for the condition within a  
11 period of six months before the effective date of coverage.

12 (8) A pool policy may exclude coverage for pregnancies for ten months following the  
13 effective date of coverage.

14 (9) (a) The preexisting condition exclusion described in Subsection (7) shall be waived to  
15 the extent to which similar exclusions have been satisfied under any prior health insurance  
16 coverage;

17 (i) which was involuntarily terminated, other than for nonpayment of premium, if the  
18 application for pool coverage is made not later than 31 days following the involuntary  
19 termination[-]; or

20 (ii) whose premium rate exceeds the rate of the pool for equal or lesser benefits.

21 (b) If Subsection (9)(a) applies, coverage in the pool shall be effective from the date on  
22 which the prior coverage was terminated.

23 (10) The board shall establish a policy allowing for the waiver of the preexisting condition  
24 exclusion set forth in Subsection (7) for coverage of medically necessary outpatient medical care.

25 (11) Benefits available under the pool may not exceed \$1,000,000 paid to or on behalf of  
26 any person.

27 Section 18. Section **31A-30-106.7** is amended to read:

28 **31A-30-106.7. Surcharge for groups changing carriers.**

29 If prior notice is given, a covered carrier may impose upon a small group that changes  
30 coverage to that carrier from another carrier a one-time surcharge of up to 25% of the annualized  
31 premium that the carrier could otherwise charge under Section 31A-30-106, unless:

1           (1) the change in carriers occurs on the annual policy renewal date of the coverage being  
2 replaced; or

3           (2) if existing coverage is involuntarily terminated.

4           Section 19. Section **31A-30-107** is amended to read:

5           **31A-30-107. Renewal -- Limitations -- Exclusions.**

6           (1) A health benefit plan subject to this chapter is renewable with respect to all covered  
7 individuals at the option of the covered insured except in any of the following cases:

8           (a) nonpayment of the required premiums;

9           (b) fraud or misrepresentation of the employer or, with respect to coverage of individual  
10 insureds, the insureds or their representatives;

11           (c) noncompliance with the covered carrier's minimum participation requirements;

12           (d) noncompliance with the covered carrier's employer contribution requirements;

13           (e) repeated misuse of a provider network provision; or

14           (f) an election by the covered carrier to nonrenew all of its health benefit plans issued to  
15 covered insureds in this state, in which case the covered carrier shall:

16           (i) provide advanced notice of its decision under this subsection to the commissioner in  
17 each state in which it is licensed; and

18           (ii) provide notice of the decision not to renew coverage to all affected covered insureds  
19 and to the commissioner in each state in which an affected insured individual is known to reside  
20 at least 180 days prior to the nonrenewal of any health benefit plans by the covered carrier. Notice  
21 to the commissioner under this subsection shall be provided at least three working days prior to  
22 the notice to the affected covered insureds.

23           (2) A covered carrier that elects not to renew a health benefit plan under Subsection (1)(f)  
24 is prohibited from writing new business subject to this chapter in this state for a period of five  
25 years from the date of notice to the commissioner.

26           (3) When a covered carrier is doing business subject to this chapter in one service area of  
27 this state, Subsections (1) and (2) apply only to the covered carrier's operations in that service area.

28           (4) Health benefit plans covering covered insureds shall comply with the following  
29 provisions:

30           (a) (i) A health benefit plan may not deny, exclude, or limit benefits for a covered  
31 individual for losses incurred more than 12 months, or 18 months in the case of a late enrollee, as

1 defined in P.L. 104-191, 110 Stat. 1940, Sec. 101, following the effective date of the individual's  
2 coverage due to a preexisting condition.

3 (ii) A health benefit plan may not define a preexisting condition more restrictively than:

4 (A) a condition for which medical advice, diagnosis, care, or treatment was recommended  
5 or received during the six months immediately preceding the effective date of coverage; or

6 (B) for an individual insurance policy, a pregnancy existing on the effective date of  
7 coverage.

8 (b) (i) A covered carrier shall waive any time period applicable to a preexisting condition  
9 exclusion or limitation period with respect to particular services in a health benefit plan for the  
10 period of time the individual was previously covered by public or private health insurance or by  
11 any other health benefit arrangement that provided benefits with respect to such services, provided  
12 that:

13 (A) the previous coverage was continuous to a date not more than 62 days prior to the  
14 effective date of the new coverage; and

15 (B) the insured provides notification of previous coverage to the covered carrier within 36  
16 months of the coverage effective date if the insurer has previously requested such notification.

17 (ii) The period of continuous coverage under Subsection (4)(b)(i)(A) shall not include any  
18 waiting period for the effective date of the new coverage applied by the employer or the carrier.  
19 This subsection does not preclude application of any waiting period applicable to all new enrollees  
20 under such plan.

21 Section 20. Section **31A-30-108** is amended to read:

22 **31A-30-108. Eligibility for small employer and individual market.**

23 (1) (a) Small employer carriers shall accept residents for small group coverage as set forth  
24 in the Health Insurance Portability and Accountability Act, P.L. 104-191, 110 Stat. 1962, Sec.  
25 2711(a).

26 (b) Individual carriers shall accept residents for individual coverage pursuant to P.L.  
27 104-191, 110 Stat. 1979, Sec. 2741(a)-(b) and Subsection (3).

28 (2) (a) Small employer carriers shall offer to accept all eligible employees and their  
29 dependents at the same level of benefits under any health benefit plan provided to a small  
30 employer.

31 (b) Small employer carriers may:

1 (i) request a small employer to submit a copy of its quarterly income tax withholdings to  
2 determine whether the employees for whom coverage is provided or requested are bona fide  
3 employees of the small employer; and

4 (ii) deny or terminate coverage if the small employer refuses to provide documentation  
5 requested under Subsection (2)(b)(i).

6 (3) Except as provided in Subsection (5) and Section 31A-30-110, individual carriers shall  
7 accept for coverage individuals to whom all of the following conditions apply:

8 (a) the individual is not covered or eligible for coverage, as an employee of an employer,  
9 as a member of an association, or as a member of any other group under:

10 (i) a health benefit plan; or

11 (ii) a self-insured arrangement that provides coverage similar to that provided by a health  
12 benefit plan as defined in Section 31A-30-103;

13 (b) the individual is not covered and is not eligible for coverage under any public health  
14 benefits arrangement including the Medicare program established under Title XVIII or the  
15 Medicaid program established under Title XIX of the Social Security Act, or any other act of  
16 congress or law of this or any other state that provides benefits comparable to the benefits provided  
17 under this part, including coverage under the Comprehensive Health Insurance Pool Act created  
18 in Chapter 29;

19 (c) the individual is not covered or eligible for coverage under any Medicare supplement  
20 policy, conversion option, continuation or extension under COBRA, or state extension unless the  
21 maximum benefit has been reached;

22 (d) the individual has not terminated or declined coverage described in Subsection (a), (b),  
23 or (c) within 93 days of application for coverage, unless the individual is eligible for individual  
24 coverage under P.L. 104-191, 110 Stat. 1979, Sec. 2741(b), in which case, the requirement of this  
25 Subsection (3)(d) does not apply; and

26 (e) the individual is certified as ineligible for the Health Insurance Pool if:

27 (i) the individual applies for coverage with the Comprehensive Health Insurance Pool  
28 within 30 days after being rejected or refused coverage by the covered carrier and reapplies for  
29 coverage with that covered carrier within 30 days after the date of issuance of a certificate under  
30 Subsection 31A-29-111(4)(~~b~~)(c); or

31 (ii) the individual applies for coverage with any individual carrier within 45 days after:

1 (A) notice of cancellation of coverage under Subsection 31A-29-115(1); or

2 (B) the date of issuance of a certificate under Subsection 31A-29-111(4)[(b)](c) if the  
3 individual applied first for coverage with the Comprehensive Health Insurance Pool.

4 (4) (a) If coverage is obtained under Subsection (3)(e)(i) and the required premium is paid,  
5 the effective date of coverage shall be the first day of the month following the individual's  
6 submission of a completed insurance application to that covered carrier.

7 (b) If coverage is obtained under Subsection (3)(e)(ii) and the required premium is paid,  
8 the effective date of coverage shall be the day following the:

9 (i) cancellation of coverage under Subsection 31A-29-115(1); or

10 (ii) submission of a completed insurance application to the Comprehensive Health  
11 Insurance Pool.

12 (5) (a) An individual carrier is not required to accept individuals for coverage under  
13 Subsection (3) if the carrier issues no new individual policies in the state after July 1, 1997.

14 (b) A carrier described in Subsection (5)(a) may not issue new individual policies in the  
15 state for five years from July 1, 1997.

16 (c) Notwithstanding Subsection (5)(b), a carrier may request permission to issue new  
17 policies after July 1, 1999, which may only be granted if:

18 (i) the carrier accepts uninsurables as is required of a carrier entering the market under  
19 Subsection 31A-30-110; and

20 (ii) the commissioner finds that the carrier's issuance of new individual policies:

21 (A) is in the best interests of the state; and

22 (B) does not provide an unfair advantage to the carrier.

23 Section 21. Section **31A-31-108** is amended to read:

24 **31A-31-108. Assessment of insurers.**

25 (1) To implement [~~this chapter, Section 34A-2-110, and Section 76-6-521~~] the statutes  
26 listed in Subsections (2)(a) through (d), the commissioner may assess each admitted insurer and  
27 each nonadmitted insurer transacting insurance under Chapter 15, Parts 1 and 2, an annual fee as  
28 follows:

29 (a) \$75 for an insurer with total premiums for Utah risks of \$1,000,000 or less;

30 (b) \$263 for an insurer with total premiums for Utah risks of less than \$2,500,000 but more  
31 than \$1,000,000;



1 (c) \$563 for an insurer with total premiums for Utah risks of less than \$5,000,000 but more  
2 than \$2,500,000;

3 (d) \$1,125 for an insurer with total premiums for Utah risks of less than \$10,000,000 but  
4 more than \$5,000,000;

5 (e) \$4,500 for an insurer with total premiums for Utah risks of less than \$50,000,000 but  
6 more than \$10,000,000; and

7 (f) \$11,250 for an insurer with total premiums for Utah risks of \$50,000,000 or more.

8 (2) All money received by the state under this section shall be deposited in the General  
9 Fund as a nonlapsing dedicated credit of the Insurance Department for the purpose of providing  
10 funds to pay for any costs and expenses incurred by the Insurance Department in the  
11 administration, investigation, and enforcement of:

12 (a) this chapter[-];

13 (b) Section 34A-2-110[-];

14 (c) Section 41-6-149.5; and

15 (d) Section 76-6-521.

16 (3) As used in this section, "Utah risks" means insurance coverage on the lives, health, or  
17 against the liability of persons residing in Utah, or on property located in Utah, other than property  
18 temporarily in transit through Utah.

19 Section 22. Section **34A-2-110** is amended to read:

20 **34A-2-110. Workers' compensation insurance fraud -- Elements -- Penalties --**  
21 **Notice.**

22 (1) As used in this section:

23 (a) "Corporation" has the same meaning as in Subsection 76-2-201(3).

24 (b) "Intentionally" has the same meaning as in Subsection 76-2-103(1).

25 (c) "Knowingly" has the same meaning as in Subsection 76-2-103(2).

26 (d) "Person" has the same meaning as in Subsection 76-1-601(8).

27 (e) "Recklessly" has the same meaning as in Subsection 76-2-103(3).

28 (2) (a) Any person is guilty of workers' compensation insurance fraud if that person  
29 intentionally, knowingly, or recklessly:

30 (i) devises any scheme or artifice to obtain workers' compensation insurance coverage,  
31 disability compensation, medical benefits, goods, professional services, fees for professional

1 services, or anything of value under this chapter or Chapter 3, Utah Occupational Disease Act, by  
2 means of false or fraudulent pretenses, representations, promises, or material omissions; and

3 (ii) communicates or causes a communication with another in furtherance of the scheme  
4 or artifice.

5 (b) Workers' compensation insurance fraud under Subsection (2)(a) is punishable in the  
6 manner prescribed by Section 76-10-1801 for communication fraud.

7 (3) A corporation or association is guilty of the offense of workers' compensation  
8 insurance fraud under the same conditions as those set forth in Section 76-2-204.

9 (4) The determination of the degree of any offense under Subsection (2) shall be measured  
10 by the total value of all property, money, or other things obtained or sought to be obtained by the  
11 scheme or artifice described in Subsection (2), except as provided in Subsection 76-10-1801(1)(e).

12 (5) Reliance on the part of any person is not a necessary element of the offense described  
13 in Subsection (2).

14 (6) An intent on the part of the perpetrator of any offense described in Subsection (2) to  
15 permanently deprive any person of property, money, or anything of value is not a necessary  
16 element of this offense.

17 (7) An insurer or self-insured employer giving written notice in accordance with  
18 Subsection (10) that workers' compensation insurance fraud is a crime is not a necessary element  
19 of the offense described in Subsection (2).

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

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

28 (10) (a) Each insurer or self-insured employer who, in connection with this chapter or  
29 Chapter 3, Utah Occupational Disease Act, prints, reproduces, or furnishes a form to any person  
30 upon which that person applies for insurance coverage, reports payroll, makes a claim by reason  
31 of accident, injury, death, disease, or other claimed loss, or otherwise reports or gives notice to the

1 insurer or self-insured employer, shall cause to be printed or displayed in comparative prominence  
2 with other content the statement: "Any person who knowingly presents false or fraudulent  
3 underwriting information, files or causes to be filed a false or fraudulent claim for disability  
4 compensation or medical benefits, or submits a false or fraudulent report or billing for health care  
5 fees or other professional services is guilty of a crime and may be subject to fines and confinement  
6 in state prison."

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

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

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

17 (A) a defense to violating Subsection (2); or

18 (B) grounds for suppressing evidence.

19 (11) In the absence of malice, a person, employer, insurer, or governmental entity that  
20 reports a suspected fraudulent act relating to a workers' compensation insurance policy or claim  
21 is not subject to any civil liability for libel, slander, or any other relevant cause of action.

22 (12) In any action involving workers' compensation, this section supersedes Title 31A,  
23 Chapter 31, Insurance Fraud Act.

24 Section 23. **Repealer.**

25 This act repeals:

26 Section 31A-22-706, **Basic hospital or medical-surgical coverage conversion options.**

27 Section 31A-22-707, **Conversion of major medical coverage.**