

**INSURANCE LAW AMENDMENTS**

2001 GENERAL SESSION

STATE OF UTAH

**Sponsor: L. Steven Poulton**

**This act modifies the Insurance Code and related provisions by addressing issues related to the insurance business in general, health insurance, life insurance, and property insurance. The act standardizes definition of terms and makes other technical changes. The act changes terminology from "disability insurance" to "accident and health insurance." The act defines the scope and applicability of certain provisions included in this act. The act imposes certain requirements on health organizations that are imposed on insurers. The act addresses the conditions governing the issuance and renewal of certificates of authority, including allowing the commissioner to enter into interstate compacts. The act addresses the form of and information required in statements filed with the department including permitting the department to accept documents complying with National Association of Insurance Commissioners requirements instead of statutory requirements. The act addresses the requirements of minimum capital and permanent surplus as well as the amount of the deposit each authorized organization shall maintain with the commissioner. The act addresses issues related to formation, cancellation, and required provisions of insurance contracts. The act redefines the qualified assets that may be used in determining the financial condition of an insurer. The act changes the requirements for title insurance reserves. The act requires that all documents and agreements that constitute a life insurance policy shall be defined and attached to the policy. The act creates notification requirements for termination of a group or blanket life insurance policy. The act modifies the responsibilities of the Health Benefit Plan Committee. The act expands the commissioner's rulemaking responsibilities for Medicare supplemental policies. The act requires a policy summary or illustration to be delivered with a life insurance policy. The act requires, in certain circumstances, monthly reports on an accident and health rider or supplemental**

**\*S B0100\***

28 **benefit. The act addresses maternity benefits required in a conversion policy. The act**  
29 **changes the requirements and restrictions on long-term care insurance policies. The act**  
30 **modifies the licensing, continuing education, and examination requirements for agents,**  
31 **brokers, consultants, third party administrators, and independent or public adjusters. The**  
32 **act also addresses the termination of licenses for agents, brokers, consultants, third party**  
33 **administrators, and independent or public adjusters. The act expands the list of activities**  
34 **that qualify as unfair marketing practices. The act addresses the handling of escrow funds**  
35 **by title insurance agents. The act requires title insurance agents to make disclosures to loan**  
36 **applicants purchasing title insurance. The act requires a financial institution to maintain**  
37 **customer privacy by ensuring confidentiality of insurance information. The act addresses**  
38 **sharing commissions for referrals of potential customers. The act addresses continuance of**  
39 **coverage by health maintenance organizations.**

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

41 AMENDS:

- 42 **7-9-5**, as last amended by Chapter 329, Laws of Utah 1999
- 43 **26-19-2**, as last amended by Chapters 39 and 145, Laws of Utah 1998
- 44 **26-40-104**, as enacted by Chapter 360, Laws of Utah 1998
- 45 **31A-1-103**, as last amended by Chapter 4, Laws of Utah 1993
- 46 **31A-1-301**, as last amended by Chapters 130 and 131, Laws of Utah 1999
- 47 **31A-2-201**, as last amended by Chapter 316, Laws of Utah 1994
- 48 **31A-2-214**, as last amended by Chapter 12, Laws of Utah 1987, First Special Session
- 49 **31A-4-103**, as enacted by Chapter 242, Laws of Utah 1985
- 50 **31A-4-113**, as last amended by Chapter 258, Laws of Utah 1992
- 51 **31A-5-211**, as last amended by Chapter 9, Laws of Utah 1996, Second Special Session
- 52 **31A-5-418**, as last amended by Chapter 9, Laws of Utah 1996, Second Special Session
- 53 **31A-5-703**, as enacted by Chapter 9, Laws of Utah 1996, Second Special Session
- 54 **31A-6a-102**, as enacted by Chapter 203, Laws of Utah 1992
- 55 **31A-6a-110**, as enacted by Chapter 203, Laws of Utah 1992
- 56 **31A-8-101**, as last amended by Chapter 261, Laws of Utah 1989
- 57 **31A-8-103 (Effective 04/30/01)**, as last amended by Chapter 300, Laws of Utah 2000
- 58 **31A-8-205**, as enacted by Chapter 204, Laws of Utah 1986

- 59           **31A-8-209**, as enacted by Chapter 204, Laws of Utah 1986
- 60           **31A-8-211**, as last amended by Chapter 30, Laws of Utah 1992
- 61           **31A-8-213**, as enacted by Chapter 204, Laws of Utah 1986
- 62           **31A-8-402**, as last amended by Chapter 327, Laws of Utah 1990
- 63           **31A-8-407**, as enacted by Chapter 261, Laws of Utah 1989
- 64           **31A-8-408**, as last amended by Chapter 344, Laws of Utah 1995
- 65           **31A-9-212 (Effective 04/30/01)**, as last amended by Chapter 300, Laws of Utah 2000
- 66           **31A-11-102**, as last amended by Chapter 10, Laws of Utah 1988, Second Special Session
- 67           **31A-14-201**, as last amended by Chapter 204, Laws of Utah 1986
- 68           **31A-14-212**, as enacted by Chapter 242, Laws of Utah 1985
- 69           **31A-15-103**, as last amended by Chapter 55, Laws of Utah 1999
- 70           **31A-15-106**, as last amended by Chapter 204, Laws of Utah 1986
- 71           **31A-17-201**, as last amended by Chapter 131, Laws of Utah 1999
- 72           **31A-17-401**, as last amended by Chapter 9, Laws of Utah 1996, Second Special Session
- 73           **31A-17-402**, as last amended by Chapter 305, Laws of Utah 1993
- 74           **31A-17-408**, as enacted by Chapter 242, Laws of Utah 1985
- 75           **31A-17-504**, as enacted by Chapter 305, Laws of Utah 1993
- 76           **31A-17-505**, as enacted by Chapter 305, Laws of Utah 1993
- 77           **31A-17-507**, as enacted by Chapter 305, Laws of Utah 1993
- 78           **31A-17-508**, as enacted by Chapter 305, Laws of Utah 1993
- 79           **31A-17-509**, as enacted by Chapter 305, Laws of Utah 1993
- 80           **31A-17-513**, as enacted by Chapter 305, Laws of Utah 1993
- 81           **31A-17-601**, as enacted by Chapter 9, Laws of Utah 1996, Second Special Session
- 82           **31A-17-602**, as last amended by Chapter 185, Laws of Utah 1997
- 83           **31A-17-603**, as enacted by Chapter 9, Laws of Utah 1996, Second Special Session
- 84           **31A-17-604**, as enacted by Chapter 9, Laws of Utah 1996, Second Special Session
- 85           **31A-17-605**, as enacted by Chapter 9, Laws of Utah 1996, Second Special Session
- 86           **31A-17-606**, as enacted by Chapter 9, Laws of Utah 1996, Second Special Session
- 87           **31A-17-607**, as enacted by Chapter 9, Laws of Utah 1996, Second Special Session
- 88           **31A-17-608**, as enacted by Chapter 9, Laws of Utah 1996, Second Special Session
- 89           **31A-17-609**, as last amended by Chapter 131, Laws of Utah 1999

90           **31A-17-610**, as enacted by Chapter 9, Laws of Utah 1996, Second Special Session  
91           **31A-17-613**, as enacted by Chapter 9, Laws of Utah 1996, Second Special Session  
92           **31A-18-105**, as last amended by Chapter 9, Laws of Utah 1996, Second Special Session  
93           **31A-19a-101**, as renumbered and amended by Chapter 130, Laws of Utah 1999  
94           **31A-21-103**, as last amended by Chapter 204, Laws of Utah 1986  
95           **31A-21-104**, as last amended by Chapter 190, Laws of Utah 1996  
96           **31A-21-201**, as last amended by Chapter 114, Laws of Utah 2000  
97           **31A-21-301**, as last amended by Chapter 230, Laws of Utah 1992  
98           **31A-21-303**, as last amended by Chapter 203, Laws of Utah 1999  
99           **31A-21-307**, as last amended by Chapter 68, Laws of Utah 1989  
100          **31A-21-401**, as enacted by Chapter 204, Laws of Utah 1986  
101          **31A-21-402**, as enacted by Chapter 204, Laws of Utah 1986  
102          **31A-21-403**, as enacted by Chapter 204, Laws of Utah 1986  
103          **31A-21-404**, as enacted by Chapter 204, Laws of Utah 1986  
104          **31A-21-501**, as last amended by Chapter 302, Laws of Utah 1999  
105          **31A-21-502**, as enacted by Chapter 132, Laws of Utah 1997  
106          **31A-21-503**, as enacted by Chapter 132, Laws of Utah 1997  
107          **31A-21-505**, as enacted by Chapter 132, Laws of Utah 1997  
108          **31A-22-403**, as enacted by Chapter 242, Laws of Utah 1985  
109          **31A-22-404**, as last amended by Chapter 114, Laws of Utah 2000  
110          **31A-22-415**, as last amended by Chapter 39, Laws of Utah 1998  
111          **31A-22-423**, as last amended by Chapter 329, Laws of Utah 1998  
112          **31A-22-510**, as last amended by Chapter 91, Laws of Utah 1987  
113          **31A-22-517**, as enacted by Chapter 242, Laws of Utah 1985  
114          **31A-22-518**, as enacted by Chapter 242, Laws of Utah 1985  
115          **31A-22-520**, as enacted by Chapter 242, Laws of Utah 1985  
116          **31A-22-600**, as enacted by Chapter 242, Laws of Utah 1985  
117          **31A-22-601**, as enacted by Chapter 242, Laws of Utah 1985  
118          **31A-22-602**, as enacted by Chapter 242, Laws of Utah 1985  
119          **31A-22-603**, as enacted by Chapter 242, Laws of Utah 1985  
120          **31A-22-604**, as last amended by Chapter 1, Laws of Utah 2000

121           **31A-22-605**, as last amended by Chapter 224, Laws of Utah 1992  
122           **31A-22-606**, as last amended by Chapter 316, Laws of Utah 1994  
123           **31A-22-607**, as enacted by Chapter 242, Laws of Utah 1985  
124           **31A-22-608**, as last amended by Chapter 91, Laws of Utah 1987  
125           **31A-22-609**, as enacted by Chapter 242, Laws of Utah 1985  
126           **31A-22-610**, as last amended by Chapter 206, Laws of Utah 1996  
127           **31A-22-610.2**, as enacted by Chapter 114, Laws of Utah 2000  
128           **31A-22-610.5**, as last amended by Chapters 102 and 137, Laws of Utah 1995  
129           **31A-22-611**, as enacted by Chapter 242, Laws of Utah 1985  
130           **31A-22-612**, as last amended by Chapter 204, Laws of Utah 1986  
131           **31A-22-613**, as last amended by Chapter 160, Laws of Utah 2000  
132           **31A-22-613.5**, as last amended by Chapter 114, Laws of Utah 2000  
133           **31A-22-614**, as enacted by Chapter 242, Laws of Utah 1985  
134           **31A-22-617**, as last amended by Chapter 267, Laws of Utah 2000  
135           **31A-22-619**, as last amended by Chapter 316, Laws of Utah 1994  
136           **31A-22-620**, as last amended by Chapter 185, Laws of Utah 1997  
137           **31A-22-623**, as enacted by Chapter 6, Laws of Utah 1998  
138           **31A-22-624**, as enacted by Chapter 357, Laws of Utah 1998  
139           **31A-22-626**, as enacted by Chapter 248, Laws of Utah 2000  
140           **31A-22-630**, as enacted by Chapter 114, Laws of Utah 2000  
141           **31A-22-701**, as last amended by Chapter 143, Laws of Utah 1996  
142           **31A-22-702**, as enacted by Chapter 242, Laws of Utah 1985  
143           **31A-22-703**, as last amended by Chapter 329, Laws of Utah 1998  
144           **31A-22-704**, as last amended by Chapter 321, Laws of Utah 1995  
145           **31A-22-705**, as last amended by Chapter 261, Laws of Utah 1989  
146           **31A-22-715**, as last amended by Chapter 12, Laws of Utah 1994  
147           **31A-22-716**, as enacted by Chapter 327, Laws of Utah 1990  
148           **31A-22-717**, as enacted by Chapter 253, Laws of Utah 1991  
149           **31A-22-720**, as enacted by Chapter 114, Laws of Utah 2000  
150           **31A-22-801**, as enacted by Chapter 242, Laws of Utah 1985  
151           **31A-22-802**, as enacted by Chapter 242, Laws of Utah 1985

152           **31A-22-803**, as enacted by Chapter 242, Laws of Utah 1985  
153           **31A-22-804**, as enacted by Chapter 242, Laws of Utah 1985  
154           **31A-22-805**, as enacted by Chapter 242, Laws of Utah 1985  
155           **31A-22-806**, as last amended by Chapter 204, Laws of Utah 1986  
156           **31A-22-807**, as last amended by Chapter 230, Laws of Utah 1992  
157           **31A-22-808**, as enacted by Chapter 242, Laws of Utah 1985  
158           **31A-22-809**, as enacted by Chapter 242, Laws of Utah 1985  
159           **31A-22-1002**, as last amended by Chapter 375, Laws of Utah 1997  
160           **31A-22-1101**, as enacted by Chapter 242, Laws of Utah 1985  
161           **31A-22-1401**, as enacted by Chapter 243, Laws of Utah 1991  
162           **31A-22-1402**, as enacted by Chapter 243, Laws of Utah 1991  
163           **31A-22-1407**, as last amended by Chapter 344, Laws of Utah 1995  
164           **31A-22-1409**, as enacted by Chapter 243, Laws of Utah 1991  
165           **31A-22-1411**, as enacted by Chapter 344, Laws of Utah 1995  
166           **31A-22-1412**, as enacted by Chapter 344, Laws of Utah 1995  
167           **31A-23-101**, as enacted by Chapter 242, Laws of Utah 1985  
168           **31A-23-102**, as last amended by Chapter 1, Laws of Utah 2000  
169           **31A-23-201**, as last amended by Chapter 344, Laws of Utah 1995  
170           **31A-23-202**, as last amended by Chapter 232, Laws of Utah 1997  
171           **31A-23-203**, as last amended by Chapter 131, Laws of Utah 1999  
172           **31A-23-204**, as last amended by Chapter 131, Laws of Utah 1999  
173           **31A-23-206**, as last amended by Chapter 131, Laws of Utah 1999  
174           **31A-23-207**, as last amended by Chapter 316, Laws of Utah 1994  
175           **31A-23-209**, as last amended by Chapter 204, Laws of Utah 1986  
176           **31A-23-211.7**, as enacted by Chapter 131, Laws of Utah 1999  
177           **31A-23-212**, as last amended by Chapter 131, Laws of Utah 1999  
178           **31A-23-216**, as last amended by Chapter 232, Laws of Utah 1997  
179           **31A-23-218**, as enacted by Chapter 242, Laws of Utah 1985  
180           **31A-23-302**, as last amended by Chapter 344, Laws of Utah 1995  
181           **31A-23-303**, as last amended by Chapter 204, Laws of Utah 1986  
182           **31A-23-307**, as last amended by Chapter 185, Laws of Utah 1997

183           **31A-23-310**, as last amended by Chapter 344, Laws of Utah 1995  
184           **31A-23-312**, as last amended by Chapter 230, Laws of Utah 1992  
185           **31A-23-316**, as enacted by Chapter 329, Laws of Utah 1998  
186           **31A-23-404**, as last amended by Chapter 293, Laws of Utah 1998  
187           **31A-23-503**, as last amended by Chapter 1, Laws of Utah 2000  
188           **31A-23-601**, as last amended by Chapter 1, Laws of Utah 2000  
189           **31A-23-702**, as enacted by Chapter 258, Laws of Utah 1992  
190           **31A-23-705**, as enacted by Chapter 258, Laws of Utah 1992  
191           **31A-25-102**, as enacted by Chapter 242, Laws of Utah 1985  
192           **31A-25-202**, as enacted by Chapter 242, Laws of Utah 1985  
193           **31A-25-203**, as enacted by Chapter 242, Laws of Utah 1985  
194           **31A-25-205**, as last amended by Chapters 1 and 114, Laws of Utah 2000  
195           **31A-25-206**, as enacted by Chapter 242, Laws of Utah 1985  
196           **31A-25-207**, as enacted by Chapter 242, Laws of Utah 1985  
197           **31A-25-208**, as enacted by Chapter 242, Laws of Utah 1985  
198           **31A-26-101**, as last amended by Chapter 30, Laws of Utah 1992  
199           **31A-26-202**, as last amended by Chapter 232, Laws of Utah 1997  
200           **31A-26-203**, as last amended by Chapter 9, Laws of Utah 1996, Second Special Session  
201           **31A-26-204**, as last amended by Chapter 131, Laws of Utah 1999  
202           **31A-26-206**, as last amended by Chapter 131, Laws of Utah 1999  
203           **31A-26-207**, as last amended by Chapter 204, Laws of Utah 1986  
204           **31A-26-208**, as last amended by Chapter 204, Laws of Utah 1986  
205           **31A-26-209**, as last amended by Chapter 204, Laws of Utah 1986  
206           **31A-26-213**, as last amended by Chapter 232, Laws of Utah 1997  
207           **31A-26-302**, as enacted by Chapter 242, Laws of Utah 1985  
208           **31A-28-102**, as last amended by Chapter 316, Laws of Utah 1994  
209           **31A-28-103**, as last amended by Chapter 316, Laws of Utah 1994  
210           **31A-28-106**, as repealed and reenacted by Chapter 211, Laws of Utah 1991  
211           **31A-28-108**, as last amended by Chapter 344, Laws of Utah 1995  
212           **31A-28-109**, as repealed and reenacted by Chapter 211, Laws of Utah 1991  
213           **31A-28-202**, as last amended by Chapter 97, Laws of Utah 1988

214           **31A-29-103**, as enacted by Chapter 232, Laws of Utah 1990  
215           **31A-29-117**, as last amended by Chapter 114, Laws of Utah 2000  
216           **31A-30-103**, as last amended by Chapter 265, Laws of Utah 1997  
217           **31A-30-104**, as last amended by Chapter 131, Laws of Utah 1999  
218           **31A-30-106**, as last amended by Chapter 267, Laws of Utah 2000  
219           **31A-30-106.5**, as enacted by Chapter 321, Laws of Utah 1995  
220           **31A-30-107**, as last amended by Chapters 114 and 315, Laws of Utah 2000  
221           **31A-32a-102**, as enacted by Chapter 131, Laws of Utah 1999  
222           **31A-33-103.5**, as last amended by Chapter 107, Laws of Utah 1998  
223           **34A-2-103**, as last amended by Chapters 55 and 199, Laws of Utah 1999  
224           **58-67-501**, as last amended by Chapter 227, Laws of Utah 1997  
225           **58-68-501**, as last amended by Chapter 227, Laws of Utah 1997  
226           **59-10-114**, as last amended by Chapter 257, Laws of Utah 2000  
227           **62A-11-326.1**, as last amended by Chapter 145, Laws of Utah 1998  
228           **62A-11-326.2**, as last amended by Chapter 145, Laws of Utah 1998  
229           **63-25a-413**, as renumbered and amended by Chapter 242, Laws of Utah 1996  
230           **63-55-231**, as last amended by Chapters 52 and 267, Laws of Utah 2000  
231           **67-22-1**, as last amended by Chapter 117, Laws of Utah 2000  
232           **67-22-2**, as last amended by Chapter 117, Laws of Utah 2000  
233           **78-14-4.5**, as last amended by Chapters 30 and 240, Laws of Utah 1992  
234           **78-45-7.5**, as last amended by Chapter 161, Laws of Utah 2000

235 ENACTS:

236           **31A-2-217**, Utah Code Annotated 1953  
237           **31A-22-424**, Utah Code Annotated 1953  
238           **31A-22-522**, Utah Code Annotated 1953  
239           **31A-22-631**, Utah Code Annotated 1953  
240           **31A-22-632**, Utah Code Annotated 1953  
241           **31A-22-1413**, Utah Code Annotated 1953  
242           **31A-22-1414**, Utah Code Annotated 1953  
243           **31A-23-201.5**, Utah Code Annotated 1953  
244           **31A-23-317**, Utah Code Annotated 1953

245           **31A-26-215**, Utah Code Annotated 1953

246 REPEALS AND REENACTS:

247           **31A-27-311.5**, as enacted by Chapter 170, Laws of Utah 1990

248 REPEALS:

249           **31A-8-210**, as last amended by Chapter 9, Laws of Utah 1996, Second Special Session

250           **31A-8-212**, as last amended by Chapter 327, Laws of Utah 1990

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

252           Section 1. Section **7-9-5** is amended to read:

253           **7-9-5. Powers of credit unions.**

254           In addition to the powers specified elsewhere in this chapter, a credit union may:

255           (1) make contracts;

256           (2) sue and be sued;

257           (3) acquire, lease, or hold fixed assets, including real property, furniture, fixtures, and  
258 equipment as the directors consider necessary or incidental to the operation and business of the  
259 credit union, but the value of the real property may not exceed 7% of credit union assets, unless  
260 approved by the commissioner;

261           (4) pledge, hypothecate, sell, or otherwise dispose of real or personal property, either in  
262 whole or in part, necessary or incidental to its operation;

263           (5) incur and pay necessary and incidental operating expenses;

264           (6) require an entrance or membership fee;

265           (7) receive the funds of its members in payment for:

266           (a) shares;

267           (b) share certificates;

268           (c) deposits;

269           (d) deposit certificates;

270           (e) share drafts;

271           (f) NOW accounts; and

272           (g) other instruments;

273           (8) allow withdrawal of shares and deposits, as requested by a member orally to a third

274 party with prior authorization in writing, including, but not limited to, drafts drawn on the credit

275 union for payment to the member or any third party, in accordance with the procedures established

276 by the board of directors, including, but not limited to, drafts, third-party instruments, and other  
277 transaction instruments, as provided in the bylaws;

278 (9) charge fees for its services;

279 (10) extend credit to its members, at rates established in accordance with the bylaws or by  
280 the board of directors;

281 (11) extend credit secured by real estate;

282 (12) make loan participation arrangements with other credit unions, credit union  
283 organizations, or financial organizations in accordance with written policies of the board of  
284 directors, if the credit union that originates a loan for which participation arrangements are made  
285 retains an interest of at least 10% of the loan;

286 (13) sell and pledge eligible obligations in accordance with written policies of the board  
287 of directors;

288 (14) engage in activities and programs of the federal government or this state or any  
289 agency or political subdivision of the state, when approved by the board of directors and not  
290 inconsistent with this chapter;

291 (15) act as fiscal agent for and receive payments on shares and deposits from the federal  
292 government, this state, or its agencies or political subdivisions not inconsistent with the laws of  
293 this state;

294 (16) borrow money and issue evidence of indebtedness for a loan or loans for temporary  
295 purposes in the usual course of its operations;

296 (17) discount and sell notes and obligations;

297 (18) sell all or any portion of its assets to another credit union or purchase all or any  
298 portion of the assets of another credit union;

299 (19) invest funds as provided in this title and in its bylaws;

300 (20) maintain deposits in insured depository institutions as provided in this title and in its  
301 bylaws;

302 (21) (a) hold membership in corporate credit unions organized under this chapter or under  
303 other state or federal statutes; and

304 (b) hold membership or equity interest in associations and organizations of credit unions,  
305 including credit union service organizations;

306 (22) declare and pay dividends on shares, contract for and pay interest on deposits, and pay

307 refunds of interest on loans as provided in this title and in its bylaws;

308 (23) collect, receive, and disburse funds in connection with the sale of negotiable or  
309 nonnegotiable instruments and for other purposes that provide benefits or convenience to its  
310 members, as provided in this title and in its bylaws;

311 (24) make donations for the members' welfare or for civic, charitable, scientific, or  
312 educational purposes as authorized by the board of directors or provided in its bylaws;

313 (25) act as trustee of funds permitted by federal law to be deposited in a credit union as  
314 a deferred compensation or tax deferred device, including, but not limited to, individual retirement  
315 accounts as defined by Section 408, Internal Revenue Code;

316 (26) purchase reasonable [~~disability~~] accident and health insurance, including accidental  
317 death benefits, for directors and committee members through insurance companies licensed in this  
318 state as provided in its bylaws;

319 (27) provide reasonable protection through insurance or other means to protect board  
320 members, committee members, and employees from liability arising out of consumer legislation  
321 such as, but not limited to, truth-in-lending and equal credit laws and as provided in its bylaws;

322 (28) reimburse directors and committee members for reasonable and necessary expenses  
323 incurred in the performance of their duties;

324 (29) participate in systems which allow the transfer, withdrawal, or deposit of funds of  
325 credit unions or credit union members by automated or electronic means and hold membership in  
326 entities established to promote and effectuate these systems, if:

327 (a) the participation is not inconsistent with the law and rules of the department; and

328 (b) any credit union participating in any system notifies the department as provided by law;

329 (30) issue credit cards and debit cards to allow members to obtain access to their shares,  
330 deposits, and extensions of credit;

331 (31) provide any act necessary to obtain and maintain membership in the credit union;

332 (32) exercise incidental powers necessary to carry out the purpose for which a credit union  
333 is organized;

334 (33) undertake other activities relating to its purpose as its bylaws may provide;

335 (34) engage in other activities, exercise other powers, and enjoy other rights, privileges,  
336 benefits, and immunities authorized by rules of the commissioner;

337 (35) act as trustee, custodian, or administrator for Keogh plans, individual retirement

338 accounts, credit union employee pension plans, and other employee benefit programs; and  
339 (36) advertise to the general public the products and services offered by the credit union  
340 if the advertisement prominently discloses that to use the products or services of the credit union  
341 a person is required to:

- 342 (a) be eligible for membership in the credit union; and
- 343 (b) become a member of the credit union.

344 Section 2. Section **26-19-2** is amended to read:

345 **26-19-2. Definitions.**

346 As used in this chapter:

347 (1) "Employee welfare benefit plan" means a medical insurance plan developed by an  
348 employer under 29 U.S.C. Section 1001, et seq., the Employee Retirement Income Security Act  
349 of 1974 as amended.

350 (2) "Estate" means, regarding a deceased recipient, all real and personal property or other  
351 assets included within a decedent's estate as defined in Section 75-1-201 and a decedent's  
352 augmented estate as defined in Section 75-2-203.

353 (3) "Insurer" includes:

354 (a) a group health plan as defined in Subsection 607(1) of the federal Employee Retirement  
355 Income Security Act of 1974;

- 356 (b) a health maintenance organization; and
- 357 (c) any entity offering a health service benefit plan.

358 (4) "Medical assistance" means:

359 (a) all funds expended for the benefit of a recipient under Title 26, Chapter 18, Medical  
360 Assistance Act, or under Titles XVIII and XIX, federal Social Security Act; and

361 (b) any other services provided for the benefit of a recipient by a prepaid health care  
362 delivery system under contract with the department.

363 (5) "Provider" means a person or entity who provides services to a recipient.

364 (6) "Recipient" means:

365 (a) a person who has applied for or received medical assistance from the state;

366 (b) the guardian, conservator, or other personal representative of a person under Subsection  
367 (6)(a) if the person is a minor or an incapacitated person; or

368 (c) the estate and survivors of a person under Subsection (6)(a) if the person is deceased.

369 (7) "State plan" means the state Medicaid program as enacted in accordance with Title  
370 XIX, federal Social Security Act.

371 (8) "Third party" includes:

372 (a) an individual, institution, corporation, public or private agency, trust, estate, insurance  
373 carrier, employee welfare benefit plan, health maintenance organization, health service  
374 organization, preferred provider organization, governmental program such as Medicare,  
375 CHAMPUS, and workers' compensation, which may be obligated to pay all or part of the medical  
376 costs of injury, disease, or disability of a recipient, unless any of these are excluded by department  
377 rule; and

378 (b) a spouse or a parent who:

379 (i) may be obligated to pay all or part of the medical costs of a recipient under law or by  
380 court or administrative order; or

381 (ii) has been ordered to maintain health, dental, or [~~disability~~] accident and health  
382 insurance to cover medical expenses of a spouse or dependent child by court or administrative  
383 order.

384 Section 3. Section **26-40-104** is amended to read:

385 **26-40-104. Advisory Council.**

386 (1) There is created a Utah Children's Health Insurance Program Advisory Council  
387 consisting of at least eight and no more than eleven members appointed by the executive director  
388 of the department. The term of each appointment shall be three years. The appointments shall be  
389 staggered at one-year intervals to ensure continuity of the advisory council.

390 (2) The advisory council shall meet at least quarterly.

391 (3) The membership of the advisory council shall include at least one representative from  
392 each of the following groups:

393 (a) child health care providers;

394 (b) parents and guardians of children enrolled in the program;

395 (c) ethnic populations other than American Indians;

396 (d) American Indians;

397 (e) the Health Policy Commission;

398 (f) the Utah Association of Health Care Providers;

399 (g) health and [~~disability~~] accident and health insurance providers; and

400 (h) the general public.

401 (4) The advisory council shall advise the department on:

402 (a) benefits design;

403 (b) eligibility criteria;

404 (c) outreach;

405 (d) evaluation; and

406 (e) special strategies for under-served populations.

407 (5) (a) (i) Members who are not government employees may not receive compensation or  
408 benefits for their services, but may receive per diem and expenses incurred in the performance of  
409 the member's official duties at the rates established by the Division of Finance under Sections  
410 63A-3-106 and 63A-3-107.

411 (ii) Members may decline to receive per diem and expenses for their service.

412 (b) (i) State government officer and employee members who do not receive salary, per  
413 diem, or expenses from their agency for their service may receive per diem and expenses incurred  
414 in the performance of their official duties from the council at the rates established by the Division  
415 of Finance under Sections 63A-3-106 and 63A-3-107.

416 (ii) State government officer and employee members may decline to receive per diem and  
417 expenses for their service.

418 Section 4. Section **31A-1-103** is amended to read:

419 **31A-1-103. Scope and applicability of title.**

420 (1) This title does not apply to:

421 (a) retainer contracts made by attorneys-at-law with individual clients with fees based on  
422 estimates of the nature and amount of services to be provided to the specific client, and similar  
423 contracts made with a group of clients involved in the same or closely related legal matters;

424 (b) arrangements for providing benefits that do not exceed a limited amount of  
425 consultations, advice on simple legal matters, either alone or in combination with referral services,  
426 or the promise of fee discounts for handling other legal matters;

427 (c) limited legal assistance on an informal basis involving neither an express contractual  
428 obligation nor reasonable expectations, in the context of an employment, membership, educational,  
429 or similar relationship; or

430 (d) legal assistance by employee organizations to their members in matters relating to

431 employment.

432 (2) (a) This title restricts otherwise legitimate business activity.

433 (b) What this title does not prohibit is permitted unless contrary to other provisions of Utah  
434 law.

435 (3) Except as otherwise expressly provided, this title does not apply to:

436 (a) those activities of an insurer where state jurisdiction is preempted by Section 514 of  
437 the federal Employee Retirement Income Security Act of 1974, as amended;

438 (b) ocean marine insurance;

439 (c) death and [~~disability~~] accident and health benefits provided by an organization where  
440 the principal purpose is to achieve charitable, educational, social, or religious objectives rather than  
441 to provide death and [~~disability~~] accident and health benefits, if the organization does not incur a  
442 legal obligation to pay a specified amount and does not create reasonable expectations of receiving  
443 a specified amount on the part of an insured person;

444 (d) other business specified in rules adopted by the commissioner on a finding that the  
445 transaction of such business in this state does not require regulation for the protection of the  
446 interests of the residents of this state or on a finding that it would be impracticable to require  
447 compliance with this title;

448 (e) (i) transactions independently procured through negotiations under Section  
449 31A-15-104;

450 (ii) however, the transactions described in Subsection (3)(e)(i) are subject to taxation under  
451 Section 31A-3-301;

452 (f) self-insurance;

453 (g) reinsurance;

454 (h) subject to Subsection (4), employee and labor union group or blanket insurance  
455 covering risks in this state if:

456 (i) the policyholder exists primarily for purposes other than to procure insurance;

457 (ii) the policyholder is not a resident of this state or a domestic corporation or does not  
458 have its principal office in this state;

459 (iii) no more than 25% of the certificate holders or insureds are residents of this state;

460 (iv) on request of the commissioner, the insurer files with the department a copy of the  
461 policy and a copy of each form or certificate; and

462 (v) the insurer agrees to pay premium taxes on the Utah portion of its business, as if it were  
463 authorized to do business in this state, and if the insurer provides the commissioner with the  
464 security the commissioner considers necessary for the payment of premium taxes under Title 59,  
465 Chapter 9, Taxation of Admitted Insurers; or

466 (i) to the extent provided in Subsection (5):

467 (A) a manufacturer's [~~warranties issued in the ordinary course of sale;~~] warranty; and

468 [~~(j) manufacturer's warranties or service contracts paid for with separate or additional~~  
469 ~~consideration; or]~~

470 [~~(k) service contracts paid for with separate or additional consideration, issued in the~~  
471 ~~ordinary course of sale, that are for the repair or maintenance of goods, other than motor vehicles,~~  
472 ~~having a purchase price of \$3,000 or less]~~

473 (B) a manufacturer's service contract.

474 (4) (a) After a hearing, the commissioner may order an insurer of certain group or blanket  
475 contracts to transfer the Utah portion of the business otherwise exempted under Subsection (3)(h)  
476 to an authorized insurer if the contracts have been written by an unauthorized insurer.

477 (b) If the commissioner finds that the conditions required for the exemption of a group or  
478 blanket insurer are not satisfied or that adequate protection to residents of this state is not provided,  
479 [~~he~~] the commissioner may require:

480 (i) the insurer to be authorized to do business in this state; or [require]

481 (ii) that any of the insurer's transactions be subject to this title.

482 (5) (a) As used in Subsection (3)(i) and this Subsection (5):

483 (i) "manufacturer's service contract" means a service contract:

484 (A) made available by a manufacturer of a product:

485 (I) on one specific product; or

486 (II) on products that are components of a system; and

487 (B) under which the manufacturer is liable for services to be provided under the service  
488 contract including, if the manufacturer's service contract designates, providing parts and labor;

489 (ii) "manufacturer's warranty" means the guaranty of the manufacturer of a product:

490 (A) (I) on one specific product; or

491 (II) on products that are components of a system; and

492 (B) under which the manufacturer is liable for services to be provided under the warranty.

493 including, if the manufacturer's warranty designates, providing parts and labor; and  
494 (iii) "service contract" is as defined in Section 31A-6a-101.  
495 (b) A manufacturer's warranty may be designated as:  
496 (i) a warranty;  
497 (ii) a guaranty; or  
498 (iii) a term similar to a term described in Subsection (5)(b)(i) or (ii).  
499 (c) This title does not apply to:  
500 (i) a manufacturer's warranty;  
501 (ii) a manufacturer's service contract paid for with consideration that is in addition to the  
502 consideration paid for the product itself; and  
503 (iii) a service contract that is not a manufacturer's warranty or manufacturer's service  
504 contract if:  
505 (A) the service contract is paid for with consideration that is in addition to the  
506 consideration paid for the product itself; and  
507 (B) the service contract is for the repair or maintenance of goods;  
508 (C) the cost of the product is equal to an amount determined in accordance with  
509 Subsection (5)(e); and  
510 (D) the product is not a motor vehicle.  
511 (d) This title does not apply to a manufacturer's warranty or service contract paid for with  
512 consideration that is in addition to the consideration paid for for the product itself regardless of  
513 whether the manufacturer's warranty or service contract is sold:  
514 (i) at the time of the purchase of the product; or  
515 (ii) at a time other than the time of the purchase of the product.  
516 (e) (i) For fiscal year 2001-02, the amount described in Subsection (5)(c)(iii)(C) shall be  
517 equal to \$3,700 or less.  
518 (ii) For each fiscal year after fiscal year 2001-02, the commissioner shall annually  
519 determine whether the amount described in Subsection (5)(c)(iii)(C) should be adjusted in  
520 accordance with changes in the Consumer Price Index published by the United States Bureau of  
521 Labor Statistics selected by the commissioner by rule, between:  
522 (A) the Consumer Price Index for the February immediately preceding the adjustment; and  
523 (B) the Consumer Price Index for February 2001.

524 (iii) If under Subsection (5)(e)(ii) the commissioner determines that an adjustment should  
525 be made, the commission shall make the adjustment by rule.

526 Section 5. Section **31A-1-301** is amended to read:

527 **31A-1-301. Definitions.**

528 As used in this title, unless otherwise specified:

529 (1) (a) "Accident and health insurance" means insurance to provide protection against  
530 economic losses resulting from:

531 (i) a medical condition including:

532 (A) medical care expenses; or

533 (B) the risk of disability;

534 (ii) accident; or

535 (iii) sickness.

536 (b) "Accident and health insurance":

537 (i) includes a contract with disability contingencies including:

538 (A) an income replacement contract;

539 (B) a health care contract;

540 (C) an expense reimbursement contract;

541 (D) a credit accident and health contract;

542 (E) a continuing care contract; and

543 (F) long-term care contracts; and

544 (ii) may provide:

545 (A) hospital coverage;

546 (B) surgical coverage;

547 (C) medical coverage; or

548 (D) loss of income coverage.

549 (c) "Accident and health insurance" does not include workers' compensation insurance.

550 ~~[(1)]~~ (2) "Administrator" is defined in Subsection ~~[(90)]~~ (111).

551 ~~[(2)]~~ (3) "Adult" means a natural person who has attained the age of at least 18 years.

552 ~~[(3)]~~ (4) "Affiliate" means any person who controls, is controlled by, or is under common  
553 control with, another person. A corporation is an affiliate of another corporation, regardless of  
554 ownership, if substantially the same group of natural persons manages the corporations.

555 ~~[(4)]~~ (5) "Alien insurer" means an insurer domiciled outside the United States.

556 (6) "Amendment" means an endorsement to an insurance policy or certificate.

557 ~~[(5)]~~ (7) "Annuity" means an agreement to make periodical payments for a period certain  
558 or over the lifetime of one or more natural persons if the making or continuance of all or some of  
559 the series of the payments, or the amount of the payment, is dependent upon the continuance of  
560 human life.

561 (8) "Application" means a document:

562 (a) completed by an applicant to provide information about the risk to be insured; and

563 (b) that contains information that is used by the insurer to:

564 (i) evaluate risk; and

565 (ii) decide whether to:

566 (A) insure the risk under:

567 (I) the coverages as originally offered; or

568 (II) a modification of the coverage as originally offered; or

569 (B) decline to insure the risk.

570 ~~[(6)]~~ (9) "Articles" or "articles of incorporation" means the original articles, special laws,  
571 charters, amendments, restated articles, articles of merger or consolidation, trust instruments, and  
572 other constitutive documents for trusts and other entities that are not corporations, and  
573 amendments to any of these.

574 ~~[(7)]~~ (10) "Bail bond insurance" means a guarantee that a person will attend court when  
575 required, or will obey the orders or judgment of the court, as a condition to the release of that  
576 person from confinement.

577 ~~[(8)]~~ (11) "Binder" is defined in Section 31A-21-102.

578 ~~[(9)]~~ (12) "Board," "board of trustees," or "board of directors" means the group of persons  
579 with responsibility over, or management of, a corporation, however designated.

580 ~~[(10)]~~ (13) "Business of insurance" is defined in Subsection ~~[(53)]~~ (64).

581 ~~[(11)]~~ (14) "Business plan" means the information required to be supplied to the  
582 commissioner under Subsections 31A-5-204(2)(i) and (j), including the information required when  
583 these subsections are applicable by reference under:

584 (a) Section 31A-7-201;

585 (b) Section 31A-8-205; or

586 (c) Subsection 31A-9-205(2).

587 [~~(12)~~] (15) "Bylaws" means the rules adopted for the regulation or management of a  
588 corporation's affairs, however designated and includes comparable rules for trusts and other entities  
589 that are not corporations.

590 [~~(13)~~] (16) "Casualty insurance" means liability insurance as defined in Subsection [~~(59)~~]  
591 (70).

592 [~~(14)~~] (17) "Certificate" means [~~the~~] evidence of insurance given to:

593 (a) an insured under a group insurance policy; or

594 (b) a third party.

595 [~~(15)~~] (18) "Certificate of authority" is included within the term "license."

596 [~~(16)~~] (19) "Claim," unless the context otherwise requires, means a request or demand on  
597 an insurer for payment of benefits according to the terms of an insurance policy.

598 [~~(17)~~] (20) "Claims-made coverage" means an insurance contract or provision limiting  
599 coverage under a policy insuring against legal liability to claims that are first made against the  
600 insured while the policy is in force.

601 [~~(18)~~] (21) (a) "Commissioner" or "commissioner of insurance" means Utah's insurance  
602 commissioner.

603 (b) When appropriate, the terms listed in Subsection [~~(18)~~] (21)(a) apply to the equivalent  
604 supervisory official of another jurisdiction.

605 (22) (a) "Continuing care insurance" means insurance that:

606 (i) provides board and lodging:

607 (ii) provides one or more of the following services:

608 (A) personal services;

609 (B) nursing services;

610 (C) medical services; or

611 (D) other health-related services; and

612 (iii) provides the coverage described in Subsection (22)(a)(i) under an agreement effective:

613 (A) for the life of the insured; or

614 (B) for a period in excess of one year.

615 (b) Insurance is continuing care insurance regardless of whether or not the board and  
616 lodging are provided at the same location as the services described in Subsection (22)(a)(ii).

617            [~~(19)~~] (23) (a) "Control," "controlling," "controlled," or "under common control" means  
618 the direct or indirect possession of the power to direct or cause the direction of the management  
619 and policies of a person. This control may be:

- 620            (i) by contract;  
621            (ii) by common management;  
622            (iii) through the ownership of voting securities; or  
623            (iv) by a means other than those described in Subsections [~~(19)~~] (23)(a)(i) through (iii).

624            (b) There is no presumption that an individual holding an official position with another  
625 person controls that person solely by reason of the position.

626            (c) A person having a contract or arrangement giving control is considered to have control  
627 despite the illegality or invalidity of the contract or arrangement.

628            (d) There is a rebuttable presumption of control in a person who directly or indirectly  
629 owns, controls, holds with the power to vote, or holds proxies to vote 10% or more of the voting  
630 securities of another person.

631            [~~(20)~~] (24) (a) "Corporation" means insurance corporation, except when referring to:

- 632            (i) a corporation doing business as an insurance broker, consultant, or adjuster under:  
633            (A) Chapter 23, Insurance Marketing - Licensing Agents, Brokers, Consultants, and  
634 Reinsurance Intermediaries; and  
635            (B) Chapter 26, Insurance Adjusters; or  
636            (ii) a noninsurer that is part of a holding company system under Chapter 16, Insurance  
637 Holding Companies.

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

639            (c) "Mutual" or "mutual corporation" means a mutual insurance corporation.

640            [~~(21)~~] (25) "Credit [~~disability~~] accident and health insurance" means insurance on a debtor  
641 to provide indemnity for payments coming due on a specific loan or other credit transaction while  
642 the debtor is disabled.

643            [~~(22)~~] (26) "Credit insurance" means surety insurance under which mortgagees and other  
644 creditors are indemnified against losses caused by the default of debtors.

645            [~~(23)~~] (27) "Credit life insurance" means insurance on the life of a debtor in connection  
646 with a loan or other credit transaction.

647            [~~(24)~~] (28) "Creditor" means a person, including an insured, having any claim, whether:

- 648 (a) matured;  
649 (b) unmatured;  
650 (c) liquidated;  
651 (d) unliquidated;  
652 (e) secured;  
653 (f) unsecured;  
654 (g) absolute;  
655 (h) fixed; or  
656 (i) contingent.

657 ~~[(25)]~~ (29) (a) "Customer service representative" means a person that provides insurance  
658 services and insurance product information:

- 659 (i) for its agent, broker, or consultant employer; and  
660 (ii) to its employer's customer, client, or organization.  
661 (b) A customer service representative may only operate within the scope of authority of  
662 its agent, broker, or consultant employer.

663 (30) "Deadline" means the final date or time:

664 (a) imposed by:

665 (i) statute;

666 (ii) rule; or

667 (iii) order; and

668 (b) by which a required filing or payment must be received by the department.

669 ~~[(26)]~~ (31) "Deemer clause" means a provision under this title under which upon the  
670 occurrence of a condition precedent, the commissioner is deemed to have taken a specific action.  
671 If the statute so provides, the condition precedent may be the commissioner's failure to take a  
672 specific action.

673 ~~[(27)]~~ (32) "Degree of relationship" means the number of steps between two persons  
674 determined by counting the generations separating one person from a common ancestor and then  
675 counting the generations to the other person.

676 ~~[(28)]~~ (33) "Department" means the Insurance Department.

677 ~~[(29)]~~ (34) "Director" means a member of the board of directors of a corporation.

678 ~~[(30)] "Disability insurance" means insurance written to:]~~

679 ~~[(a) indemnify for losses and expenses resulting from accident or sickness;]~~  
680 ~~[(b) provide payments to replace income lost from accident or sickness; and]~~  
681 ~~[(c) pay for services resulting directly from accident or sickness, including medical,~~  
682 ~~surgical, hospital, and other ancillary expenses.]~~

683 (35) "Disability" means a physiological or psychological condition that partially or totally  
684 limits an individual's ability to:

685 (a) perform the duties of:

686 (i) that individual's occupation; or

687 (ii) any occupation for which the individual is reasonably suited by education, training, or  
688 experience; or

689 (b) perform two or more of the following basic activities of daily living:

690 (i) eating;

691 (ii) toileting;

692 (iii) transferring;

693 (iv) bathing; or

694 (v) dressing.

695 ~~[(31)]~~ (36) "Domestic insurer" means an insurer organized under the laws of this state.

696 ~~[(32)]~~ (37) "Domiciliary state" means the state in which an insurer:

697 (a) is incorporated;

698 (b) is organized; or

699 (c) in the case of an alien insurer, enters into the United States.

700 ~~[(33)]~~ (38) "Employee benefits" means one or more benefits or services provided  
701 employees or their dependents.

702 ~~[(34)]~~ (39) (a) "Employee welfare fund" means a fund:

703 (i) established or maintained, whether directly or through trustees, by:

704 (A) one or more employers;

705 (B) one or more labor organizations; or

706 (C) a combination of employers and labor organizations; and

707 (ii) that provides employee benefits paid or contracted to be paid, other than income from  
708 investments of the fund, by or on behalf of an employer doing business in this state or for the  
709 benefit of any person employed in this state.

710 (b) "Employee welfare fund" includes a plan funded or subsidized by user fees or tax  
711 revenues.

712 (40) "Endorsement" means a written agreement attached to a policy or certificate to modify  
713 one or more of the provisions of the policy or certificate.

714 [~~35~~] (41) "Excludes" is not exhaustive and does not mean that other things are not also  
715 excluded. The items listed are representative examples for use in interpretation of this title.

716 (42) "Expense reimbursement insurance" means insurance:

717 (a) written to provide payments for expenses relating to hospital confinements resulting  
718 from illness or injury; and

719 (b) written:

720 (i) as a daily limit for a specific number of days in a hospital; and

721 (ii) to have a one or two day waiting period following a hospitalization.

722 [~~36~~] (43) "Fidelity insurance" means insurance guaranteeing the fidelity of persons  
723 holding positions of public or private trust.

724 (44) (a) "Filed" means that a filing is:

725 (i) submitted to the department in accordance with any applicable statute, rule, or filing  
726 order:

727 (ii) received by the department within the time period provided in the applicable statute,  
728 rule, or filing order; and

729 (iii) accompanied with the applicable one or more filing fees required by:

730 (A) Section 31A-3-103; or

731 (B) rule.

732 (b) "Filed" does not include a filing that is rejected by the department because it is not  
733 submitted in accordance with Subsection (44)(a).

734 (45) "Filing," when used as a noun, means an item required to be filed with the department  
735 including:

736 (a) a policy;

737 (b) a rate;

738 (c) a form;

739 (d) a document;

740 (e) a plan;

741 (f) a manual;

742 (g) an application;

743 (h) a report;

744 (i) a certificate;

745 (j) an endorsement;

746 (k) an actuarial certification;

747 (l) a licensee annual statement;

748 (m) a licensee renewal application; or

749 (n) an advertisement.

750 ~~[(37)]~~ (46) "First party insurance" means an insurance policy or contract in which the  
751 insurer agrees to pay claims submitted to it by the insured for the insured's losses.

752 ~~[(38)]~~ (47) "Foreign insurer" means an insurer domiciled outside of this state, including  
753 an alien insurer.

754 ~~[(39)]~~ (48) (a) "Form" means a policy, certificate, or application prepared for general use.

755 (b) "Form" does not include a document specially prepared for use in an individual case.

756 ~~[(40)]~~ (49) "Franchise insurance" means individual insurance policies provided through  
757 a mass marketing arrangement involving a defined class of persons related in some way other than  
758 through the purchase of insurance.

759 (50) "Health care" means any of the following intended for use in the diagnosis, treatment,  
760 mitigation, or prevention of a human ailment or impairment:

761 (a) professional services;

762 (b) personal services;

763 (c) facilities;

764 (d) equipment;

765 (e) devices;

766 (f) supplies; or

767 (g) medicine.

768 ~~[(41)]~~ (51) (a) "Health care insurance" or "health insurance" means ~~[disability]~~ insurance  
769 providing ~~[benefits solely of medical, surgical, hospital, or other ancillary services or payment of~~  
770 ~~medical, surgical, hospital, or other ancillary expenses incurred.];~~

771 (i) health care benefits; or

772 (ii) payment of incurred health care expenses.

773 (b) "Health care insurance" or "health insurance" does not include [~~disability~~] accident and  
774 health insurance providing benefits for:

775 (i) replacement of income;

776 (ii) short-term accident;

777 (iii) fixed indemnity;

778 (iv) credit [~~disability~~] accident and health;

779 (v) supplements to liability;

780 (vi) workers' compensation;

781 (vii) automobile medical payment;

782 (viii) no-fault automobile;

783 (ix) equivalent self-insurance; or

784 (x) any type of [~~disability~~] accident and health insurance coverage that is a part of or  
785 attached to another type of policy.

786 (52) "Income replacement insurance" or "disability income insurance" means insurance  
787 written to provide payments to replace income lost from accident or sickness.

788 [~~(42)~~] (53) "Indemnity" means the payment of an amount to offset all or part of an insured  
789 loss.

790 [~~(43)~~] (54) "Independent adjuster" means an insurance adjuster required to be licensed  
791 under Section 31A-26-201 who engages in insurance adjusting as a representative of insurers.

792 [~~(44)~~] (55) "Independently procured insurance" means insurance procured under Section  
793 31A-15-104.

794 [~~(45)~~] (56) "Individual" means a natural person.

795 [~~(46)~~] (57) "Inland marine insurance" includes insurance covering:

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

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

798 (c) bailee liability;

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

801 (e) personal and commercial property floaters.

802 [~~(47)~~] (58) "Insolvency" means that:

- 803 (a) an insurer is unable to pay its debts or meet its obligations as they mature;
- 804 (b) an insurer's total adjusted capital is less than the insurer's mandatory control level RBC  
805 under Subsection 31A-17-601~~(7)~~(8)(c); or
- 806 (c) an insurer is determined to be hazardous under this title.
- 807 ~~(48)~~ (59) (a) "Insurance" means:
- 808 (i) an arrangement, contract, or plan for the transfer of a risk or risks from one or more  
809 persons to one or more other persons; or
- 810 (ii) an arrangement, contract, or plan for the distribution of a risk or risks among a group  
811 of persons that includes the person seeking to distribute that person's risk.
- 812 (b) "Insurance" includes:
- 813 (i) risk distributing arrangements providing for compensation or replacement for damages  
814 or loss through the provision of services or benefits in kind;
- 815 (ii) contracts of guaranty or suretyship entered into by the guarantor or surety as a business  
816 and not as merely incidental to a business transaction; and
- 817 (iii) plans in which the risk does not rest upon the person who makes the arrangements,  
818 but with a class of persons who have agreed to share it.
- 819 ~~(49)~~ (60) "Insurance adjuster" means a person who directs the investigation, negotiation,  
820 or settlement of a claim under an insurance policy other than life insurance or an annuity, on behalf  
821 of an insurer, policyholder, or a claimant under an insurance policy.
- 822 ~~(50)~~ (61) "Interinsurance exchange" is defined in Subsection ~~(81)~~ (100).
- 823 ~~(51)~~ (62) Except as provided in Subsection ~~[31A-23-102(2)]~~ 31A-23-201.5(1),  
824 "insurance agent" or "agent" means a person who represents insurers in soliciting, negotiating, or  
825 placing insurance.
- 826 ~~(52)~~ (63) Except as provided in Subsection ~~[31A-23-102(2)]~~ 31A-23-201.5(1),  
827 "insurance broker" or "broker" means a person who:
- 828 (a) acts in procuring insurance on behalf of an applicant for insurance or an insured; and
- 829 (b) does not act on behalf of the insurer except by collecting premiums or performing other  
830 ministerial acts.
- 831 ~~(53)~~ (64) "Insurance business" or "business of insurance" includes:
- 832 (a) providing health care insurance, as defined in Subsection ~~(41)~~ (51), by organizations  
833 that are or should be licensed under this title;

834 (b) providing benefits to employees in the event of contingencies not within the control  
835 of the employees, in which the employees are entitled to the benefits as a right, which benefits may  
836 be provided either:

837 (i) by single employers or by multiple employer groups; or

838 (ii) through trusts, associations, or other entities;

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

841 (d) providing the characteristic services of motor clubs as outlined in Subsection [~~(65)~~]  
842 (77);

843 (e) providing other persons with insurance as defined in Subsection [~~(48)~~] (59);

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

846 (g) transacting or proposing to transact any phase of title insurance, including solicitation,  
847 negotiation preliminary to execution, execution of a contract of title insurance, insuring, and  
848 transacting matters subsequent to the execution of the contract and arising out of it, including  
849 reinsurance; and

850 (h) doing, or proposing to do, any business in substance equivalent to Subsections [~~(53)~~]  
851 (64)(a) through (g) in a manner designed to evade the provisions of this title.

852 [~~(54)~~] (65) Except as provided in Subsection [~~31A-23-102(2)~~] 31A-23-201.5(1),  
853 "insurance consultant" or "consultant" means a person who:

854 (a) advises other persons about insurance needs and coverages;

855 (b) is compensated by the person advised on a basis not directly related to the insurance  
856 placed; and

857 (c) is not compensated directly or indirectly by an insurer, agent, or broker for advice  
858 given.

859 [~~(55)~~] (66) "Insurance holding company system" means a group of two or more affiliated  
860 persons, at least one of whom is an insurer.

861 [~~(56)~~] (67) (a) "Insured" means a person to whom or for whose benefit an insurer makes  
862 a promise in an insurance policy and includes:

863 (i) policyholders;

864 (ii) subscribers;

865 (iii) members; and

866 (iv) beneficiaries.

867 (b) The definition in Subsection [~~56~~] (67)(a) applies only to this title and does not define  
868 the meaning of this word as used in insurance policies or certificates.

869 [~~57~~] (68) (a) (i) "Insurer" means any person doing an insurance business as a principal  
870 including:

871 (A) fraternal benefit societies;

872 (B) issuers of gift annuities other than those specified in Subsections 31A-22-1305(2) and

873 (3);

874 (C) motor clubs;

875 (D) employee welfare plans; and

876 (E) any person purporting or intending to do an insurance business as a principal on that

877 person's own account.

878 (ii) "Insurer" does not include a governmental entity, as defined in Section 63-30-2, to the  
879 extent it is engaged in the activities described in Section 31A-12-107.

880 (b) "Admitted insurer" is defined in Subsection [~~94~~] (115)(b).

881 (c) "Alien insurer" is defined in Subsection [~~4~~] (5).

882 (d) "Authorized insurer" is defined in Subsection [~~94~~] (115)(b).

883 (e) "Domestic insurer" is defined in Subsection [~~31~~] (36).

884 (f) "Foreign insurer" is defined in Subsection [~~38~~] (47).

885 (g) "Nonadmitted insurer" is defined in Subsection [~~94~~] (115)(a).

886 (h) "Unauthorized insurer" is defined in Subsection [~~94~~] (115)(a).

887 [~~58~~] (69) (a) Except as provided in Section 31A-1-103, "legal expense insurance" means  
888 insurance written to indemnify or pay for specified legal expenses.

889 (b) "Legal expense insurance" includes arrangements that create reasonable expectations  
890 of enforceable rights, but it does not include the provision of, or reimbursement for, legal services  
891 incidental to other insurance coverages.

892 [~~59~~] (70) (a) "Liability insurance" means insurance against liability:

893 (i) for death, injury, or disability of any human being, or for damage to property, exclusive  
894 of the coverages under:

895 (A) Subsection [~~62~~] (74) for medical malpractice insurance;

- 896 (B) Subsection [~~(77)~~] (92) for professional liability insurance; and
- 897 (C) Subsection [~~(97)~~] (119) for workers' compensation insurance;
- 898 (ii) for medical, hospital, surgical, and funeral benefits to persons other than the insured
- 899 who are injured, irrespective of legal liability of the insured, when issued with or supplemental to
- 900 insurance against legal liability for the death, injury, or disability of human beings, exclusive of
- 901 the coverages under:
- 902 (A) Subsection [~~(62)~~] (74) for medical malpractice insurance;
- 903 (B) Subsection [~~(77)~~] (92) for professional liability insurance; and
- 904 (C) Subsection [~~(97)~~] (118) for workers' compensation insurance;
- 905 (iii) for loss or damage to property resulting from accidents to or explosions of boilers,
- 906 pipes, pressure containers, machinery, or apparatus;
- 907 (iv) for loss or damage to any property caused by the breakage or leakage of sprinklers,
- 908 water pipes and containers, or by water entering through leaks or openings in buildings; or
- 909 (v) for other loss or damage properly the subject of insurance not within any other kind
- 910 or kinds of insurance as defined in this chapter, if such insurance is not contrary to law or public
- 911 policy.
- 912 (b) "Liability insurance" includes:
- 913 (i) vehicle liability insurance as defined in Subsection [~~(95)~~] (116);
- 914 (ii) residential dwelling liability insurance as defined in Subsection [~~(83)~~] (102); and
- 915 (iii) making inspection of, and issuing certificates of inspection upon, elevators, boilers,
- 916 machinery, and apparatus of any kind when done in connection with insurance on them.
- 917 [~~(60)~~] (71) "License" means the authorization issued by the insurance commissioner under
- 918 this title to engage in some activity that is part of or related to the insurance business. It includes
- 919 certificates of authority issued to insurers.
- 920 [~~(61)~~] (72) (a) "Life insurance" means insurance on human lives and insurances pertaining
- 921 to or connected with human life.
- 922 (b) The business of life insurance includes:
- 923 (i) granting death benefits;
- 924 [~~(i)~~] (ii) granting annuity benefits;
- 925 [~~(ii)~~] (iii) granting endowment benefits;
- 926 [~~(iii)~~] (iv) granting additional benefits in the event of death by accident [~~or accidental~~

927 means];

928 [~~(iv)~~] (v) granting additional benefits to safeguard the policy against lapse in the event of

929 [~~the total and permanent~~] disability [~~of the insured~~]; and

930 [~~(v)~~] (vi) providing optional methods of settlement of proceeds.

931 (73) (a) "Long-term care insurance" means an insurance policy or rider advertised,

932 marketed, offered, or designated to provide coverage:

933 (i) in a setting other than an acute care unit of a hospital;

934 (ii) for not less than 12 consecutive months for each covered person on the basis of:

935 (A) expenses incurred;

936 (B) indemnity;

937 (C) prepayment; or

938 (D) another method;

939 (iii) for one or more necessary or medically necessary services that are:

940 (A) diagnostic;

941 (B) preventative;

942 (C) therapeutic;

943 (D) rehabilitative;

944 (E) maintenance; or

945 (F) personal care; and

946 (iv) that may be issued by:

947 (A) an insurer;

948 (B) a fraternal benefit society;

949 (C) (I) a nonprofit health hospital; and

950 (II) a medical service corporation;

951 (D) a prepaid health plan;

952 (E) a health maintenance organization; or

953 (F) an entity similar to the entities described in Subsections (73)(a)(iv)(A) through (E) to

954 the extent that the entity is otherwise authorized to issue life or health care insurance.

955 (b) "Long-term care insurance" includes:

956 (i) any of the following that provide directly or supplement long-term care insurance:

957 (A) a group or individual annuity or rider; or

- 958 (B) a life insurance policy or rider;  
959 (ii) a policy or rider that provides for payment of benefits based on:  
960 (A) cognitive impairment; or  
961 (B) functional capacity; or  
962 (iii) a qualified long-term care insurance contract.  
963 (c) "Long-term care insurance" does not include:  
964 (i) a policy that is offered primarily to provide basic Medicare supplement coverage;  
965 (ii) basic hospital expense coverage;  
966 (iii) basic medical/surgical expense coverage;  
967 (iv) hospital confinement indemnity coverage;  
968 (v) major medical expense coverage;  
969 (vi) income replacement or related asset-protection coverage;  
970 (vii) accident only coverage;  
971 (viii) coverage for a specified:  
972 (A) disease; or  
973 (B) accident;  
974 (ix) limited benefit health coverage; or  
975 (x) a life insurance policy that accelerates the death benefit to provide the option of a lump  
976 sum payment:  
977 (A) if neither the benefits nor eligibility is conditioned on the receipt of long-term care;  
978 and  
979 (B) the coverage is for one or more the following qualifying events:  
980 (I) terminal illness;  
981 (II) medical conditions requiring extraordinary medical intervention; or  
982 (III) permanent institutional confinement.  
983 ~~[(62)]~~ (74) "Medical malpractice insurance" means insurance against legal liability  
984 incident to the practice and provision of medical services other than the practice and provision of  
985 dental services.  
986 ~~[(63)]~~ (75) "Member" means a person having membership rights in an insurance  
987 corporation.  
988 ~~[(64)]~~ (76) "Minimum capital" or "minimum required capital" means the capital that must

989 be constantly maintained by a stock insurance corporation as required by statute.

990 [~~(65)~~] (77) "Motor club" means a person:

991 (a) licensed under:

992 (i) Chapter 5, Domestic Stock and Mutual Insurance Corporations;

993 (ii) Chapter 11, Motor Clubs; or

994 (iii) Chapter 14, Foreign Insurers; and

995 (b) that promises for an advance consideration to provide for a stated period of time:

996 (i) legal services under Subsection 31A-11-102(1)(b);

997 (ii) bail services under Subsection 31A-11-102(1)(c); or

998 (iii) trip reimbursement, towing services, emergency road services, stolen automobile

999 services, a combination of these services, or any other services given in Subsections  
1000 31A-11-102(1)(b) through (f).

1001 [~~(66)~~] (78) "Mutual" means mutual insurance corporation.

1002 [~~(67)~~] (79) "Nonparticipating" means a plan of insurance under which the insured is not  
1003 entitled to receive dividends representing shares of the surplus of the insurer.

1004 [~~(68)~~] (80) "Ocean marine insurance" means insurance against loss of or damage to:

1005 (a) ships or hulls of ships;

1006 (b) goods, freight, cargoes, merchandise, effects, disbursements, profits, moneys,  
1007 securities, choses in action, evidences of debt, valuable papers, bottomry, respondentia interests,  
1008 or other cargoes in or awaiting transit over the oceans or inland waterways;

1009 (c) earnings such as freight, passage money, commissions, or profits derived from  
1010 transporting goods or people upon or across the oceans or inland waterways; or

1011 (d) a vessel owner or operator as a result of liability to employees, passengers, bailors,  
1012 owners of other vessels, owners of fixed objects, customs or other authorities, or other persons in  
1013 connection with maritime activity.

1014 [~~(69)~~] (81) "Order" means an order of the commissioner.

1015 (82) "Outline of coverage" means a summary that explains an accident and health  
1016 insurance policy.

1017 [~~(70)~~] (83) "Participating" means a plan of insurance under which the insured is entitled  
1018 to receive dividends representing shares of the surplus of the insurer.

1019 [~~(71)~~] (84) "Person" includes an individual, partnership, corporation, incorporated or

1020 unincorporated association, joint stock company, trust, reciprocal, syndicate, or any similar entity  
1021 or combination of entities acting in concert.

1022 ~~[(72)]~~ (85) (a) (i) "Policy" means any document, including attached endorsements and  
1023 riders, purporting to be an enforceable contract, which memorializes in writing some or all of the  
1024 terms of an insurance contract.

1025 (ii) "Policy" includes a service contract issued by:

1026 (A) a motor club under Chapter 11, Motor Clubs; ~~[and]~~

1027 (B) a service contract provided under Chapter 6a, Service Contracts; and

1028 ~~[(B)]~~ (C) a corporation licensed under:

1029 (I) Chapter 7, Nonprofit Health Service Insurance Corporations; or

1030 (II) Chapter 8, Health Maintenance Organizations and Limited Health Plans.

1031 (iii) "Policy" does not include:

1032 (A) a certificate under a group insurance contract; or

1033 (B) a document that does not purport to have legal effect.

1034 (b) "Group insurance policy" means a policy covering a group of persons that is issued to  
1035 a policyholder on behalf of the group, for the benefit of group members who are selected under  
1036 procedures defined in the policy or in agreements which are collateral to the policy. This type of  
1037 policy may include members of the policyholder's family or dependents.

1038 (c) "Blanket insurance policy" means a group policy covering classes of persons without  
1039 individual underwriting, where the persons insured are determined by definition of the class with  
1040 or without designating the persons covered.

1041 ~~[(73)]~~ (86) "Policyholder" means the person who controls a policy, binder, or oral contract  
1042 by ownership, premium payment, or otherwise.

1043 (87) "Policy illustration" means a presentation or depiction that includes nonguaranteed  
1044 elements of a policy of life insurance over a period of years.

1045 (88) "Policy summary" means a synopsis describing the elements of a life insurance policy.

1046 ~~[(74)]~~ (89) (a) "Premium" means the monetary consideration for an insurance policy, and  
1047 includes assessments, membership fees, required contributions, or monetary consideration,  
1048 however designated.

1049 (b) Consideration paid to third party administrators for their services is not "premium,"  
1050 though amounts paid by third party administrators to insurers for insurance on the risks

1051 administered by the third party administrators are "premium."

1052 ~~[(75)]~~ (90) "Principal officers" of a corporation means the officers designated under  
1053 Subsection 31A-5-203(3).

1054 ~~[(76)]~~ (91) "Proceedings" includes actions and special statutory proceedings.

1055 ~~[(77)]~~ (92) "Professional liability insurance" means insurance against legal liability  
1056 incident to the practice of a profession and provision of any professional services.

1057 ~~[(78)]~~ (93) "Property insurance" means insurance against loss or damage to real or personal  
1058 property of every kind and any interest in that property, from all hazards or causes, and against loss  
1059 consequential upon the loss or damage including vehicle comprehensive and vehicle physical  
1060 damage coverages, but excluding inland marine insurance and ocean marine insurance as defined  
1061 under Subsections ~~[(46)]~~ (57) and ~~[(68)]~~ (80).

1062 ~~[(79)]~~ (94) (a) "Public agency insurance mutual" means any entity formed by joint venture  
1063 or interlocal cooperation agreement by two or more political subdivisions or public agencies of the  
1064 state for the purpose of providing insurance coverage for the political subdivisions or public  
1065 agencies.

1066 (b) Any public agency insurance mutual created under this title and Title 11, Chapter 13,  
1067 Interlocal Cooperation Act, is considered to be a governmental entity and political subdivision of  
1068 the state with all of the rights, privileges, and immunities of a governmental entity or political  
1069 subdivision of the state.

1070 (95) "Qualified long-term care insurance contract" or "federally tax qualified long-term  
1071 care insurance contract" means:

1072 (a) an individual or group insurance contract that meets the requirements of Section  
1073 7702B(b), Internal Revenue Code; or

1074 (b) the portion of a life insurance contract that provides long-term care insurance:

1075 (i) (A) by rider; or

1076 (B) as a part of the contract; and

1077 (ii) that satisfies the requirements of Section 7702B(b) and (e), Internal Revenue Code.

1078 (96) (a) "Rate" means:

1079 (i) the cost of a given unit of insurance; or

1080 (ii) for property-casualty insurance, that cost of insurance per exposure unit either  
1081 expressed as:

- 1082           (A) a single number; or
- 1083           (B) a pure premium rate, adjusted before any application of individual risk variations based
- 1084 on loss or expense considerations to account for the treatment of:
- 1085           (I) expenses;
- 1086           (II) profit; and
- 1087           (III) individual insurer variation in loss experience.
- 1088           (b) "Rate" does not include a minimum premium.
- 1089           ~~[(80)]~~ (97) (a) Except as provided in Subsection ~~[(80)]~~ (97)(b), "rate service organization"
- 1090 means any person who assists insurers in rate making or filing by:
- 1091           (i) collecting, compiling, and furnishing loss or expense statistics;
- 1092           (ii) recommending, making, or filing rates or supplementary rate information; or
- 1093           (iii) advising about rate questions, except as an attorney giving legal advice.
- 1094           (b) "Rate service organization" does not mean:
- 1095           (i) an employee of an insurer;
- 1096           (ii) a single insurer or group of insurers under common control;
- 1097           (iii) a joint underwriting group; or
- 1098           (iv) a natural person serving as an actuarial or legal consultant.
- 1099           (98) "Rating manual" means any of the following used to determine initial and renewal
- 1100 policy premiums:
- 1101           (a) a manual of rates;
- 1102           (b) classifications;
- 1103           (c) rate-related underwriting rules; and
- 1104           (d) rating formulas that describe steps, policies, and procedures for determining initial and
- 1105 renewal policy premiums.
- 1106           (99) "Received by the department" means:
- 1107           (a) except as provided in Subsection (99)(b), the date delivered to and stamped received
- 1108 by the department, whether delivered:
- 1109           (i) in person;
- 1110           (ii) by a delivery service; or
- 1111           (iii) electronically; and
- 1112           (b) if an item with a department imposed deadline is delivered to the department by a

1113 delivery service, the delivery service's postmark date or pick-up date unless otherwise stated in:

1114 (i) statute;

1115 (ii) rule; or

1116 (iii) a specific filing order.

1117 [~~81~~] (100) "Reciprocal" or "interinsurance exchange" means any unincorporated  
1118 association of persons:

1119 (a) operating through an attorney-in-fact common to all of them; and

1120 (b) exchanging insurance contracts with one another that provide insurance coverage on  
1121 each other.

1122 [~~82~~] (101) "Reinsurance" means an insurance transaction where an insurer, for  
1123 consideration, transfers any portion of the risk it has assumed to another insurer. In referring to  
1124 reinsurance transactions, this title sometimes refers to:

1125 (a) the insurer transferring the risk as the "ceding insurer"; and

1126 (b) the insurer assuming the risk as the:

1127 (i) "assuming insurer"; or

1128 (ii) "assuming reinsurer."

1129 [~~83~~] (102) "Residential dwelling liability insurance" means insurance against liability  
1130 resulting from or incident to the ownership, maintenance, or use of a residential dwelling that is  
1131 a detached single family residence or multifamily residence up to four units.

1132 [~~84~~] (103) "Retrocession" means reinsurance with another insurer of a liability assumed  
1133 under a reinsurance contract. A reinsurer "retrocedes" when it reinsures with another insurer part  
1134 of a liability assumed under a reinsurance contract.

1135 (104) "Rider" means an endorsement to:

1136 (a) an insurance policy; or

1137 (b) an insurance certificate.

1138 [~~85~~] (105) (a) "Security" means any:

1139 (i) note;

1140 (ii) stock;

1141 (iii) bond;

1142 (iv) debenture;

1143 (v) evidence of indebtedness;

- 1144 (vi) certificate of interest or participation in any profit-sharing agreement;  
1145 (vii) collateral-trust certificate;  
1146 (viii) preorganization certificate or subscription;  
1147 (ix) transferable share;  
1148 (x) investment contract;  
1149 (xi) voting trust certificate;  
1150 (xii) certificate of deposit for a security;  
1151 (xiii) certificate of interest of participation in an oil, gas, or mining title or lease or in  
1152 payments out of production under such a title or lease;  
1153 (xiv) commodity contract or commodity option;  
1154 (xv) any certificate of interest or participation in, temporary or interim certificate for,  
1155 receipt for, guarantee of, or warrant or right to subscribe to or purchase any of the items listed in  
1156 Subsections [~~(85)~~] (105)(a)(i) through (xiv); or  
1157 (xvi) any other interest or instrument commonly known as a security.
- 1158 (b) "Security" does not include:
- 1159 (i) any insurance or endowment policy or annuity contract under which an insurance  
1160 company promises to pay money in a specific lump sum or periodically for life or some other  
1161 specified period; or
- 1162 (ii) a burial certificate or burial contract.
- 1163 [~~(86)~~] (106) "Self-insurance" means any arrangement under which a person provides for  
1164 spreading its own risks by a systematic plan.
- 1165 (a) Except as provided in this Subsection [~~(86)~~] (106), self-insurance does not include an  
1166 arrangement under which a number of persons spread their risks among themselves.
- 1167 (b) Self-insurance does include an arrangement by which a governmental entity, as defined  
1168 in Section 63-30-2, undertakes to indemnify its employees for liability arising out of the  
1169 employees' employment.
- 1170 (c) Self-insurance does include an arrangement by which a person with a managed  
1171 program of self-insurance and risk management undertakes to indemnify its affiliates, subsidiaries,  
1172 directors, officers, or employees for liability or risk which is related to the relationship or  
1173 employment.
- 1174 (d) Self-insurance does not include any arrangement with independent contractors.

1175           (107) "Short-term care insurance" means any insurance policy or rider advertised,  
1176 marketed, offered, or designed to provide coverage that is similar to long-term care insurance but  
1177 that provides coverage for less than 12 consecutive months for each covered person.

1178           ~~(87)~~ (108) (a) "Subsidiary" of a person means an affiliate controlled by that person either  
1179 directly or indirectly through one or more affiliates or intermediaries.

1180           (b) "Wholly owned subsidiary" of a person is a subsidiary of which all of the voting shares  
1181 are owned by that person either alone or with its affiliates, except for the minimum number of  
1182 shares the law of the subsidiary's domicile requires to be owned by directors or others.

1183           ~~(88)~~ (109) Subject to Subsection ~~(48)~~ (59)(b), "surety insurance" includes:

1184           (a) a guarantee against loss or damage resulting from failure of principals to pay or  
1185 perform their obligations to a creditor or other obligee;

1186           (b) bail bond insurance; and

1187           (c) fidelity insurance.

1188           ~~(89)~~ (110) (a) "Surplus" means the excess of assets over the sum of paid-in capital and  
1189 liabilities.

1190           (b) (i) "Permanent surplus" means the surplus of a mutual insurer that has been designated  
1191 by the insurer as permanent.

1192           (ii) Sections 31A-5-211, 31A-7-201, 31A-8-209, 31A-9-209, and 31A-14-209 require that  
1193 mutuals doing business in this state maintain specified minimum levels of permanent surplus.

1194           (iii) Except for assessable mutuals, the minimum permanent surplus requirement is  
1195 essentially the same as the minimum required capital requirement that applies to stock insurers.

1196           (c) "Excess surplus" means:

1197           (i) for life or ~~disability insurers, as defined in Subsection 31A-17-601(3),~~ accident and  
1198 health insurers, health organizations, and property and casualty insurers~~;~~ as defined in

1199 ~~Subsection~~ Section 31A-17-601~~(4)~~, the lesser of:

1200           (A) that amount of an insurer's or health organization's total adjusted capital, as defined  
1201 in Subsection ~~(92)~~ (113), that exceeds the product of:

1202           (I) 2.5; and

1203           (II) the sum of the insurer's or health organization's minimum capital or permanent surplus  
1204 required under Section 31A-5-211, 31A-9-209, or 31A-14-205; or

1205           (B) that amount of an insurer's or health organization's total adjusted capital, as defined

1206 in Subsection [~~(92)~~] 113, that exceeds the product of:

1207       (I) 3.0; and

1208       (II) the authorized control level RBC as defined in Subsection 31A-17-601[~~(7)~~](8)(a); and

1209       (ii) for monoline mortgage guaranty insurers, financial guaranty insurers, and title insurers,

1210 that amount of an insurer's paid-in-capital and surplus that exceeds the product of:

1211       (A) 1.5; and

1212       (B) the insurer's total adjusted capital required by Subsection 31A-17-609(1).

1213       [~~(90)~~] (111) "Third party administrator" or "administrator" means any person who collects

1214 charges or premiums from, or who, for consideration, adjusts or settles claims of residents of the

1215 state in connection with insurance coverage, annuities, or service insurance coverage, except:

1216       (a) a union on behalf of its members;

1217       (b) a person exempt as a trust under Section 514 of the federal Employee Retirement

1218 Income Security Act of 1974;

1219       (c) an employer on behalf of the employer's employees or the employees of one or more

1220 of the subsidiary or affiliated corporations of the employer;

1221       (d) an insurer licensed under Chapter 5, 7, 8, 9, or 14, but only [~~with respect to insurance~~

1222 ~~issued by the insurer~~] for a line of insurance for which the insurer holds a license in this state; or

1223       (e) a person licensed or exempt from licensing under Chapter 23 or 26 whose activities are

1224 limited to those authorized under the license the person holds or for which the person is exempt.

1225       [~~(91)~~] (112) "Title insurance" means the insuring, guaranteeing, or indemnifying of owners

1226 of real or personal property or the holders of liens or encumbrances on that property, or others

1227 interested in the property against loss or damage suffered by reason of liens or encumbrances upon,

1228 defects in, or the unmarketability of the title to the property, or invalidity or unenforceability of any

1229 liens or encumbrances on the property.

1230       [~~(92)~~] (113) "Total adjusted capital" means the sum of an insurer's or health organization's

1231 statutory capital and surplus as determined in accordance with:

1232       (a) the statutory accounting applicable to the annual financial statements required to be

1233 filed under Section 31A-4-113; and

1234       (b) any other items provided by the RBC instructions, as RBC instructions is defined in

1235 [~~Subsection~~] Section 31A-17-601[~~(6)~~].

1236       [~~(93)~~] (114) (a) "Trustee" means "director" when referring to the board of directors of a

1237 corporation.

1238 (b) "Trustee," when used in reference to an employee welfare fund, means an individual,  
1239 firm, association, organization, joint stock company, or corporation, whether acting individually  
1240 or jointly and whether designated by that name or any other, that is charged with or has the overall  
1241 management of an employee welfare fund.

1242 [~~94~~] (115) (a) "Unauthorized insurer," "unadmitted insurer," or "nonadmitted insurer"  
1243 means an insurer:

1244 (i) not holding a valid certificate of authority to do an insurance business in this state; or

1245 (ii) transacting business not authorized by a valid certificate.

1246 (b) "Admitted insurer" or "authorized insurer" means an insurer:

1247 (i) holding a valid certificate of authority to do an insurance business in this state; and

1248 (ii) transacting business as authorized by a valid certificate.

1249 [~~95~~] (116) "Vehicle liability insurance" means insurance against liability resulting from  
1250 or incident to ownership, maintenance, or use of any land vehicle or aircraft, exclusive of vehicle  
1251 comprehensive and vehicle physical damage coverages under Subsection [~~78~~] (93).

1252 [~~96~~] (117) "Voting security" means a security with voting rights, and includes any  
1253 security convertible into a security with a voting right associated with it.

1254 [~~97~~] (118) "Workers' compensation insurance" means:

1255 (a) insurance for indemnification of employers against liability for compensation based  
1256 on:

1257 (i) compensable accidental injuries; and

1258 (ii) occupational disease disability;

1259 (b) employer's liability insurance incidental to workers compensation insurance and written  
1260 in connection with it; and

1261 (c) insurance assuring to the persons entitled to workers compensation benefits the  
1262 compensation provided by law.

1263 Section 6. Section **31A-2-201** is amended to read:

1264 **31A-2-201. General duties and powers.**

1265 (1) The commissioner shall administer and enforce this title.

1266 (2) The commissioner has all powers specifically granted, and all further powers that are  
1267 reasonable and necessary to enable him to perform the duties imposed by this title.

1268 (3) (a) The commissioner may make rules to implement the provisions of this title  
1269 according to the procedures and requirements of Title 63, Chapter 46a, Utah Administrative  
1270 Rulemaking Act.

1271 (b) In addition to the notice requirements of Section 63-46a-4, the commissioner shall  
1272 provide notice under Section 31A-2-303 of hearings concerning insurance department rules.

1273 (4) (a) The commissioner shall issue prohibitory, mandatory, and other orders as necessary  
1274 to secure compliance with this title. An order by the commissioner is not effective unless the  
1275 order:

1276 (i) is in writing; and

1277 (ii) is signed by the commissioner or under the commissioner's authority.

1278 (b) On request of any person who would be affected by an order under Subsection (4)(a),  
1279 the commissioner may issue a declaratory order to clarify the person's rights or duties.

1280 (5) (a) The commissioner may hold informal adjudicative proceedings and public  
1281 meetings, for the purpose of investigation, ascertainment of public sentiment, or informing the  
1282 public.

1283 (b) No effective rule or order may result from informal hearings and meetings unless the  
1284 requirement of a hearing under Section 31A-2-301 is satisfied.

1285 (6) The commissioner shall inquire into violations of this title and may conduct any  
1286 examinations and investigations of insurance matters, in addition to examinations and  
1287 investigations expressly authorized, that he considers proper to determine:

1288 (a) whether or not any person has violated any provision of this title; or

1289 (b) to secure information useful in the lawful administration of any provision of this title.

1290 Section 7. Section **31A-2-214** is amended to read:

1291 **31A-2-214. Market assistance programs -- Joint underwriting associations.**

1292 (1) (a) If the commissioner finds that in any part of this state a line of insurance is not  
1293 generally available in the marketplace or that it is priced in such a manner as to severely limit its  
1294 availability, and that the public interest requires it, ~~he~~ the commissioner may by rule implement  
1295 a market assistance program whereby all licensed insurers and agents may pool their information  
1296 as to the available markets.

1297 (b) Insurers doing business in this state may, at their own instance or at the request of the  
1298 commissioner, prepare and submit to the commissioner, for ~~his~~ the commissioner's approval and

1299 adoption, voluntary plans providing any line of insurance coverage for all or any part of this state  
1300 in which this insurance is not generally available in the voluntary market or is priced in such a  
1301 manner as to severely limit its availability and in which the public interest requires the availability  
1302 of this coverage.

1303 (2) (a) If the commissioner finds after notice and hearing that a market assistance program  
1304 formed under Subsection (1)(a) or (b) has not met the needs it was intended to address, ~~he~~ the  
1305 commissioner may by rule form a joint underwriting association to make available the insurance  
1306 to applicants who are in good faith entitled to but unable to procure this insurance through ordinary  
1307 methods.

1308 (b) The commissioner shall allow any market assistance program formed under Subsection  
1309 (1)(a) or (b) a minimum of 30 days operation before ~~he~~ the commissioner forms a joint  
1310 underwriting association. The commissioner may not adopt a rule forming a joint underwriting  
1311 association unless ~~he~~ the commissioner finds as a result of the hearing that:

1312 (i) a certain coverage is not available or that the price for that coverage is no longer  
1313 commensurate with the risk in this state; and

1314 (ii) the coverage is:

1315 (A) vital to the economic health of this state~~is~~;

1316 (B) vital to the quality of life in this state~~is~~;

1317 (C) vital in maintaining competition in insurance in this state~~is~~; or

1318 (D) the number of people affected is significant enough to justify its creation.

1319 ~~(b)~~ (c) The commissioner may not adopt a rule forming a joint underwriting association  
1320 under Subsection (2)(a) on the basis that applicants for particular lines of insurance are unable to  
1321 pay a premium that is commensurate with the risk involved or that the number of applicants or  
1322 people affected is too small to justify its creation.

1323 ~~(c)~~ (d) Each joint underwriting association formed under Subsection (2)(a) shall require  
1324 participation by all insurers licensed and engaged in writing that line of insurance or any  
1325 component of that line of insurance within this state.

1326 ~~(d)~~ (e) Each association formed under Subsection (2)(a) shall:

1327 (i) give consideration to:

1328 (A) the need for adequate and readily accessible coverage;

1329 (B) alternative methods of improving the market affected;

- 1330 (C) the preference of the insurers and agents;
- 1331 (D) the inherent limitations of the insurance mechanism;
- 1332 (E) the need for reasonable underwriting standards; and
- 1333 (F) the requirement of reasonable loss prevention measures;
- 1334 (ii) establish procedures that will create minimum interference with the voluntary market;
- 1335 (iii) allocate the burden imposed by the association equitably and efficiently among the
- 1336 insurers doing business in this state;
- 1337 (iv) establish procedures for applicants and participants to have grievances reviewed by
- 1338 an impartial body;
- 1339 (v) provide for the method of classifying risks and making and filing applicable rates; and
- 1340 (vi) specify:
- 1341 (A) the basis of participation of insurers and agents in the association;
- 1342 (B) the conditions under which risks must be accepted; and
- 1343 (C) the commission rates to be paid for insurance business placed with the association.
- 1344 ~~[(e)]~~ (f) Any deficit in an association in any year shall be recouped by rate increases for
- 1345 the association, applicable prospectively. Any surplus in excess of the loss reserves of the
- 1346 association in any year shall be distributed either by rate decreases or by distribution to the
- 1347 members of the association on a pro-rata basis.
- 1348 (3) Notwithstanding ~~[the provisions of]~~ Subsection (2), the commissioner may not create
- 1349 a joint underwriting association under ~~[that subsection]~~ Subsection (2) for:
- 1350 (a) life insurance[;];
- 1351 (b) annuities[~~;~~ disability];
- 1352 (c) accident and health insurance[;];
- 1353 (d) ocean marine insurance[;];
- 1354 (e) medical malpractice insurance[;];
- 1355 (f) earthquake insurance[;];
- 1356 (g) workers' compensation insurance[;];
- 1357 (h) public agency insurance mutuals[;]; or
- 1358 (i) private passenger automobile liability insurance.
- 1359 (4) Every insurer and agent participating in a joint underwriting association adopted by the
- 1360 commissioner under Subsection (2) shall provide the services prescribed by the association to any

1361 person seeking coverage of the kind available in the plan, including full information about the  
1362 requirements and procedures for obtaining coverage with the association.

1363 (5) If the commissioner finds that the lack of cooperating insurers or agents in an area  
1364 makes the functioning of the association difficult, ~~he~~ the commissioner may order the association  
1365 to:

1366 (a) establish branch service offices[-];

1367 (b) make special contracts for provision of the service[-]; or

1368 (c) take other appropriate steps to ensure that service is available.

1369 (6) The association may issue policies for a period of one year. If, at the end of any one  
1370 year period, the commissioner determines that the market conditions justify the continued  
1371 existence of the association, ~~he~~ the commissioner may reauthorize its existence. In reauthorizing  
1372 the association, the commissioner shall follow the procedure set forth in Subsection (2).

1373 Section 8. Section **31A-2-217** is enacted to read:

1374 **31A-2-217. Coordination with other states.**

1375 (1) (a) Subject to Subsection (1)(b), the commissioner, by rule, may adopt one or more  
1376 agreements with another governmental regulatory agency, within and outside of this state, or with  
1377 the National Association of Insurance Commissioners to address:

1378 (i) licensing of insurance companies;

1379 (ii) licensing of agents;

1380 (iii) regulation of premium rates and policy forms; and

1381 (iv) regulation of insurer insolvency and insurance receiverships.

1382 (b) An agreement described in Subsection (1)(a), may authorize the commissioner to  
1383 modify a requirement of this title if the commissioner determines that the requirements under the  
1384 agreement provide protections similar to or greater than the requirements under this title.

1385 (2) (a) The commissioner may negotiate an interstate compact that addresses issuing  
1386 certificates of authority, if the commissioner determines that:

1387 (i) each state participating in the compact has requirements for issuing certificates of  
1388 authority that provide protections similar to or greater than the requirements of this title; or

1389 (ii) the interstate compact contains requirements for issuing certificates of authority that  
1390 provide protections similar to or greater than the requirements of this title.

1391 (b) If an interstate compact described in Subsection (2)(a) is adopted by the Legislature,

1392 the commissioner may issue certificates of authority to insurers in accordance with the terms of  
1393 the interstate compact.

1394 (3) If any provision of this title conflicts with a provision of the annual statement  
1395 instructions or the National Association of Insurance Commissioners Accounting Practices and  
1396 Procedures Manual, the commissioner may, by rule, resolve the conflict in favor of the annual  
1397 statement instructions or the National Association of Insurance Commissioners Accounting  
1398 Practices and Procedures Manual.

1399 (4) The commissioner may, by rule, accept the information prescribed by the National  
1400 Association of Insurance Commissioners instead of the documents required to be filed with an  
1401 application for a certificate of authority under:

1402 (a) Section 31A-4-103, 31A-5-204, 31A-8-205, or 31A-14-201; or

1403 (b) rules made by the commissioner.

1404 (5) Before November 30, 2001, the commissioner shall report to the Business, Labor, and  
1405 Economic Development Interim Committee regarding the status of:

1406 (a) any agreements entered into under Subsection (1);

1407 (b) any interstate compact entered into under Subsection (2); and

1408 (c) any rule made under Subsections (3) and (4).

1409 (6) This section shall be repealed in accordance with Section 63-55-231.

1410 Section 9. Section **31A-4-103** is amended to read:

1411 **31A-4-103. Certificate of authority.**

1412 (1) Each certificate of authority issued by the commissioner shall specify:

1413 (a) the name of the insurer[?];

1414 (b) the kinds of insurance it is authorized to transact in Utah[?]; and

1415 (c) any other information the commissioner requires.

1416 (2) A certificate of authority issued under this chapter remains in force until, under  
1417 Subsection (3), the certificate of authority is:

1418 (a) revoked;

1419 (b) suspended; or

1420 (c) limited.

1421 (3) (a) After an adjudicative proceeding under Title 63, Chapter 46b, Administrative

1422 Procedures Act, the commissioner may revoke, suspend, or limit in whole or in part the certificate

1423 of authority of any insurer if:

1424 (i) the insurer is found to have:

1425 (A) failed to pay when due any fee due under Section 31A-3-103;

1426 (B) violated or failed to comply with:

1427 (I) this title;

1428 (II) a rule made under Subsection 31A-2-201(3); or

1429 (III) an order issued under Subsection 31A-2-201(4); or

1430 (ii) the insurer's methods and practices in the conduct of business endanger the legitimate

1431 interests of customers and the public.

1432 (b) An order suspending or limiting a certificate of authority issued under this chapter shall

1433 specify:

1434 (i) the period of the suspension or limitation, which in no event may be in excess of 12

1435 months;

1436 (ii) the conditions and limitations imposed on the insurer during the suspension or

1437 limitation; and

1438 (iii) the conditions and procedures for reinstatement from suspension or limitation.

1439 (4) Subject to the requirements of this section and in accordance with Title 63, Chapter

1440 46a, Utah Administrative Rulemaking Act, the commissioner shall by rule prescribe procedures

1441 to renew or reinstate a certificate of authority.

1442 (5) An insurer under this chapter whose certificate of authority is suspended or revoked,

1443 but that continues to act as an authorized insurer, is subject to the penalties for acting as an insurer

1444 without a certificate of authority.

1445 (6) Any insurer holding a certificate of authority in this state shall immediately report to

1446 the commissioner a suspension or revocation of that insurer's certificate of authority in any:

1447 (a) state;

1448 (b) the District of Columbia; or

1449 (c) a territory of the United States.

1450 (7) (a) An order revoking a certificate of authority under Subsection (3) may specify a time

1451 within which the former authorized insurer may not apply for a new certificate of authority, except

1452 that the time may not exceed five years from the date the certificate of authority is revoked.

1453 (b) If no time is specified in an order revoking a certificate of authority under Subsection

1454 (3), the former authorized insurer may not apply for a new certificate of authority for five years  
1455 from the date the certificate of authority is revoked without express approval by the commissioner.

1456 (8) (a) Subject to Subsection (8)(b), the insurer shall pay all fees under Section 31A-3-103  
1457 that would have been payable if the certificate of authority had not been suspended or revoked,  
1458 unless the commissioner, in accordance with rule, waives the payment of the fees by no later than  
1459 the day of:

1460 (i) a suspension under Subsection (3) of an insurer's certificate of authority ends; or

1461 (ii) a new certificate of authority is issued to an insurer whose certificate of authority is  
1462 revoked under Subsection (3).

1463 (b) If a new certificate of authority is issued more than three years after the revocation of  
1464 a similar certificate of authority, this Subsection (8) applies only to the fees that would have  
1465 accrued during the three years immediately following the revocation.

1466 Section 10. Section **31A-4-113** is amended to read:

1467 **31A-4-113. Annual statements.**

1468 (1) (a) Each authorized insurer shall annually, on or before March 1, file with the  
1469 commissioner a true statement of its financial condition, transactions, and affairs as of December  
1470 31 of the preceding year. [~~This~~]

1471 (b) The statement required by Subsection (1)(a) shall be:

1472 (i) verified by the oaths of at least two of the insurer's principal officers[-]; and

1473 (ii) in the general form and provide the information as prescribed by the commissioner by  
1474 rule.

1475 (c) The commissioner may, for good cause shown, extend the date for filing the statement[-  
1476 The] required by Subsection (1)(a), except that the deadline for filing fee payment may not be  
1477 extended.

1478 [~~(2) The statement shall be in the general form and provide the information as prescribed~~  
1479 ~~by rule of the commissioner. In the absence of a statute providing otherwise, the statement shall~~  
1480 ~~be prepared in accordance with the annual statement instructions and the Accounting Practices and~~  
1481 ~~Procedures Manual which is published by the National Association of Insurance Commissioners.]~~

1482 [~~(3)~~] (2) The annual statement of an alien insurer shall:

1483 (a) relate only to its transactions and affairs in the United States unless the commissioner  
1484 requires otherwise[- ~~The statement shall~~]; and

- 1485 (b) be verified by:
- 1486 (i) the insurer's United States manager; or [~~by its~~]
- 1487 (ii) the insurer's authorized officers.

1488 Section 11. Section **31A-5-211** is amended to read:

1489 **31A-5-211. Minimum capital or permanent surplus requirements.**

1490 (1) (a) Except as provided in Subsections (4) and (5), insurers being organized or operating  
1491 under this chapter shall maintain minimum capital or permanent surplus for a mutual, in amounts  
1492 specified in Subsection (2).

1493 (b) The certificate of authority issued under Section 31A-5-212 does not permit an insurer  
1494 to transact types of insurance for which the insurer does not have the required minimum capital  
1495 or permanent surplus for a mutual, in at least the amounts specified under Subsection (2).

1496 (c) The types of insurance under this section are defined in Section 31A-1-301. Minimum  
1497 capital and permanent surplus requirements under this section are based upon all types of insurance  
1498 transacted by the insurer in any and all areas which it operates, whether or not only a portion of  
1499 those types of insurance is or is to be transacted in this state.

1500 (2) The minimum capital, or permanent surplus for a nonassessable mutual, is as follows  
1501 for the indicated types of insurance:

1502 (a) life, annuity, [~~disability~~] accident and health, or any combination of these . . . . . \$400,000

1503 (b) subject to an aggregate maximum of \$1,000,000 for more than one of the following  
1504 types of coverages:

- 1505 (i) property insurance . . . . . 200,000
- 1506 (ii) surety insurance . . . . . 300,000
- 1507 (iii) bail bonds insurance only . . . . . 100,000
- 1508 (iv) marine and transportation insurance . . . . . 200,000
- 1509 (v) vehicle liability insurance, residential dwelling liability insurance,  
1510 or both . . . . . 400,000
- 1511 (vi) liability insurance . . . . . 600,000
- 1512 (vii) workers' compensation insurance . . . . . 300,000
- 1513 (c) title insurance . . . . . 200,000
- 1514 (d) professional liability insurance, excluding medical malpractice . . . . . 700,000
- 1515 (e) professional liability, including medical malpractice . . . . . 1,000,000

1516 (f) all types of insurance, except life, annuity, or title . . . . . 2,000,000

1517 (3) Prior to beginning operations, an insurer licensed under this chapter shall have total  
1518 adjusted capital in excess of the company action level RBC as defined in Subsection  
1519 31A-17-601[(7)](8)(b).

1520 (4) (a) Subject to Subsections (4)(b) and (4)(c), an insurer holding a valid certificate of  
1521 authority to transact insurance in this state prior to July 1, 1986, continues to be authorized to  
1522 transact the same kinds of insurance as permitted by that certificate of authority, if the insurer  
1523 maintains not less than the amount of minimum capital or permanent surplus required for that  
1524 authority under the laws of this state in force immediately prior to July 1, 1986.

1525 (b) If, after July 1, 1986, an insurer ever has minimum capital or permanent surplus that  
1526 meets or exceeds the requirements of Subsections (2) and (3), then Subsection (4)(a) is  
1527 inapplicable to that insurer and it shall comply with Subsections (2) and (3).

1528 (c) Any insurer satisfying the minimum capital or permanent surplus requirement through  
1529 application of Subsection (4)(a) shall comply with Subsections (2) and (3) by July 1, 1990.

1530 (d) Beginning July 1, 1987, former county mutuals shall comply with the capital and  
1531 surplus requirements of this section.

1532 (5) (a) An assessable mutual may be organized under this chapter, but it may not issue life  
1533 insurance or annuities. An assessable mutual need not have a permanent surplus if the assessment  
1534 liability of its policyholders is unlimited and all insurance policies clearly state that. If assessments  
1535 are limited to a specified amount or a specified multiple of annual advance premiums, the  
1536 minimum permanent surplus is the amount that would be required under Subsections (2) and (3)  
1537 if the corporation were not assessable, reduced by an amount that reasonably reflects the value of  
1538 the policyholders' assessment liability in satisfying the financial needs of the corporation. The  
1539 liability of members in an assessable mutual is joint and several up to the limits provided by the  
1540 articles of incorporation or this title.

1541 (b) (i) Except as provided in Subsections (5)(c) and (d), no certificate of authority may be  
1542 issued to an assessable mutual until it has at least 400 bona fide applications for insurance from  
1543 not less than 400 separate applicants, on separate risks located in this state, in each of the classes  
1544 of business upon which assessments may be separately levied. A full year's premium shall be paid  
1545 with each application and the aggregate premium is at least \$50,000 for each class.

1546 (ii) If at any time while the corporation is an assessable mutual, the business plan is

1547 amended to include an additional class of business on which assessments may be separately levied,  
1548 identical requirements of Subsection (5)(b)(i) are applicable to each additional class.

1549 (c) Five or more employers may join in the formation of an assessable mutual to write only  
1550 workers' compensation insurance if, instead of the requirements of Subsection (5)(b), policies are  
1551 simultaneously put into effect that cover at least 1,500 employees, with no single employer having  
1552 more than 1/5 of the employees insured by the assessable mutual. A full year's premium shall be  
1553 paid by each employer, aggregating at least \$200,000.

1554 (d) The number and amount of required initial applications and premium payments may  
1555 be reduced by substituting surplus for the applications or premium payments. The commissioner  
1556 shall determine the reduction in required initial applications and premium payments that is  
1557 appropriate for a given amount of surplus. The insurer shall continue to be assessable until  
1558 conversion under Subsection 31A-5-508(1) to a nonassessable mutual.

1559 (6) The capital or permanent surplus requirements of Subsection (2) apply to persons  
1560 seeking certificates of authority under this chapter to write reinsurance. This subsection may not  
1561 be construed as requiring reinsurers to obtain a certificate of authority. However, Section  
1562 31A-17-404 imposes alternate safety prerequisites to reserve credit being granted for reinsurance  
1563 ceded to a reinsurer without a certificate of authority.

1564 Section 12. Section **31A-5-418** is amended to read:

1565 **31A-5-418. Dividends and other distributions.**

1566 (1) Subject to the requirements of Section 16-10a-842 and Subsection 31A-16-106(2), a  
1567 stock corporation may make distributions under Section 16-10a-640 if all the following conditions  
1568 are satisfied:

1569 (a) A dividend may not be paid that would reduce the insurer's total adjusted capital below  
1570 the insurer's company action level RBC as defined in Subsection 31A-17-601[(7)](8)(b).

1571 (b) Except as to excess surplus, or unless the commissioner issues an order allowing  
1572 otherwise, a dividend may not be paid that exceeds the insurer's net gain from operations or net  
1573 income for the period ending December 31 of the preceding year.

1574 (2) Title 67, Chapter 4a, Unclaimed Property Act, applies to unclaimed dividends and  
1575 distributions in insurance corporations.

1576 Section 13. Section **31A-5-703** is amended to read:

1577 **31A-5-703. Nonrenewals, cancellations, or revisions of ceded reinsurance**

1578 **agreements.**

1579 (1) (a) A nonrenewal, cancellation, or revision of ceded reinsurance agreements is not  
1580 subject to the reporting requirements of Section 31A-5-701 if:

1581 (i) the nonrenewal, cancellation, or revision is not material; or

1582 (ii) with respect to a property and casualty business, the insurer's total ceded written  
1583 premium [~~represents~~], on an annualized basis, is less than 10% of its total written premium for  
1584 direct and assumed business; or

1585 (iii) with respect to a life, annuity, and [~~disability~~] accident and health business, the total  
1586 reserve credit taken for business ceded [~~represents~~], on an annualized basis, is less than 10% of the  
1587 statutory reserve requirement prior to a cession.

1588 (b) For purposes of this part, a material nonrenewal, cancellation, or revision is one that  
1589 affects:

1590 (i) with respect to a property and casualty business:

1591 (A) more than 50% of the insurer's total ceded written premium; or

1592 (B) more than 50% of the insurer's total ceded indemnity and loss adjustment reserves;

1593 (ii) with respect to a life, annuity, and [~~disability~~] accident and health business, more than  
1594 50% of the total reserve credit taken for business ceded, on an annualized basis, as indicated in the  
1595 insurer's most recent annual statement; or

1596 (iii) with respect to either property and casualty or life, annuity, or [~~disability~~] accident and  
1597 health business[~~, is either of the following events~~]:

1598 (A) an authorized reinsurer representing more than 10% of a total cession is replaced by  
1599 one or more unauthorized reinsurers; or

1600 (B) previously established collateral requirements have been reduced or waived as respects  
1601 one or more unauthorized reinsurers representing collectively more than 10% of a total cession.

1602 (2) (a) The following information is required to be disclosed in any report filed pursuant  
1603 to Section 31A-5-701 of a material nonrenewal, cancellation, or revision of a ceded reinsurance  
1604 agreement:

1605 (i) the effective date of the nonrenewal, cancellation, or revision;

1606 (ii) the description of the transaction with an identification of the initiator of the  
1607 transaction;

1608 (iii) the purpose of, or reason for the transaction; and

1609 (iv) if applicable, the identity of the replacement reinsurers.

1610 (b) (i) Insurers are required to report all material nonrenewals, cancellations, or revisions  
1611 of ceded reinsurance agreements on a nonconsolidated basis unless the insurer:

1612 (A) is part of a consolidated group of insurers that uses a pooling arrangement or 100%  
1613 reinsurance agreement that affects the solvency and integrity of the insurer's reserves; and

1614 (B) ceded substantially all of its direct and assumed business to the pool.

1615 (ii) An insurer is considered to have ceded substantially all of its direct and assumed  
1616 business to a pool if:

1617 (A) the insurer has less than \$1,000,000 total direct plus assumed written premiums during  
1618 a calendar year that are not subject to a pooling arrangement; and

1619 (B) the net income of the business not subject to the pooling arrangement represents less  
1620 than 5% of the insurer's capital and surplus.

1621 Section 14. Section **31A-6a-102** is amended to read:

1622 **31A-6a-102. Scope and purposes.**

1623 (1) The purposes of this chapter are to:

1624 (a) create a legal framework within which service contracts may be sold in this state;

1625 (b) encourage innovation in the marketing and development of more economical and  
1626 effective ways of providing services under service contracts, while placing the risk of innovation  
1627 on the service contract providers rather than on consumers; and

1628 (c) permit and encourage fair and effective competition among different systems of  
1629 providing and paying for these services.

1630 (2) Service contracts may not be issued, sold, or offered for sale in this state unless the  
1631 provider has complied with this chapter. [~~Subsections 31A-1-103(3)(i), (j), and (k) limit the~~  
1632 ~~application of this chapter to certain persons engaged in a limited manner in providing extended~~  
1633 ~~warranties or service contracts.]~~

1634 (3) This chapter applies only to a service contract not otherwise exempted from this title  
1635 by Section 31A-1-103.

1636 Section 15. Section **31A-6a-110** is amended to read:

1637 **31A-6a-110. Rulemaking.**

1638 (1) Pursuant to Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the  
1639 commissioner may make rules necessary to assist in the enforcement of this chapter.

1640 (2) The commissioner may by rule or order, after a hearing, exempt certain service contract  
1641 providers or service contract providers for a specific class of service contracts that are not  
1642 otherwise exempt under [~~Subsections~~] Subsection 31A-1-103(3)[~~(i), (j), or (k),~~] from any provision  
1643 of this title. The commissioner may order substitute requirements on a finding that a particular  
1644 provision of this title is not necessary for the protection of the public or that the substitute  
1645 requirement is reasonably certain to provide equivalent protection to the public.

1646 Section 16. Section **31A-8-101** is amended to read:

1647 **31A-8-101. Definitions.**

1648 For purposes of this chapter:

1649 (1) "Basic health care services" means:

1650 (a) emergency care[;];

1651 (b) inpatient hospital and physician care[;];

1652 (c) outpatient medical services[;]; and

1653 (d) out-of-area coverage.

1654 (2) "Director of health" means the executive director of the Department of Health or his  
1655 authorized representative.

1656 (3) "Enrollee" means [~~any~~] an individual:

1657 (a) who has entered into a contract with [~~a health maintenance~~] an organization for health  
1658 care; or

1659 (b) in whose behalf [~~such~~] an arrangement for health care has been made.

1660 (4) "Health care" [~~means professional or personal services, facilities, equipment, devices,~~  
1661 ~~supplies, or medicine, intended for use in the diagnosis, treatment, mitigation, or prevention of any~~  
1662 ~~human ailment or impairment~~] is as defined in Section 31A-1-301.

1663 (5) "Health maintenance organization" means any person[;]:

1664 (a) other than:

1665 (i) an insurer licensed under Chapter 7; or

1666 (ii) an individual who contracts to render professional or personal services that [~~he~~] the  
1667 individual directly performs [~~himself, which~~]; and

1668 (b) that:

1669 [~~(a)~~] (i) furnishes at a minimum, either directly or through arrangements with others, basic  
1670 health care services to an enrollee in return for prepaid periodic payments agreed to in amount

1671 prior to the time during which the health care may be furnished; and

1672 ~~(b)~~ (ii) is obligated to the enrollee to arrange for or to directly provide available and  
1673 accessible health care.

1674 (6) (a) "Limited health plan" means, except as limited under Subsection (6)(b), any person  
1675 who furnishes, either directly or through arrangements with others, ~~the~~ services;

1676 (i) of:

1677 (A) dentists[;];

1678 (B) optometrists[;];

1679 (C) physical therapists[;];

1680 (D) podiatrists[;];

1681 (E) psychologists[;];

1682 (F) physicians[;];

1683 (G) chiropractic physicians[;];

1684 (H) naturopathic physicians[;];

1685 (I) osteopathic physicians[;];

1686 (J) social workers[;];

1687 (K) family counselors[;];

1688 (L) other health care providers[;]; or

1689 (M) reasonable combinations of ~~these;~~ the services described in this Subsection (1)(a)(i);

1690 (ii) to an enrollee;

1691 (iii) in return for prepaid periodic payments agreed to in amount prior to the time during  
1692 which the services may be furnished[;]; and ~~who is~~

1693 (iv) for which the person is obligated to the enrollee to arrange for or directly provide  
1694 available and accessible the services described in this Subsection (6)(a).

1695 (b) "Limited health plan" does not include:

1696 (i) a health maintenance organization;

1697 (ii) an insurer licensed under Chapter 7; or

1698 (iii) an individual who contracts to render professional or personal services that he  
1699 performs himself.

1700 (7) (a) "Nonprofit organization" or "nonprofit corporation" means an organization no part  
1701 of the income of which is distributable to its members, trustees, or officers, or a nonprofit

1702 cooperative association, except in a manner allowed under Section 31A-8-406.

1703 (b) "Nonprofit health maintenance organization" and "nonprofit limited health plan" are  
1704 used when referring specifically to one of the types of organizations with "nonprofit" status.

1705 (8) "Organization" means health maintenance organization and limited health plan, unless  
1706 used in the context of:

1707 (a) "organization permit," in which case see Sections 31A-8-204 and 31A-8-206[;]; or  
1708 [~~unless used in the context of~~]

1709 (b) "organization expenses," in which case see Section 31A-8-208.

1710 (9) "Participating provider" means a provider as defined in Subsection (10) who, under an  
1711 express or implied contract with the health maintenance organization, has agreed to provide health  
1712 care services to enrollees with an expectation of receiving payment, directly or indirectly, from the  
1713 health maintenance organization, other than copayment.

1714 (10) "Provider" means any person who furnishes health care directly to the enrollee and  
1715 who is licensed or otherwise authorized to furnish this care in this state.

1716 (11) "Uncovered expenditures" means the costs of health care services that are covered by  
1717 an organization for which an enrollee is liable in the event of the organization's insolvency.

1718 (12) "Unusual or infrequently used health services" means those health services which are  
1719 projected to involve fewer than 10% of the organization's enrollees' encounters with providers,  
1720 measured on an annual basis over the organization's entire enrollment.

1721 Section 17. Section **31A-8-103 (Effective 04/30/01)** is amended to read:

1722 **31A-8-103 (Effective 04/30/01). Applicability to other provisions of law.**

1723 (1) (a) Except for exemptions specifically granted under this title, [~~organizations are~~] an  
1724 organization is subject to regulation under all of the provisions of this title.

1725 (b) Notwithstanding any provision of this title, [~~organizations~~] an organization licensed  
1726 under this chapter [~~are~~] is:

1727 (i) wholly exempt from [~~the provisions of~~] Chapters 7, 9, 10, 11, 12, 13, 19, and 28[~~—In~~  
1728 ~~addition, organizations are~~] and not subject to:

1729 [~~(a)~~] (A) Chapter 3, except for Part I;

1730 [~~(b)~~] (B) Section 31A-4-107;

1731 [~~(c)~~] (C) Chapter 5, except for provisions specifically made applicable by this chapter;

1732 [~~(d)~~] (D) Chapter 14, except for provisions specifically made applicable by this chapter;

1733 ~~[(e) Chapters]~~ (E) Chapter 17 ~~[and 18]~~, except:

1734 (I) Part VI; or

1735 (II) as made applicable by the commissioner by rule consistent with this chapter; ~~[and]~~

1736 (F) Chapter 18, except as made applicable by the commissioner by rule consistent with this

1737 chapter; and

1738 ~~[(f)]~~ (G) Chapter 22, except for Parts VI, VII, and XII.

1739 (2) The commissioner may by rule waive other specific provisions of this title that ~~[he]~~ the

1740 commissioner considers inapplicable to health maintenance organizations or limited health plans,

1741 upon a finding that ~~[such a]~~ the waiver will not endanger the interests of:

1742 (a) enrollees~~[-]~~;

1743 (b) investors~~[-]~~; or

1744 (c) the public.

1745 (3) Title 16, Chapter 6a, Utah Revised Nonprofit Corporation Act, and Title 16, Chapter

1746 10a, Utah Revised Business Corporation Act, do not apply to ~~[organizations]~~ an organization

1747 except as specifically made applicable by:

1748 (a) this chapter;

1749 (b) a provision referenced under this chapter; or

1750 (c) a rule adopted by the commissioner to deal with corporate law issues of health

1751 maintenance organizations that are not settled under this chapter.

1752 (4) (a) Whenever in this chapter ~~[a section, subsection, or paragraph of]~~, Chapter 5, or

1753 Chapter 14 is made applicable to ~~[organizations]~~ an organization, the application is:

1754 (i) of those provisions that apply to a mutual ~~[corporations]~~ corporation if the organization

1755 is nonprofit; and

1756 (ii) of those that apply to a stock ~~[corporations]~~ corporation if the organization is for profit.

1757 ~~[Whenever a provision under]~~

1758 (b) When Chapter 5 or 14 is made applicable to ~~[organizations]~~ an organization under this

1759 chapter, "mutual" means nonprofit organization.

1760 (5) Solicitation of enrollees by an organization is not a violation of any provision of law

1761 relating to solicitation or advertising by health professionals if that solicitation is made in

1762 accordance with ~~[the provisions of]~~;

1763 (a) this chapter; and

1764 (b) Chapter 23.

1765 (6) Nothing in this title prohibits any health maintenance organization from meeting the  
1766 requirements of any federal law that enables the health maintenance organization to:

1767 (a) receive federal funds; or [to]

1768 (b) obtain or maintain federal qualification status.

1769 (7) Except as provided in Section 31A-8-501, [~~organizations are~~] an organization is exempt  
1770 from:

1771 (a) statutes in this title or department rules that restrict or limit [~~their~~] its freedom of choice  
1772 in contracting with or selecting health care providers, including Section 31A-22-618[-]; and

1773 [~~(8)~~] (b) [~~Organizations are exempt from~~] the assessment or payment of premium taxes  
1774 imposed by Sections 59-9-101 through 59-9-104.

1775 Section 18. Section **31A-8-205** is amended to read:

1776 **31A-8-205. Organization permit and certificate of incorporation.**

1777 (1) Section 31A-5-204 applies to the formation of organizations, except that "Section  
1778 31A-5-211" in Subsection 31A-5-204 (5) shall be read "Section 31A-8-209."

1779 (2) In addition to the requirements of Section 31A-5-204, the application for a permit shall  
1780 include a description of the initial locations of facilities where health care will be available to  
1781 enrollees, the hours during which various services will be provided, the types of health care  
1782 personnel to be used at each location and the approximate number of each personnel type to be  
1783 available at each location, the methods to be used to monitor the quality of health care furnished,  
1784 the method of resolving grievances initiated by enrollees or providers, the method used to give  
1785 enrollees an opportunity to participate in matters of policy, the medical records system, and the  
1786 method for documentation of utilization of health care by persons insured.

1787 Section 19. Section **31A-8-209** is amended to read:

1788 **31A-8-209. Minimum capital or minimum permanent surplus.**

1789 (1) [~~Health~~] A health maintenance [~~organizations~~] organization being organized or  
1790 operating under this chapter shall have and maintain a minimum capital or minimum permanent  
1791 surplus of \$100,000.

1792 [~~(2) Limited health plans being organized or operating under this chapter shall have and~~  
1793 ~~maintain a minimum capital or permanent surplus in an amount determined under Subsection~~  
1794 ~~31A-8-210 (9).~~]

1795 ~~[(3) For purposes of measuring compliance with Section 31A-8-210, to the extent an~~  
1796 ~~organization has capital or permanent surplus in excess of its required minimum capital, or in~~  
1797 ~~excess of its required minimum permanent surplus, the excess shall be counted as surplus.]~~

1798 (2) (a) The minimum required capital or minimum permanent surplus for a limited health  
1799 plan:

1800 (i) is at least \$10,000; and

1801 (ii) may not exceed \$100,000.

1802 (b) The initial minimum required capital or minimum permanent surplus for a limited

1803 health plan required by Subsection (2)(a) shall be set by the commissioner, after:

1804 (i) a hearing; and

1805 (ii) consideration of:

1806 (A) the services to be provided by the limited health plan;

1807 (B) the size and geographical distribution of the population the limited health plan

1808 anticipates serving;

1809 (C) the nature of the limited health plan's arrangements with providers; and

1810 (D) the arrangements, agreements, and relationships in place or reasonably anticipated with

1811 respect to:

1812 (I) insolvency insurance;

1813 (II) reinsurance;

1814 (III) lenders subordinating to the interests of enrollees and trade creditors;

1815 (IV) personal and corporate financial guarantees;

1816 (V) provider withholds and assessments;

1817 (VI) surety bonds;

1818 (VII) hold harmless agreements in provider contracts; and

1819 (VIII) other arrangements, agreements, and relationships impacting the security of

1820 enrollees.

1821 (c) Upon a material change in the scope or nature of a limited health plan's operations, the

1822 commissioner may, after a hearing, alter the limited health plan's minimum required capital or

1823 minimum permanent surplus.

1824 (3) Before beginning operations, a health maintenance organization licensed under this  
1825 chapter shall have total adjusted capital in excess of the company action level RBC as defined in

1826 Subsection 31A-17-601(8)(b).

1827 (4) Each health maintenance organization authorized to do business in this state shall  
1828 maintain assets in an amount equal to the total of the health maintenance organization's:

1829 (a) liabilities;

1830 (b) minimum capital or minimum permanent surplus required by Subsection (1) or (2); and

1831 (c) the company action level RBC as defined in Subsection 31A-17-601(8)(b).

1832 (5) As a prerequisite to receiving an original certificate of authority to do business in this  
1833 state, a health maintenance organization shall have initial surplus at least \$400,000 in excess of  
1834 the capital and surplus required by Subsection (4).

1835 [~~4~~] (6) The commissioner may allow the minimum capital or permanent surplus account  
1836 of an organization to be designated by some other name.

1837 (7) A pattern of persistent deviation from the accounting and investment standards under  
1838 this section may be grounds for the commissioner to find that the one or more persons with  
1839 authority to make the organization's accounting or investment decisions are incompetent for  
1840 purposes of Subsection 31A-5-410(3).

1841 Section 20. Section **31A-8-211** is amended to read:

1842 **31A-8-211. Deposit.**

1843 (1) Except as provided in Subsection (2), each organization authorized in this state shall  
1844 maintain a deposit with the commissioner under Section 31A-2-206 in an amount equal to the sum  
1845 of:

1846 (a) the organization's minimum capital or minimum permanent surplus [~~plus~~] requirement  
1847 of Subsection 31A-8-209(1) or (2); and

1848 (b) 50% of [~~compulsory surplus~~] the company action level RBC as defined in Subsection  
1849 31A-17-601(8)(b).

1850 (2) [~~A~~] (a) After a hearing the commissioner may exempt a health maintenance  
1851 organization from the deposit requirement of Subsection (1) if:

1852 (i) the commissioner determines that the enrollees' interests are adequately protected;

1853 (ii) the health maintenance organization [~~which~~] has been continuously authorized to do  
1854 business in this state for at least five years[;]; and [~~which~~]

1855 (iii) the health maintenance organization has \$5,000,000 surplus [~~over and above~~] in  
1856 excess of its [~~compulsory surplus in an amount specified in Subsection (3), may, after a hearing,~~

1857 be exempted from the deposit requirement of Subsection (1) if the commissioner determines that  
1858 the enrollees' interests are adequately protected] company action level RBC as defined in  
1859 Subsection 31A-17-601(8)(b).

1860 (b) The commissioner may rescind [~~such~~] an exemption given under Subsection (2)(a).

1861 [~~(3) No health maintenance organization may be exempted under Subsection (2) from the~~  
1862 ~~deposit requirement unless:]~~

1863 [~~(a) disregarding assets described in Subsection 31A-8-210 (8)(a), the health maintenance~~  
1864 ~~organization has \$1,000,000 of surplus in excess of the amount required to satisfy its compulsory~~  
1865 ~~surplus requirement; or]~~

1866 [~~(b) the health maintenance organization has \$5,000,000 surplus in excess of the amount~~  
1867 ~~required to satisfy its compulsory surplus requirement.]~~

1868 Section 21. Section **31A-8-213** is amended to read:

1869 **31A-8-213. Certificate of authority.**

1870 (1) [~~The~~] An organization may apply for a certificate of authority at any time prior to the  
1871 expiration of its organization permit. The application shall include:

1872 (a) a detailed statement by a principal officer about any material changes that have taken  
1873 place or are likely to take place in the facts on which the issuance of the organization permit was  
1874 based[~~;~~]; and

1875 (b) if any material changes are proposed in the business plan, the information about the  
1876 changes that would be required if an organization permit were then being applied for.

1877 (2) The commissioner shall issue a certificate of authority, if [~~he~~] the commissioner finds  
1878 that:

1879 (a) the [~~organization satisfies~~] organization's capital and surplus complies with the  
1880 requirements of [Sections] Section 31A-8-209 [and 31A-8-210] as to the operations proposed  
1881 under the new certificate of authority;

1882 (b) there is no basis for revoking the organization permit under Section 31A-8-207;

1883 (c) the deposit required by Section 31A-8-211 has been made;

1884 (d) the organization satisfies the requirements of Section 31A-8-104; and

1885 [~~(e) the organization satisfies the surplus requirement of Subsection 31A-8-210 (4) or (5);~~  
1886 ~~whichever applies; and]~~

1887 [(~~f~~)] (e) all other applicable requirements of the law have been met.

1888 (3) The certificate of authority shall specify any limits imposed by the commissioner upon  
1889 the organization's business or methods of operation, including the general types of health care  
1890 services the organization is authorized to provide.

1891 (4) Upon the issuance of the certificate of authority:

1892 (a) the board shall authorize and direct the issuance of certificates for shares, bonds, or  
1893 notes subscribed to under the organization permit, and of insurance policies upon qualifying  
1894 applications obtained under the organization permit; and

1895 (b) the commissioner shall authorize the release to the organization of all funds held in  
1896 escrow under Section 31A-5-208, as adopted by Section 31A-8-206.

1897 (5) (a) An organization may at any time apply to the commissioner for a new or amended  
1898 certificate of authority altering the limits on its business or methods of operation. The application  
1899 shall contain or be accompanied by that information reasonably required by the commissioner  
1900 under Subsections 31A-5-204(2) and 31A-8-205(2). The commissioner shall issue the new  
1901 certificate as requested if ~~he~~ the commissioner finds that the organization continues to satisfy the  
1902 requirements specified under Subsection (2).

1903 (b) If the commissioner issues a summary order under Section 31A-27-201 against an  
1904 organization, ~~he~~ the commissioner may also revoke the organization's certificate and issue a new  
1905 one with any limitation he considers necessary.

1906 Section 22. Section **31A-8-402** is amended to read:

1907 **31A-8-402. Contract cancellation or nonrenewal.**

1908 (1) An enrollee may not be cancelled or nonrenewed except for:

1909 ~~[(a) failure to pay the charge for the enrollment or coverage;]~~

1910 ~~[(b) violation of reasonable, published policies of the organization;]~~

1911 ~~[(c) unreasonable refusal to comply with care or treatment prescribed by the health care  
1912 personnel of the organization; or]~~

1913 ~~[(d) such other reasons as the commissioner may specify by rule.]~~

1914 (a) nonpayment of a premium or contribution;

1915 (b) a fraudulent act committed by the plan sponsor;

1916 (c) a violation of participation or contribution rules;

1917 (d) termination of the plan where the issuer is ceasing to offer coverage in the market

1918 according to:

1919            (i) regulations required under the Health Insurance Portability and Accountability Act of  
1920 1996 42 U.S.C. 1301, et seq.; and

1921            (ii) Subsections 31A-2-201(3), 31A-4-115(8), and 31A-30-106(1)(k); or

1922            (e) the enrollee moving to outside of the service area.

1923            (2) Every organization authorized under this chapter shall provide its enrollees an  
1924 opportunity, at least once each year, to:

1925            (a) enroll again with the organization; or

1926            (b) choose another source through which they may secure health care services or benefits.

1927            (3) This section does not prohibit reasonable underwriting classifications for the purpose  
1928 of establishing rates nor does it prohibit experience rating.

1929            (4) (a) The requirement in [~~Part VII of~~] Chapter 22, Part VII, Group Accident and Health  
1930 Insurance, that a conversion policy be available for certain persons who are no longer entitled to  
1931 group coverage does not require an organization to provide a conversion policy to a person  
1932 residing outside of the organization's service area.

1933            (b) The commissioner may, by rule or order, define the scope of an organization's service  
1934 area.

1935            Section 23. Section **31A-8-407** is amended to read:

1936            **31A-8-407. Written contracts -- Limited liability of enrollee.**

1937            (1) (a) Every contract between [~~a health maintenance~~] an organization and a participating  
1938 provider of health care services shall be in writing and shall set forth that [~~in the event the health~~  
1939 ~~maintenance~~] if the organization:

1940            (i) fails to pay for health care services as set forth in the contract, the enrollee [~~shall~~] may  
1941 not be liable to the provider for any sums owed by the [~~health maintenance~~] organization[~~;~~]; and

1942            (ii) the organization becomes insolvent, the rehabilitator or liquidator may require the  
1943 participating provider of health care services to:

1944            (A) continue to provide health care services under the contract between the participating  
1945 provider and the organization until the later of:

1946            (I) 90 days from the date of the filing of a petition for rehabilitation or the petition for  
1947 liquidation; or

1948            (II) the date the term of the contract ends; and

1949            (B) subject to Subsection (1)(c), reduce the fees the participating provider is otherwise

1950 entitled to receive from the organization under the contract between the participating provider and  
1951 the organization during the time period described in Subsection (1)(b)(i).

1952 (b) If the conditions of Subsection (1)(a)(ii)(b) are met, the participating provider shall:

1953 (i) accept the reduced payment as payment in full; and

1954 (ii) relinquish the right to collect additional amounts from the insolvent organization's  
1955 enrollee.

1956 (c) Notwithstanding Subsection (1)(a)(ii)(b):

1957 (i) the rehabilitator or liquidator may not reduce a fee to less than 75% of the regular fee  
1958 set forth in the participating provider contract; and

1959 (ii) the enrollee shall continue to pay the same copayments, deductibles, and other  
1960 payments for services received from the participating provider that the enrollee was required to pay  
1961 before the filing of:

1962 (A) the petition for reorganization; or

1963 (B) the petition for liquidation.

1964 (2) [~~In the event that the participating provider contract has not been reduced to writing~~  
1965 as required by Subsection (1) or that the contract fails to contain the required prohibition, the] Δ  
1966 participating provider [~~shall~~] may not collect or attempt to collect from the enrollee sums owed  
1967 by the [~~health maintenance~~] organization or the amount of the regular fee reduction authorized  
1968 under Subsection (1)(a)(ii) if the participating provider contract:

1969 (a) is not in writing as required in Subsection (1); or

1970 (b) fails to contain the language required by Subsection (1).

1971 (3) (a) [~~No participating provider, or agent, trustee, or assignee thereof~~] Δ a person listed  
1972 in Subsection (3)(b) may not bill or maintain any action at law against an enrollee to collect:

1973 (i) sums owed by the [~~health maintenance~~] organization[~~-~~]; or

1974 (ii) the amount of the regular fee reduction authorized under Subsection (1)(a)(ii).

1975 (b) Subsection (3)(a) applies to:

1976 (i) a participating provider;

1977 (ii) an agent;

1978 (iii) a trustee; or

1979 (iv) an assignee of a person described in Subsections (3)(b)(i) through (iii).

1980 Section 24. Section **31A-8-408** is amended to read:

1981           **31A-8-408. Organizations offering point of service products.**

1982           Effective July 1, 1991, a health maintenance [organizations] organization offering products  
1983 that permit members the option of obtaining covered services from a noncontracted provider,  
1984 which is a point of service or [~~POS~~] point of sale product, shall comply with the [~~following~~]  
1985 requirements[?] of Subsections (1) through (7).

1986           (1) The cost of an encounter with a noncontracted provider is considered an uncovered  
1987 expenditure as defined in Section 31A-8-101 [~~for purposes of Section 31A-8-210~~].

1988           (2) Any organization offering to sell point of service products shall report the number of  
1989 encounters with contracted and noncontracted providers to the commissioner on a monthly basis.  
1990 The commissioner shall define the form, content, and due date of the report and shall require  
1991 audited reports of the information on a yearly basis.

1992           (3) An organization may not offer point of service products unless it has secured contracts  
1993 with participating providers located within the organization's service area for each covered service  
1994 other than those unusual or infrequently used health services that are not available from the  
1995 organization's health care providers.

1996           (4) An organization may not enroll members who do not work or reside in the service area  
1997 as defined by rule, except this Subsection (4) does not apply to dependents of enrollees.

1998           (5) Any organization [~~which~~] that exceeds the 10% limit of unusual or infrequently used  
1999 health services as defined in Section 31A-8-101 is subject to a forfeiture of up to \$50 per  
2000 encounter.

2001           (6) [~~Organizations~~] An organization shall disclose to employees and members the  
2002 existence of the 10% limit at or prior to enrollment.

2003           (7) The commissioner shall hold hearings and adopt rules providing any additional  
2004 limitations or requirements necessary to secure the public interest in conformity with this section.

2005           Section 25. Section **31A-9-212 (Effective 04/30/01)** is amended to read:

2006           **31A-9-212 (Effective 04/30/01). Separate accounts and subsidiaries.**

2007           (1) Except as provided in Subsections (2) and (3), Sections 31A-5-217 and 31A-5-218  
2008 apply to separate accounts and subsidiaries of fraternal. If a fraternal issues contracts on a variable  
2009 basis, Subsections 31A-22-902(2) and (6) and 31A-9-209(2) do not apply, except that Subsection  
2010 31A-9-209(2) applies to any benefits contained in the variable contracts which are fixed or  
2011 guaranteed dollar amounts.

2012 (2) If a fraternal engages in any insurance business other than life, [~~disability~~] accident  
2013 and health, annuities, property, or liability insurance, it shall do so through a subsidiary under  
2014 Section 31A-5-218.

2015 (3) (a) A local lodge may incorporate under Title 16, Chapter 6a, Utah Revised Nonprofit  
2016 Corporation Act, or the corresponding law of the state where it is located, to carry out the  
2017 noninsurance activities of the local lodge.

2018 (b) Corporations may be formed under Title 16, Chapter 6a, Utah Revised Nonprofit  
2019 Corporation Act, to implement Subsection 31A-9-602(2).

2020 Section 26. Section **31A-11-102** is amended to read:

2021 **31A-11-102. Activities of motor clubs.**

2022 (1) Motor clubs authorized under this chapter may provide or arrange for the following  
2023 services:

2024 (a) service as agent or broker in obtaining insurance coverage from authorized insurers,  
2025 subject to Chapter 23;

2026 (b) provision of, or payment for, legal services and costs in the defense of traffic offenses  
2027 or other legal problems connected with the ownership or use of a motor vehicle, provided the  
2028 maximum amount payable for any one incident is not more than 100 times the [~~the~~] annual charge  
2029 for the motor club contract;

2030 (c) guaranteed arrest bond certificates and cash bond guarantees as specified under Section  
2031 31A-11-112;

2032 (d) payment of specified expenses resulting from an automobile accident, other than  
2033 expenses for personal injury or for damage to an automobile, provided the maximum amount  
2034 payable for any one accident is not more than 100 times the annual charge for the motor club  
2035 contract;

2036 (e) towing and emergency road services and theft services; and

2037 (f) any services relating to travel not involving the transfer and distribution of risk.

2038 (2) Unless they are also insurers under Chapter 5 or 14, motor clubs may not provide any  
2039 liability or physical damage insurance or insurance of life or [~~disability~~] accident and health,  
2040 whether or not related to motor vehicles.

2041 (3) If a motor club is a separate division of a corporation, the activities of the other  
2042 divisions of the corporation are not limited by this section, if the motor club division complies with

2043 Subsection 31A-11-106(3).

2044 Section 27. Section **31A-14-201** is amended to read:

2045 **31A-14-201. Application.**

2046 ~~[Any]~~ (1) (a) An incorporated person, other than a foreign health maintenance  
2047 organization~~[-, including the United States branch of an alien insurer]~~, authorized as an insurer in  
2048 another jurisdiction in the United States may apply under this section for a certificate of authority  
2049 as an insurer in this state. ~~[This insurer]~~

2050 (b) An alien insurer that is incorporated may apply under this section for a certificate of  
2051 authority as an insurer in this state.

2052 (2) An applicant for a certificate of authority under this section shall:

2053 (a) use the forms prescribed by the commissioner~~[-. The applicant shall]; and~~

2054 (b) provide the information and documents the commissioner requests, including the  
2055 following~~[-, unless the commissioner excludes any of them because they will not be helpful in~~  
2056 making the decision of whether to issue a certificate of authority]:

2057 ~~[(1)]~~ (i) a copy of the applicant's articles and bylaws;

2058 ~~[(2)]~~ (ii) financial statements for the most recent complete fiscal year, with an explanation  
2059 of the bases of all valuations and computations, in the detail reasonably required by the  
2060 commissioner;

2061 ~~[(3)]~~ (iii) a summary, as detailed as the commissioner reasonably requires, of the  
2062 applicant's financial history for:

2063 (A) the preceding ten years~~[-]; or [for]~~

2064 (B) the entire period of the applicant's existence if less than ten years;

2065 ~~[(4)]~~ (iv) [the names of the] for each of the applicant's current or proposed directors and  
2066 principal officers ~~[and their addresses and occupations]:~~

2067 (A) the name of the director or principal officer;

2068 (B) the address of the director or principal officer; and

2069 (C) the occupation for the preceding ten years of the director or principal officer;

2070 ~~[(5)]~~ (v) for an alien insurer~~[-];~~

2071 (A) the name of its United States manager, the manager's addresses and occupations for  
2072 the preceding ten years; and

2073 (B) if the manager is a corporation, the names, addresses, and occupations of its directors

2074 and principal officers, and its most recent detailed financial statements;

2075       ~~[(6)]~~ (vi) a schedule listing:

2076       ~~[(a)]~~ (A) all jurisdictions in which applicant has done or has been authorized to conduct  
2077 an insurance business during the preceding ten years;

2078       ~~[(b)]~~ (B) all jurisdictions in which the applicant has applied for authorization to conduct  
2079 an insurance business during the preceding ten years, and the dates and results of those  
2080 applications;

2081       ~~[(c)]~~ (C) all jurisdictions from which the applicant has withdrawn from conducting an  
2082 insurance business during the preceding ten years, and the reasons for its withdrawals; and

2083       ~~[(d)]~~ (D) the name of and the circumstances surrounding any officer, director, or  
2084 controlling shareholder of the corporation ever being subject to a:

2085           ~~[(i)]~~ (I) felony indictment or conviction; or

2086           ~~[(ii)]~~ (II) civil, criminal, or administrative action alleging fraud;

2087       ~~[(7)]~~ (vii) a summary description of the applicant's present business operations, including  
2088 the coverages written and the states and countries in which it does business;

2089       ~~[(8)]~~ (viii) a list of any statements, reports, or other documents that have, within the last  
2090 five years, been generally transmitted or distributed to or among the insurer's creditors,  
2091 shareholders, members, subscribers, or policyholders;

2092       ~~[(9)]~~ (ix) if the applicant has been in the insurance business for less than ten years, a  
2093 summary of the past and a projection of the anticipated operating results at the end of each year  
2094 of the first ten years of operation, based, where known, on actual data and otherwise on reasonable  
2095 assumptions of loss experience, premium and other income, operating expenses, and acquisition  
2096 costs;

2097       ~~[(10)]~~ (x) a statement that organizational and promotional expenses have been paid, and  
2098 that organizational procedures required by the insurer's domiciliary authority are complete;

2099       ~~[(11)]~~ (xi) a statement from the domiciliary regulatory authority and the state of entry into  
2100 the United States, if any, that so far as known, the applicant is sound and there are no legitimate  
2101 objections to its proposed operations in this state;

2102       ~~[(12)]~~ (xii) the plan for conducting an insurance business in this state, including:

2103           ~~[(a)]~~ (A) the geographical area where business is to be conducted;

2104           ~~[(b)]~~ (B) the types of insurance to be written;

2105           ~~[(e)]~~ (C) the proposed general marketing methods;  
2106           ~~[(d)]~~ (D) the proposed method for establishing premium rates; and  
2107           ~~[(e)]~~ (E) copies of the policy and application forms to be used in this state;  
2108           ~~[(13)]~~ (xiii) any other information the commissioner reasonably requires;  
2109           ~~[(14)]~~ (xiv) authorization to the commissioner to make inquiry of any person about the  
2110 applicant, its manager under a management contract, its attorney in fact, its general agents, and any  
2111 of the officers, directors, or shareholders of any of them designated by the commissioner; and  
2112           ~~[(15)]~~ (xv) written agreement by the applicant and any other designated persons that in the  
2113 absence of actual malice, no communication made in response to any inquiry under Subsection  
2114 ~~[(14)]~~ (2)(xiv) will subject the person making it to an action for damages for defamation brought  
2115 by the applicant, the designated person, or a legal representative of either.

2116           (3) No action for damages for defamation lies even in the absence of this agreement.

2117           (4) Notwithstanding Subsection (2), the commissioner may exempt an applicant for a  
2118 certificate of authority from providing the information described in Subsection (2) if the  
2119 commissioner finds that the information will not be helpful in making the decision of whether to  
2120 issue a certificate of authority.

2121           Section 28. Section **31A-14-212** is amended to read:

2122           **31A-14-212. Changes in business plan.**

2123           (1) Within two years after the initial issuance of a certificate of authority to a foreign  
2124 insurer by its domiciliary jurisdiction, the insurer may not substantially deviate from its business  
2125 plan under Subsection 31A-14-201 ~~[(12)]~~ (2)(xii) unless notice of the proposed action is filed with  
2126 the commissioner 30 days in advance of the proposed effective date.

2127           (2) If the commissioner believes that the change proposed under Subsection (1) would be  
2128 contrary to Utah law or to the interests of insureds, creditors, or the public, he may prohibit the  
2129 application of the change to Utah. In his prohibitory order he shall explain why he has prohibited  
2130 the change.

2131           (3) If the commissioner finds after a hearing that the application of the proposed change  
2132 outside Utah would endanger the interests of insureds, creditors, or the public in Utah, the  
2133 commissioner may revoke the insurer's certificate of authority unless the insurer agrees not to make  
2134 the change.

2135           Section 29. Section **31A-15-103** is amended to read:

2136           **31A-15-103. Surplus lines insurance -- Unauthorized insurers.**

2137           (1) Notwithstanding Section 31A-15-102, a foreign insurer that has not obtained a  
2138 certificate of authority to do business in this state under Section 31A-14-202 may negotiate for and  
2139 make insurance contracts with persons in this state and on risks located in this state, subject to the  
2140 limitations and requirements of this section.

2141           (2) For contracts made under this section, the insurer may, in this state, inspect the risks  
2142 to be insured, collect premiums and adjust losses, and do all other acts reasonably incidental to the  
2143 contract, through employees or through independent contractors.

2144           (3) (a) Subsections (1) and (2) do not permit any person to solicit business in this state on  
2145 behalf of an insurer that has no certificate of authority.

2146           (b) Any insurance placed with a nonadmitted insurer shall be placed with a surplus lines  
2147 broker licensed under Chapter 23.

2148           (c) The commissioner may by rule prescribe how a surplus lines broker may:

2149           (i) pay or permit the payment, commission, or other remuneration on insurance placed by  
2150 the surplus lines broker under authority of the surplus lines broker's license to one holding a license  
2151 to act as an insurance agent; and

2152           (ii) advertise the availability of the surplus lines broker's services in procuring, on behalf  
2153 of persons seeking insurance, contracts with nonadmitted insurers.

2154           (4) For contracts made under this section, nonadmitted insurers are subject to Sections  
2155 31A-23-302 and 31A-26-303 and the rules adopted under those sections.

2156           (5) A nonadmitted insurer may not issue workers' compensation insurance coverage to  
2157 employers located in this state, except for stop loss coverages issued to employers securing  
2158 workers' compensation under Subsection 34A-2-201(3).

2159           (6) (a) The commissioner may by rule prohibit making contracts under Subsection (1) for  
2160 a specified class of insurance if authorized insurers provide an established market for the class in  
2161 this state that is adequate and reasonably competitive.

2162           (b) The commissioner may by rule place restrictions and limitations on and create special  
2163 procedures for making contracts under Subsection (1) for a specified class of insurance if there  
2164 have been abuses of placements in the class or if the policyholders in the class, because of limited  
2165 financial resources, business experience, or knowledge, cannot protect their own interests  
2166 adequately.

2167 (c) The commissioner may prohibit an individual insurer from making any contract under  
2168 Subsection (1) and all insurance agents and brokers from dealing with the insurer if:

2169 (i) the insurer has willfully violated this section, Section 31A-4-102, 31A-23-302, or  
2170 31A-26-303, or any rule adopted under any of these sections;

2171 (ii) the insurer has failed to pay the fees and taxes specified under Section 31A-3-301; or

2172 (iii) the commissioner has reason to believe that the insurer is in an unsound condition or  
2173 is operated in a fraudulent, dishonest, or incompetent manner or in violation of the law of its  
2174 domicile.

2175 (d) (i) The commissioner may issue lists of unauthorized foreign insurers whose solidity  
2176 the commissioner doubts, or whose practices the commissioner considers objectionable.

2177 (ii) The commissioner shall issue lists of unauthorized foreign insurers the commissioner  
2178 considers to be reliable and solid. [~~The~~]

2179 (iii) In addition to the lists described in Subsections (7)(d)(i) and (ii), the commissioner  
2180 may [also] issue other relevant evaluations of unauthorized insurers. [~~No~~]

2181 (iv) An action [~~lies~~] may not lie against the commissioner or any employee of the  
2182 department for any written or oral communication made in, or in connection with the issuance of,  
2183 [~~these~~] the lists or evaluations described in this Subsection (6)(d).

2184 (e) A foreign unauthorized insurer shall be listed on the commissioner's "reliable" list only  
2185 if the unauthorized insurer:

2186 (i) has delivered a request to the commissioner to be on the list;

2187 (ii) has established satisfactory evidence of good reputation and financial integrity;

2188 (iii) has delivered to the commissioner a copy of its current annual statement certified by  
2189 the insurer and continues each subsequent year to file its annual statements with the commissioner  
2190 within 60 days of its filing with the insurance regulatory authority where it is domiciled; [~~and~~]

2191 (iv) (A) is in substantial compliance with the solvency standards in Chapter 17, Part VI,  
2192 Risk-Based Capital, or maintains capital and surplus of at least [~~\$5,000,000~~] \$15,000,000,  
2193 whichever is greater, and maintains in the United States an irrevocable trust fund in either a  
2194 national bank or a member of the Federal Reserve System, or maintains a deposit meeting the  
2195 statutory deposit requirements for insurers in the state where it is made, which trust fund or  
2196 deposit:

2197 (I) shall be in an amount not less than [~~\$1,500,000~~] \$2,500,000 for the protection of all of

2198 the insurer's policyholders in the United States;

2199 (II) may consist of cash, securities, or investments of substantially the same character and  
2200 quality as those which are "qualified assets" under Section 31A-17-201; and

2201 (III) may include as part of the trust arrangement a letter of credit that qualifies as  
2202 acceptable security under Subsection 31A-17-404(3)(c)(iii); or

2203 (B) in the case of any "Lloyd's" or other similar incorporated or unincorporated group of  
2204 alien individual insurers, maintains a trust fund that:

2205 (I) shall be in an amount not less than \$50,000,000 as security to its full amount for all  
2206 policyholders and creditors in the United States of each member of the group;

2207 (II) may consist of cash, securities, or investments of substantially the same character and  
2208 quality as those which are "qualified assets" under Section 31A-17-201; and

2209 (III) may include as part of this trust arrangement a letter of credit that qualifies as  
2210 acceptable security under Subsection 31A-17-404(3)(c)(iii)[-]; and

2211 (v) for an alien insurer not domiciled in the United States or a territory of the United  
2212 States, is listed on the Quarterly Listing of Alien Insurers maintained by the National Association  
2213 of Insurance Commissions International Insurers Department.

2214 (7) A surplus lines broker may not, either knowingly or without reasonable investigation  
2215 of the financial condition and general reputation of the insurer, place insurance under this section  
2216 with financially unsound insurers or with insurers engaging in unfair practices, or with otherwise  
2217 substandard insurers, unless the broker gives the applicant notice in writing of the known  
2218 deficiencies of the insurer or the limitations on his investigation, and explains the need to place  
2219 the business with that insurer. A copy of this notice shall be kept in the office of the broker for at  
2220 least five years. To be financially sound, an insurer shall satisfy standards that are comparable to  
2221 those applied under the laws of this state to authorized insurers. Insurers on the "doubtful or  
2222 objectionable" list under Subsection (6)(d) and insurers not on the commissioner's "reliable" list  
2223 under Subsection (6)~~(d)~~(e) are presumed substandard.

2224 (8) A policy issued under this section shall include a description of the subject of the  
2225 insurance and indicate the coverage, conditions, and term of the insurance, the premium charged  
2226 and premium taxes to be collected from the policyholder, and the name and address of the  
2227 policyholder and insurer. If the direct risk is assumed by more than one insurer, the policy shall  
2228 state the names and addresses of all insurers and the portion of the entire direct risk each has

2229 assumed. All policies issued under the authority of this section shall have attached or affixed to  
2230 the policy the following statement: "The insurer issuing this policy does not hold a certificate of  
2231 authority to do business in this state and thus is not fully subject to regulation by the Utah  
2232 insurance commissioner. This policy receives no protection from any of the guaranty associations  
2233 created under Title 31A, Chapter 28."

2234 (9) Upon placing a new or renewal coverage under this section, the broker shall promptly  
2235 deliver to the policyholder or his agent evidence of the insurance consisting either of the policy as  
2236 issued by the insurer or, if the policy is not then available, a certificate, cover note, or other  
2237 confirmation of insurance complying with Subsection (8).

2238 (10) If the commissioner finds it necessary to protect the interests of insureds and the  
2239 public in this state, the commissioner may by rule subject policies issued under this section to as  
2240 much of the regulation provided by this title as is required for comparable policies written by  
2241 authorized foreign insurers.

2242 (11) (a) Each surplus lines transaction in this state shall be examined to determine whether  
2243 it complies with:

- 2244 (i) the surplus lines tax levied under Chapter 3;  
2245 (ii) the solicitation limitations of Subsection (3);  
2246 (iii) the requirement of Subsection (3) that placement be through a surplus lines broker;  
2247 (iv) placement limitations imposed under Subsections (6)(a), (b), and (c); and  
2248 (v) the policy form requirements of Subsections (8) and (10).

2249 (b) The examination described in Subsection (11)(a) shall take place as soon as practicable  
2250 after the transaction. The surplus lines broker shall submit to the examiner information necessary  
2251 to conduct the examination within a period specified by rule.

2252 (c) The examination described in Subsection (11)(a) may be conducted by the  
2253 commissioner or by an advisory organization created under Section 31A-15-111 and authorized  
2254 by the commissioner to conduct these examinations. The commissioner is not required to  
2255 authorize any additional advisory organizations to conduct examinations under this Subsection  
2256 (11)(c). The commissioner's authorization of one or more advisory organizations to act as  
2257 examiners under this subsection shall be by rule. In addition, the authorization shall be evidenced  
2258 by a contract, on a form provided by the commissioner, between the authorized advisory  
2259 organization and the department.

2260 (d) The person conducting the examination described in Subsection (11)(a) shall collect  
2261 a stamping fee of an amount not to exceed 1% of the policy premium payable in connection with  
2262 the transaction. Stamping fees collected by the commissioner shall be deposited in the General  
2263 Fund. The commissioner shall establish this fee by rule. Stamping fees collected by an advisory  
2264 organization are the property of the advisory organization to be used in paying the expenses of the  
2265 advisory organization. Liability for paying the stamping fee is as required under Subsection  
2266 31A-3-303(1) for taxes imposed under Section 31A-3-301. The commissioner shall adopt a rule  
2267 dealing with the payment of stamping fees. If stamping fees are not paid when due, the  
2268 commissioner or advisory organization may impose a penalty of 25% of the fee due, plus 1-1/2%  
2269 per month from the time of default until full payment of the fee. Fees relative to policies covering  
2270 risks located partially in this state shall be allocated in the same manner as under Subsection  
2271 31A-3-303(4).

2272 (e) The commissioner, representatives of the department, advisory organizations,  
2273 representatives and members of advisory organizations, authorized insurers, and surplus lines  
2274 insurers are not liable for damages on account of statements, comments, or recommendations made  
2275 in good faith in connection with their duties under this Subsection (11)(e) or under Section  
2276 31A-15-111.

2277 (f) Examinations conducted under this Subsection (11) and the documents and materials  
2278 related to the examinations are confidential.

2279 Section 30. Section **31A-15-106** is amended to read:

2280 **31A-15-106. Servicing of contracts made out of state.**

2281 (1) A foreign insurer that does not have a certificate of authority to do business in this state  
2282 under Section 31A-14-202 may, in this state, collect premiums and adjust losses and do all other  
2283 acts reasonably incidental to contracts made outside this state without violating this chapter. Any  
2284 premiums collected under this section are subject to Section 31A-3-301.

2285 (2) Subsection (1) does not permit a renewal, extension, increase, or other substantial  
2286 change in the terms of any contract under Subsection (1) unless:

2287 (a) it is permitted under Section 31A-15-103;

2288 (b) the contract is for life or [~~disability~~] accident and health insurance or annuities; or

2289 (c) a rule adopted by the commissioner permits this action when the interests of the  
2290 policyholder and the public appear to be sufficiently protected.

2291 Section 31. Section **31A-17-201** is amended to read:

2292 **31A-17-201. Qualified assets.**

2293 (1) Except as provided under Subsections (3) and (4), only the qualified assets listed in  
2294 Subsection (2) may be used in determining the financial condition of an insurer, except to the  
2295 extent an insurer has shown to the commissioner that the insurer has excess surplus, as defined in  
2296 Section 31A-1-301.

2297 (2) For purposes of Subsection (1), "qualified assets" means:

2298 [~~(a) investments, securities, properties, and loans acquired or held in accordance with  
2299 Sections 31A-18-105 and 31A-18-106, and the income due and accrued on these;~~]

2300 [~~(b) the net amount of uncollected and deferred premiums for a life insurer that carries the  
2301 full annual mean tabular reserve liability;~~]

2302 [~~(c) premiums in the course of collection, other than for life insurance, not more than 90  
2303 days past due, less commissions payable on the premiums, with the 90-day limitation being  
2304 inapplicable to premiums payable directly or indirectly by the United States government or any of  
2305 its instrumentalities;~~]

2306 [~~(d) installment premiums, other than life insurance premiums, in accordance with;~~]

2307 [~~(i) the rules adopted by the commissioner; or]~~

2308 [~~(ii) in the absence of rules adopted by the commissioner, practices formulated or adopted  
2309 by the National Association of Insurance Commissioners;~~]

2310 [~~(e) notes and similar written obligations that are:~~]

2311 [~~(i) not past due;~~]

2312 [~~(ii) taken for premiums other than life insurance premiums;~~]

2313 [~~(iii) on policies permitted to be issued on that basis; and]~~

2314 [~~(iv) to the extent of the unearned premium reserves carried on the policies;~~]

2315 [~~(f) amounts recoverable or receivable from reinsurers under a reinsurance contract that  
2316 qualifies for reserve credit under Section 31A-17-404;~~]

2317 [~~(g) electronic and mechanical machines constituting a data processing and accounting  
2318 system, the cost of which is depreciated in full over a period of five years or less;~~]

2319 [~~(h) tangible components of the health care delivery systems of insurers licensed under  
2320 Chapter 7, with the cost of these assets having a finite useful life being depreciated in full over  
2321 periods provided by rule;~~]

2322 [~~(i) cash or currency; and~~]

2323 (a) assets as determined to be admitted in the Accounting Practices and Procedures

2324 Manual, published by the National Association of Insurance Commissioners; and

2325 [~~(j)~~] (b) other assets authorized by rule.

2326 (3) (a) Subject to Subsection (5) and even if they could not otherwise be counted under this  
2327 chapter, assets acquired in the bona fide enforcement of creditors' rights may be counted for the  
2328 purposes of Subsection (1) and Sections 31A-18-105 and 31A-18-106:

2329 (i) for five years after their acquisition if they are real property; and

2330 (ii) for one year if they are not real property.

2331 (b) (i) The commissioner may allow reasonable extensions of the periods described in  
2332 Subsection (3)(a), if disposal of the assets within the periods given is not possible without  
2333 substantial loss.

2334 (ii) Extensions under Subsection (3)(b)(i) may not, as to any particular asset, exceed a total  
2335 of five years.

2336 (4) Subject to Subsection (5), and even though under this chapter the assets could not  
2337 otherwise be counted, assets acquired in connection with mergers, consolidations, or bulk  
2338 reinsurance, or as a dividend or distribution of assets, may be counted for the same purposes, in  
2339 the same manner, and for the same periods as assets acquired under Subsection (3).

2340 (5) Assets described under Subsection (3) or (4) may not be counted for the purposes of  
2341 Subsection (1), except to the extent they are counted as assets in determining insurer solvency  
2342 under the laws of the state of domicile of the creditor or acquired insurer.

2343 Section 32. Section **31A-17-401** is amended to read:

2344 **31A-17-401. Valuation of assets.**

2345 (1) The commissioner shall value the assets of insurers in accordance with then current  
2346 insurance business practices, but not in a manner inconsistent with the provisions of this title. In  
2347 valuing assets, the commissioner shall consider any method then current, formulated, or approved  
2348 by the National Association of Insurance Commissioners.

2349 (2) Assets that are not qualified assets under Subsection 31A-17-201(2) are considered to  
2350 have no value in evaluating an insurer's compliance with Chapter 17, Part 6, Risk-Based Capital.  
2351 Those assets may be used in evaluating the insurer's financial condition only to the extent the  
2352 insurer has excess surplus.

2353 (3) (a) Insurance subsidiaries are valued on the books of a parent insurer as follows:

2354 (i) Except as provided under Subsections (3)(a)(iii) [~~through (vi)~~] and (iv), common stock  
2355 of the subsidiary is valued on the basis of the parent insurer's percentage of ownership of the  
2356 common stock multiplied by the total of the subsidiary's capital and surplus, less amounts needed  
2357 to liquidate all claims to the capital and surplus which are senior to common stock. Subsection  
2358 31A-18-106(1)(k) provides applicable limitations on investments in subsidiaries.

2359 (ii) The value of securities other than common stock issued by a subsidiary is the lesser  
2360 of the present value of the future income to be derived under the securities or the amount the parent  
2361 insurer would receive as a result of the securities if the subsidiary were liquidated and all creditors  
2362 of the subsidiary and holders of the subsidiary's securities with senior priority were paid in full.  
2363 The present value of future income derived from securities is determined by rule adopted by the  
2364 commissioner. A parent insurer may attribute value to a security of its subsidiary only if the parent  
2365 insurer is being paid dividends or interest on the security, and only if the parent insurer can  
2366 reasonably anticipate that dividends or interest will continue to be paid on the security.

2367 (iii) Except as provided under [~~Subsections (3)(a)(iv) through (vi)~~] Subsection (3)(iv), any  
2368 portion of the subsidiary's value permitted under Subsection (3)(a) that is represented by assets  
2369 other than assets listed under Section 31A-17-201, may only be classified as excess surplus of the  
2370 parent insurer, and then only to the extent the parent insurer has established that it has excess  
2371 surplus under Section 31A-17-202.

2372 (iv) For the purposes of Subsection (3)(a)(iii), assets of a newly acquired subsidiary that  
2373 are the equivalent of qualified assets in the subsidiary's domiciliary state, are, for the first five years  
2374 after the subsidiary's acquisition, considered to be qualified assets under Section 31A-17-201. This  
2375 assumption stands even if the assets are not otherwise qualified assets under Section 31A-17-201.

2376 [~~(v) Under a plan of merger approved by the commissioner, a newly-acquired insurance  
2377 subsidiary may be valued initially at its cost to the parent insurer, or a greater or lesser value  
2378 established by the commissioner. The amount in excess of the parent insurer's proportionate share  
2379 of the subsidiary's capital and surplus shall be written off for regulatory purposes over a period  
2380 specified by the commissioner in the commissioner's order approving the plan of merger. This  
2381 period may not exceed five years. Once they are established by the commissioner, any amounts  
2382 not yet written off may be counted as assets for the purposes specified under Chapter 17, Part 6,  
2383 Risk-Based Capital.]~~

2384           ~~[(vi) Subject to Subsection 31A-18-106(1)(k), an insurance subsidiary that is acquired by~~  
2385 ~~another insurer, but not under an approved plan of merger, may be valued initially at the lesser of~~  
2386 ~~its cost to the parent insurer, or the parent insurer's proportionate share of the subsidiary's capital~~  
2387 ~~and surplus plus 10% of the parent insurer's capital and surplus. The amount in excess of the~~  
2388 ~~parent insurer's proportionate share of the subsidiary's capital and surplus shall be written off for~~  
2389 ~~regulatory purposes over a period specified by the commissioner in an order approving the~~  
2390 ~~acquisition. This period may not exceed ten years.]~~

2391           ~~[(vii) For subsidiaries valued under Subsection (3)(a)(v) or (3)(a)(vi), until the excess of~~  
2392 ~~the subsidiary's cost over the parent insurer's proportionate share of the subsidiary's capital and~~  
2393 ~~surplus is completely amortized, the commissioner shall semiannually review the actual~~  
2394 ~~performance of the subsidiary to determine whether the amortization schedule provided by the~~  
2395 ~~commissioner's order is reasonable, based on the subsidiary's actual performance. The~~  
2396 ~~commissioner may adjust the amortization schedule based on the findings of this semiannual~~  
2397 ~~review.]~~

2398           (b) A subsidiary formed or acquired to hold or manage investments that the parent  
2399 insurance company might hold or manage directly, shall be valued as if the assets of the subsidiary  
2400 were owned directly by the insurer in a percentage equal to the insurer's percentage of ownership  
2401 of the subsidiary. The subsidiary investment limitation of Subsection 31A-18-106(1)(k) does not  
2402 apply to these subsidiaries.

2403           (c) Subsidiaries other than those described in Subsections (3)(a) and (b) shall be valued  
2404 in accordance with Subsection (1). The subsidiary investment limitation under Subsection  
2405 31A-18-106(1)(k) applies to these subsidiaries in the same manner as to subsidiaries described in  
2406 Subsection (3)(a).

2407           (d) In determining an insurer's financial condition, no value is given to:

2408           (i) any interest held by the insurer in its own stock, including debts due the insurer that are  
2409 secured by the insurer's own stock; or

2410           (ii) any proportionate interest in the insurer's own stock, including debts that are secured  
2411 by the insurer's own stock, which is held by any corporation, partnership, business unit, firm, or  
2412 person owned in whole or in part by the insurer.

2413           (4) The commissioner shall adopt rules to implement the provisions of this section.

2414           Section 33. Section **31A-17-402** is amended to read:

2415 **31A-17-402. Valuation of liabilities.**

2416 The commissioner shall adopt rules specifying the liabilities required to be reported by  
2417 insurers in financial statements submitted under Section 31A-2-202 and the methods of valuing  
2418 them. For life insurance, those methods shall be consistent with Part 5 of this chapter, Standard  
2419 Valuation Law. Title insurance reserves are provided for under Section 31A-17-408. In  
2420 determining the financial condition of an insurer, liabilities include:

2421 (1) the estimated amount necessary to pay all its unpaid losses and claims incurred on or  
2422 prior to the date of statement, whether reported or unreported, together with the expense of  
2423 adjustment or settlement of the loss or claim;

2424 (2) for life, [~~disability~~] accident and health insurance, and annuity contracts:

2425 (a) the reserves on life insurance policies and annuity contracts in force, valued according  
2426 to appropriate tables of mortality and the applicable rates of interest;

2427 (b) the reserves for [~~disability~~] accident and health benefits, for both active and disabled  
2428 lives;

2429 (c) the reserves for accidental death benefits; and

2430 (d) any additional reserves which may be required by the commissioner by rule, or if no  
2431 rule is applicable, then in a manner consistent with the practice formulated or approved by the  
2432 National Association of Insurance Commissioners with respect to those types of insurance;

2433 (3) for insurance other than life, [~~disability~~] accident and health, and title insurance, the  
2434 amount of reserves equal to the unearned portions of the gross premiums charged on policies in  
2435 force, computed on a daily or monthly pro rata basis or other basis approved by the commissioner;  
2436 provided that after adopting any one of the methods for computing those reserves, an insurer may  
2437 not change methods without the commissioner's written consent;

2438 (4) for ocean marine and other transportation insurance, reserves equal to 50% of the  
2439 amount of premiums upon risks covering not more than one trip or passage not terminated, and  
2440 computed upon a pro rata basis or, with the commissioner's consent, in accordance with methods  
2441 provided under Subsection (3); and

2442 (5) its other liabilities, including taxes, expenses, and other obligations due or accrued at  
2443 the date of statement.

2444 Section 34. Section **31A-17-408** is amended to read:

2445 **31A-17-408. Title insurance reserves.**

2446 (1) In addition to an adequate reserve for outstanding losses, a title insurance company  
2447 shall either:

2448 (a) maintain and segregate an unearned premium reserve fund of not less than 10 cents for  
2449 each \$1,000 face amount of retained liability under each title insurance contract or policy on a  
2450 single insurance risk issued~~[, except that during each of the 20 years following the year in which~~  
2451 ~~the title insurance policy or contract was issued, the reserve applicable to the contract may be~~  
2452 ~~reduced by 5% of the original amount of the reserve]~~; or

2453 (b) have the commissioner review and approve a contract of reinsurance applicable to the  
2454 title insurance company's policies, which contract adequately covers the exposure or risk which  
2455 the unearned premium reserve would serve.

2456 (2) The fund shall be maintained for the protection of policyholders and is not subject to  
2457 the claims of stockholders or creditors other than policyholders.

2458 Section 35. Section **31A-17-504** is amended to read:

2459 **31A-17-504. Computation of minimum standard.**

2460 Except as otherwise provided in Sections 31A-17-505, 31A-17-506, and 31A-17-513, the  
2461 minimum standard for the valuation of all life insurance policies and annuity and pure endowment  
2462 contracts issued prior to January 1, 1994, shall be that provided by the laws in effect immediately  
2463 prior to that date. Except as otherwise provided in Sections 31A-17-505, 31A-17-506, and  
2464 31A-17-513, the minimum standard for the valuation of all such policies and contracts issued on  
2465 or after January 1, 1994, shall be the commissioner's reserve valuation methods defined in Sections  
2466 31A-17-507, 31A-17-508, 31A-17-511, and 31A-17-513, 3.5% interest, or in the case of life  
2467 insurance policies and contracts, other than annuity and pure endowment contracts, issued on or  
2468 after June 1, 1973, 4% interest for such policies issued prior to April 2, 1980, 5.5% interest for  
2469 single premium life insurance policies, and 4.5% interest for all other such policies issued on and  
2470 after April 2, 1980, and the following tables:

2471 (1) For all ordinary policies of life insurance issued on the standard basis, excluding any  
2472 ~~[disability]~~ accident and health and accidental death benefits in such policies: the National  
2473 Association of Insurance Commissioners 1941 Standard Ordinary Mortality Table for such policies  
2474 issued prior to the operative date of Subsection 31A-22-408(6)(a) (that is, the Standard  
2475 Nonforfeiture Law for Life Insurance), the National Association of Insurance Commissioners 1958  
2476 Standard Ordinary Mortality Table for such policies issued on or after the operative date of

2477 Subsection 31A-22-408(6)(a) and prior to the operative date of Subsection 31A-22-408(6)(d),  
2478 provided that for any category of such policies issued on female risks, all modified net premiums  
2479 and present values referred to in this section may be calculated according to an age not more than  
2480 six years younger than the actual age of the insured; and for such policies issued on or after the  
2481 operative date of Subsection 31A-22-408(6)(d):

2482 (a) the National Association of Insurance Commissioners 1980 Standard Ordinary  
2483 Mortality Table;

2484 (b) at the election of the company for any one or more specified plans of life insurance,  
2485 the National Association of Insurance Commissioners 1980 Standard Ordinary Mortality Table  
2486 with Ten-Year Select Mortality Factors; or

2487 (c) any ordinary mortality table, adopted after 1980 by the National Association of  
2488 Insurance Commissioners, that is approved by rule promulgated by the commissioner for use in  
2489 determining the minimum standard of valuation for such policies.

2490 (2) For all industrial life insurance policies issued on the standard basis, excluding any  
2491 [~~disability~~] accident and health and accidental death benefits in such policies: the 1941 Standard  
2492 Industrial Mortality Table for such policies issued prior to the operative date of Subsection  
2493 31A-22-408(6)(c), and for such policies issued on or after such operative date, the National  
2494 Association of Insurance Commissioners 1961 Standard Industrial Mortality Table or any  
2495 industrial mortality table, adopted after 1980 by the National Association of Insurance  
2496 Commissioners, that is approved by rule promulgated by the commissioner for use in determining  
2497 the minimum standard of valuation for such policies.

2498 (3) For individual annuity and pure endowment contracts, excluding any disability and  
2499 accidental death benefits in such policies:

2500 (a) the 1937 Standard Annuity Mortality Table[~~;~~];

2501 (b) at the option of the company, the Annuity Mortality Table for 1949, Ultimate[~~;~~]; or

2502 (c) any modification of either of these tables approved by the commissioner.

2503 (4) For group annuity and pure endowment contracts, excluding any [~~disability~~] accident  
2504 and health and accidental death benefits in such policies:

2505 (a) the Group Annuity Mortality Table for 1951, any modification of such table approved  
2506 by the commissioner[~~;~~]; or

2507 (b) at the option of the company, any of the tables or modifications of tables specified for

2508 individual annuity and pure endowment contracts.

2509 (5) For total and permanent disability benefits in or supplementary to ordinary policies or  
2510 contracts: for policies or contracts issued on or after January 1, 1966, the tables of Period 2  
2511 disablement rates and the 1930 to 1950 termination rates of the 1952 Disability Study of the  
2512 Society of Actuaries, with due regard to the type of benefit or any tables of disablement rates and  
2513 termination rates adopted after 1980 by the National Association of Insurance Commissioners, that  
2514 are approved by rule promulgated by the commissioner for use in determining the minimum  
2515 standard of valuation for such policies; for policies or contracts issued on or after January 1, 1961,  
2516 and prior to January 1, 1966, either such tables or, at the option of the company, the Class (3)  
2517 Disability Table (1926); and for policies issued prior to January 1, 1961, the Class (3) Disability  
2518 Table (1926). Any such table shall, for active lives, be combined with a mortality table permitted  
2519 for calculating the reserves for life insurance policies.

2520 (6) For accidental death benefits in or supplementary to policies issued on or after January  
2521 1, 1966, the 1959 Accidental Death Benefits Table or any accidental death benefits table adopted  
2522 after 1980 by the National Association of Insurance Commissioners, that is approved by rule  
2523 promulgated by the commissioner for use in determining the minimum standard of valuation for  
2524 such policies, for policies issued on or after January 1, 1961, and prior to January 1, 1966, either  
2525 such table or, at the option of the company, the Inter-Company Double Indemnity Mortality Table;  
2526 and for policies issued prior to January 1, 1961, the Inter-Company Double Indemnity Mortality  
2527 Table. Either table shall be combined with a mortality table for calculating the reserves for life  
2528 insurance policies.

2529 (7) For group life insurance, life insurance issued on the substandard basis and other  
2530 special benefits: such tables as may be approved by the commissioner.

2531 Section 36. Section **31A-17-505** is amended to read:

2532 **31A-17-505. Computation of minimum standard for annuities.**

2533 (1) Except as provided in Section 31A-17-506, the minimum standard for the valuation  
2534 of all individual annuity and pure endowment contracts issued on or after the operative date of this  
2535 section, as defined in Subsection (2), and for all annuities and pure endowments purchased on or  
2536 after such operative date under group annuity and pure endowment contracts, shall be the  
2537 commissioner's reserve valuation methods defined in Sections 31A-17-507 and 31A-17-508 and  
2538 the following tables and interest rates:

2539 (a) For individual annuity and pure endowment contracts issued prior to April 2, 1980,  
2540 excluding any [~~disability~~] accident and health and accidental death benefits in such contracts: the  
2541 1971 Individual Annuity Mortality Table, or any modification of this table approved by the  
2542 commissioner, and 6% interest for single premium immediate annuity contracts, and 4% interest  
2543 for all other individual annuity and pure endowment contracts.

2544 (b) For individual single premium immediate annuity contracts issued on or after April 2,  
2545 1980, excluding any [~~disability~~] accident and health and accidental death benefits in such  
2546 contracts: the 1971 Individual Annuity Mortality Table or any individual annuity mortality table,  
2547 adopted after 1980 by the National Association of Insurance Commissioners that is approved by  
2548 rule promulgated by the commissioner for use in determining the minimum standard of valuation  
2549 for such contracts, or any modification of these tables approved by the commissioner, and 7.5%  
2550 interest.

2551 (c) For individual annuity and pure endowment contracts issued on or after April 2, 1980,  
2552 other than single premium immediate annuity contracts, excluding any [~~disability~~] accident and  
2553 health and accidental death benefits in such contracts: the 1971 Individual Annuity Mortality Table  
2554 or any individual annuity mortality table adopted after 1980 by the National Association of  
2555 Insurance Commissioners, that is approved by rule promulgated by the commissioner for use in  
2556 determining the minimum standard of valuation for such contracts, or any modification of these  
2557 tables approved by the commissioner, and 5.5% interest for single premium deferred annuity and  
2558 pure endowment contracts and 4.5% interest for all other such individual annuity and pure  
2559 endowment contracts.

2560 (d) For all annuities and pure endowments purchased prior to April 2, 1980, under group  
2561 annuity and pure endowment contracts, excluding any [~~disability~~] accident and health and  
2562 accidental death benefits purchased under such contracts: the 1971 Group Annuity Mortality Table  
2563 or any modification of this table approved by the commissioner, and 6.5% interest.

2564 (e) For all annuities and pure endowments purchased on or after April 2, 1980, under  
2565 group annuity and pure endowment contracts, excluding any [~~disability~~] accident and health and  
2566 accidental death benefits purchased under such contracts: the 1971 Group Annuity Mortality Table,  
2567 or any group annuity mortality table adopted after 1980 by the National Association of Insurance  
2568 Commissioners, that is approved by rule and promulgated by the commissioner for use in  
2569 determining the minimum standard of valuation for such annuities and pure endowments, or any

2570 modification of these tables approved by the commissioner, and 7.5% interest.

2571 (2) After June 1, 1973, any company may file with the commissioner a written notice of  
2572 its election to comply with the provisions of this section after a specified date before January 1,  
2573 1979, which shall be the operative date of this section for such company, provided, if a company  
2574 makes no such election, the operative date of this section for such company shall be January 1,  
2575 1979.

2576 Section 37. Section **31A-17-507** is amended to read:

2577 **31A-17-507. Reserve valuation method -- Life insurance and endowment benefits.**

2578 (1) Except as otherwise provided in Sections 31A-17-508, 31A-17-511, and 31A-17-513,  
2579 reserves according to the commissioner's reserve valuation method, for the life insurance and  
2580 endowment benefits of policies providing for a uniform amount of insurance and requiring the  
2581 payment of uniform premiums shall be the excess, if any, of the present value, at the date of  
2582 valuation, of such future guaranteed benefits provided for by such policies, over the then present  
2583 value of any future modified net premiums therefor. The modified net premiums for any such  
2584 policy shall be such uniform percentage of the respective contract premiums for such benefits that  
2585 the present value, at the date of issue of the policy, of all such modified net premiums shall be  
2586 equal to the sum of the then present value of such benefits provided for by the policy and the  
2587 excess of Subsection (1)(a) over Subsection (1)(b), as follows:

2588 (a) A net level annual premium equal to the present value, at the date of issue, of such  
2589 benefits provided for after the first policy year, divided by the present value, at the date of issue,  
2590 of an annuity of one per annum payable on the first and each subsequent anniversary of such policy  
2591 on which a premium falls due; provided, however, that such net level annual premium shall not  
2592 exceed the net level annual premium on the 19 year premium whole life plan for insurance of the  
2593 same amount at an age one year higher than the age at issue of such policy.

2594 (b) A net one year term premium for such benefits provided for in the first policy year.

2595 (2) Provided that for any life insurance policy issued on or after January 1, 1997, for which  
2596 the contract premium in the first policy year exceeds that of the second year and for which no  
2597 comparable additional benefit is provided in the first year for such excess and which provides an  
2598 endowment benefit or a cash surrender value or a combination thereof in an amount greater than  
2599 such excess premium, the reserve according to the commissioner's reserve valuation method as of  
2600 any policy anniversary occurring on or before the assumed ending date defined herein as the first

2601 policy anniversary on which the sum of any endowment benefit and any cash surrender value then  
2602 available is greater than such excess premium shall, except as otherwise provided in Section  
2603 31A-17-511, be the greater of the reserve as of such policy anniversary calculated as described in  
2604 Subsection (1) and the reserve as of such policy anniversary calculated as described in that  
2605 subsection, but with:

2606 (a) the value defined in Subsection (1)(a) being reduced by 15% of the amount of such  
2607 excess first year premium[-];

2608 (b) all present values of benefits and premiums being determined without reference to  
2609 premiums or benefits provided for by the policy after the assumed ending date[-];

2610 (c) the policy being assumed to mature on such date as an endowment[-]; and

2611 (d) the cash surrender value provided on such date being considered as an endowment  
2612 benefit. In making the above comparison the mortality and interest bases stated in Sections  
2613 31A-17-504 and 31A-17-506 shall be used.

2614 (3) Reserves according to the commissioner's reserve valuation method for:

2615 (a) life insurance policies providing for a varying amount of insurance or requiring the  
2616 payment of varying premiums;

2617 (b) group annuity and pure endowment contracts purchased under a retirement plan or plan  
2618 of deferred compensation, established or maintained by an employer, including a partnership or  
2619 sole proprietorship, or by an employee organization, or by both, other than a plan providing  
2620 individual retirement accounts or individual retirement annuities under [~~26 U.S.C. Sec. 408, as~~  
2621 ~~amended~~] Section 408, Internal Revenue Code;

2622 (c) [~~disability~~] accident and health and accidental death benefits in all policies and  
2623 contracts; and

2624 (d) all other benefits, except life insurance and endowment benefits in life insurance  
2625 policies and benefits provided by all other annuity and pure endowment contracts, shall be  
2626 calculated by a method consistent with the principles of Subsections (1) and (2).

2627 Section 38. Section **31A-17-508** is amended to read:

2628 **31A-17-508. Reserve valuation method -- Annuity and pure endowment benefits.**

2629 (1) This section shall apply to all annuity and pure endowment contracts other than group  
2630 annuity and pure endowment contracts purchased under a retirement plan or plan of deferred  
2631 compensation, established or maintained by an employer, including a partnership or sole

2632 proprietorship, or by an employee organization, or by both, other than a plan providing individual  
2633 retirement accounts or individual retirement annuities under [~~26 U.S.C. Sec. 408, as amended~~]  
2634 Section 408, Internal Revenue Code.

2635 (2) Reserves according to the commissioner's annuity reserve method for benefits under  
2636 annuity or pure endowment contracts, excluding any [~~disability~~] accident and health and accidental  
2637 death benefits in such contracts, shall be the greatest of the respective excesses of the present  
2638 values, at the date of valuation, of the future guaranteed benefits, including guaranteed  
2639 nonforfeiture benefits, provided for by such contracts at the end of each respective contract year,  
2640 over the present value, at the date of valuation, of any future valuation considerations derived from  
2641 future gross considerations, required by the terms of such contract, that become payable prior to  
2642 the end of such respective contract year. The future guaranteed benefits shall be determined by  
2643 using the mortality table, if any, and the interest rate, or rates, specified in such contracts for  
2644 determining guaranteed benefits. The valuation considerations are the portions of the respective  
2645 gross considerations applied under the terms of such contracts to determine nonforfeiture values.

2646 Section 39. Section **31A-17-509** is amended to read:

2647 **31A-17-509. Minimum reserves.**

2648 (1) In no event shall a company's aggregate reserves for all life insurance policies,  
2649 excluding [~~disability~~] accident and health and accidental death benefits, issued on or after January  
2650 1, 1994, be less than the aggregate reserves calculated in accordance with the methods set forth in  
2651 Sections 31A-17-507, 31A-17-508, 31A-17-511, and 31A-17-512 and the mortality table or tables  
2652 and rate or rates of interest used in calculating nonforfeiture benefits for such policies.

2653 (2) In no event shall the aggregate reserves for all policies, contracts, and benefits be less  
2654 than the aggregate reserves determined by the qualified actuary to be necessary to render the  
2655 opinion required by Section 31A-17-503.

2656 Section 40. Section **31A-17-513** is amended to read:

2657 **31A-17-513. Minimum standards for accident and health plans.**

2658 The commissioner shall promulgate a rule containing the minimum standards applicable  
2659 to the valuation of [~~disability~~] accident and health plans.

2660 Section 41. Section **31A-17-601** is amended to read:

2661 **31A-17-601. Definitions.**

2662 As used in this part:

2663 (1) "Adjusted RBC report" means an RBC report that has been adjusted by the  
2664 commissioner in accordance with Subsection 31A-17-602[~~(4)~~] (5).

2665 (2) "Corrective order" means an order issued by the commissioner specifying corrective  
2666 action that the commissioner determines is required.

2667 (3) "Health organization" means:

2668 (a) an entity that is authorized under Chapter 7 or 8; and

2669 (b) that is:

2670 (i) a health maintenance organization;

2671 (ii) a limited health service organization;

2672 (iii) a dental or vision plan;

2673 (iv) a hospital, medical, and dental indemnity or service corporation; or

2674 (v) other managed care organization.

2675 [~~(3)~~] (4) "Life or [~~disability~~] accident and health insurer" means:

2676 (a) an insurance company licensed to write life insurance, disability insurance, or both; or

2677 (b) a licensed property casualty insurer writing only disability insurance.

2678 [~~(4)~~] (5) "Property and casualty insurer" means any insurance company licensed to write  
2679 lines of insurance other than life but does not include a monoline mortgage guaranty insurer,  
2680 financial guaranty insurer, or title insurer.

2681 [~~(5)~~] (6) "RBC" means risk-based capital.

2682 [~~(6)~~] (7) "RBC instructions" means the RBC report including risk-based capital  
2683 instructions adopted by the department by rule.

2684 [~~(7)~~] (8) "RBC level" means an insurer's or health organization's authorized control level  
2685 RBC, company action level RBC, mandatory control level RBC, or regulatory action level RBC.

2686 (a) "Authorized control level RBC" means the number determined under the risk-based  
2687 capital formula in accordance with the RBC instructions;

2688 (b) "Company action level RBC" means the product of 2.0 and its authorized control level  
2689 RBC;

2690 (c) "Mandatory control level RBC" means the product of .70 and the authorized control  
2691 level RBC; and

2692 (d) "Regulatory action level RBC" means the product of 1.5 and its authorized control  
2693 level RBC.

2694           ~~[(8)]~~ (9)(a) "RBC plan" means a comprehensive financial plan containing the elements  
2695 specified in Subsection 31A-17-603(2). ~~[H]~~

2696           (b) Notwithstanding Subsection (9)(a), the plan is a "revised RBC plan" if:

2697           (i) the commissioner rejects the RBC plan[-]; and [it]

2698           (ii) the plan is revised by the insurer or health organization, with or without the  
2699 commissioner's recommendation[-; the plan shall be called the "Revised RBC Plan."].

2700           ~~[(9)]~~ (10) "RBC report" means the report required in Section 31A-17-602.

2701           Section 42. Section **31A-17-602** is amended to read:

2702           **31A-17-602. RBC reports -- RBC of life and accident and health insurers -- RBC of**  
2703 **property and casualty insurers.**

2704           (1) Every domestic life or ~~[disability]~~ accident and health insurer ~~[and]~~, every domestic  
2705 property and casualty insurer, and every domestic health organization shall:

2706           (a) on or before March 1, prepare and submit to the commissioner a report of its RBC  
2707 levels as of the end of the calendar year just ended, in a form and containing the information as is  
2708 required by the RBC instructions; ~~[and]~~

2709           (b) file its RBC report with the insurance commissioner in any state in which the insurer  
2710 or health organization is authorized to do business, if the insurance commissioner of that state  
2711 notifies the insurer or health organization of its request in writing, in which case the insurer or  
2712 health organization may file its RBC report not later than the later of:

2713           (i) 15 days from the receipt of notice to file its RBC report with that state; or

2714           (ii) March 1[-]; and

2715           (c) file the documents described in Subsections (1)(a) and (b) with the National  
2716 Association of Insurance Commissioners in accordance with RBC instructions.

2717           (2) A life and ~~[disability]~~ accident and health insurer's RBC shall be determined in  
2718 accordance with the formula set forth in the RBC instructions. The formula shall take into account  
2719 and may adjust for the covariance between:

2720           (a) the risk with respect to the insurer's assets;

2721           (b) the risk of adverse insurance experience with respect to the insurer's liabilities and  
2722 obligations;

2723           (c) the interest rate risk with respect to the insurer's business; and

2724           (d) all other business risks and other relevant risks as set forth in the RBC instructions.

2725 (3) A property and casualty insurer's RBC shall be determined in accordance with the  
2726 formula set forth in the RBC instructions. The formula shall take the following into account and  
2727 may adjust for the covariance between:

2728 (a) asset risk;

2729 (b) credit risk;

2730 (c) underwriting risk; and

2731 (d) all other business risks and the other relevant risks as set forth in the RBC instructions.

2732 (4) A health organization's RBC shall be determined in accordance with the formula set  
2733 forth in the RBC instructions. The formula shall take the following into account and may adjust  
2734 for the covariance between:

2735 (a) asset risk;

2736 (b) credit risk;

2737 (c) underwriting risk; and

2738 (d) all other business risks and such other relevant risks as are set forth in the RBC  
2739 instructions.

2740 [~~(4)~~] (5) (a) If a domestic insurer files an RBC report that the commissioner determines  
2741 is inaccurate, the commissioner shall adjust the RBC report to correct the inaccuracy and shall  
2742 notify the insurer of the adjustment.

2743 (b) The notice under Subsection [~~(4)~~] (5)(a) shall contain a statement of the reason for the  
2744 adjustment.

2745 (6) The commissioner may make rules to assist in applying the provisions of this part to  
2746 health organizations.

2747 Section 43. Section **31A-17-603** is amended to read:

2748 **31A-17-603. Company action level event.**

2749 (1) "Company action level event" means any of the following events:

2750 (a) the filing of an RBC report by an insurer or health organization that indicates that:

2751 (i) the insurer's or health organization's total adjusted capital is greater than or equal to its  
2752 regulatory action level RBC but less than its company action level RBC; or

2753 (ii) if a life or [~~disability~~] accident and health insurer, the insurer has:

2754 (A) total adjusted capital that is greater than or equal to its company action level RBC but  
2755 less than the product of its authorized control level RBC and 2.5; and

2756 (B) a negative trend, determined in accordance with the "trend test calculation" included  
2757 in the RBC instructions;

2758 (b) the notification by the commissioner to the insurer or health organization of an adjusted  
2759 RBC report that indicates an event in Subsection (1)(a), provided the insurer or health organization  
2760 does not challenge the adjusted RBC report under Section 31A-17-607; or

2761 (c) if, pursuant to Section 31A-17-607, an insurer or health organization challenges an  
2762 adjusted RBC report that indicates the event in Subsection (1)(a), the notification by the  
2763 commissioner to the insurer or health organization that after a hearing the commissioner rejects  
2764 the insurer's or health organization's challenge.

2765 (2) (a) In the event of a company action level event, the insurer or health organization shall  
2766 prepare and submit to the commissioner an RBC plan that shall:

2767 (i) identify the conditions that contribute to the company action level event;

2768 (ii) contain proposals of corrective actions that the insurer or health organization intends  
2769 to take and that are expected to result in the elimination of the company action level event;

2770 (iii) provide projections of the insurer's or health organization's financial results in the  
2771 current year and at least the four succeeding years, both in the absence of proposed corrective  
2772 actions and giving effect to the proposed corrective actions, including projections of:

2773 (A) statutory operating income~~[;]~~;

2774 (B) net income~~[;]~~;

2775 (C) capital~~[, and]~~;

2776 (D) surplus; and

2777 (E) RBC levels;

2778 (iv) identify the key assumptions impacting the insurer's or health organization's  
2779 projections and the sensitivity of the projections to the assumptions; and

2780 (v) identify the quality of, and problems associated with, the insurer's or health  
2781 organization's business, including its assets, anticipated business growth and associated surplus  
2782 strain, extraordinary exposure to risk, mix of business and use of reinsurance, if any, in each case.

2783 (b) For purposes of Subsection (2)(a)(iii), the projections for both new and renewal  
2784 business may include separate projections for each major line of business and separately identify  
2785 each significant income, expense, and benefit component.

2786 (3) The RBC plan shall be submitted:

- 2787 (a) within 45 days of the company action level event; or
- 2788 (b) if the insurer or health organization challenges an adjusted RBC report pursuant to
- 2789 Section 31A-17-607, within 45 days after notification to the insurer or health organization that
- 2790 after a hearing the commissioner rejects the insurer's or health organization's challenge.
- 2791 (4) (a) Within 60 days after the submission by an insurer or health organization of an RBC
- 2792 plan to the commissioner, the commissioner shall notify the insurer or health organization whether
- 2793 the RBC plan:
- 2794 (i) shall be implemented; or
- 2795 (ii) is unsatisfactory.
- 2796 (b) If the commissioner determines the RBC plan is unsatisfactory, the notification to the
- 2797 insurer or health organization shall set forth the reasons for the determination, and may propose
- 2798 revisions that will render the RBC plan satisfactory. Upon notification from the commissioner,
- 2799 the insurer or health organization shall:
- 2800 (i) prepare a revised RBC plan that incorporates any revision proposed by the
- 2801 commissioner; and
- 2802 (ii) submit the revised RBC plan to the commissioner:
- 2803 (A) within 45 days after the notification from the commissioner; or
- 2804 (B) if the insurer challenges the notification from the commissioner under Section
- 2805 31A-17-607, within 45 days after a notification to the insurer or health organization that after a
- 2806 hearing the commissioner rejects the insurer's or health organization's challenge.
- 2807 (5) In the event of a notification by the commissioner to an insurer or health organization
- 2808 that the insurer's or health organization's RBC plan or revised RBC plan is unsatisfactory, the
- 2809 commissioner may specify in the notification that the notification constitutes a regulatory action
- 2810 level event subject to the insurer's or health organization's right to a hearing under Section
- 2811 31A-17-607.
- 2812 (6) Every domestic insurer or health organization that files an RBC plan or revised RBC
- 2813 plan with the commissioner shall file a copy of the RBC plan or revised RBC plan with the
- 2814 insurance commissioner in any state in which the insurer or health organization is authorized to
- 2815 do business if:
- 2816 (a) the state has an RBC provision substantially similar to Subsection 31A-17-608(1); and
- 2817 (b) the insurance commissioner of that state notifies the insurer or health organization of

2818 its request for the filing in writing, in which case the insurer or health organization shall file a copy  
2819 of the RBC plan or revised RBC plan in that state no later than the later of:

2820 (i) 15 days after the receipt of notice to file a copy of its RBC plan or revised RBC plan  
2821 with that state; or

2822 (ii) the date on which the RBC plan or revised RBC plan is filed under Subsections (3) and  
2823 (4).

2824 Section 44. Section **31A-17-604** is amended to read:

2825 **31A-17-604. Regulatory action level event.**

2826 (1) "Regulatory action level event" means with respect to any insurer or health  
2827 organization, any of the following events:

2828 (a) the filing of an RBC report by the insurer or health organization that indicates that the  
2829 insurer's or health organization's total adjusted capital is greater than or equal to its authorized  
2830 control level RBC but less than its regulatory action level RBC;

2831 (b) the notification by the commissioner to an insurer or health organization of an adjusted  
2832 RBC report that indicates the event in Subsection (1)(a), provided the insurer or health  
2833 organization does not challenge the adjusted RBC report under Section 31A-17-607;

2834 (c) if, pursuant to Section 31A-17-607, the insurer or health organization challenges an  
2835 adjusted RBC report that indicates the event in Subsection (1)(a), the notification by the  
2836 commissioner to the insurer or health organization that after a hearing the commissioner rejects  
2837 the insurer's or health organization's challenge;

2838 (d) the failure of the insurer or health organization to file an RBC report by March 1,  
2839 unless the insurer or health organization has:

2840 (i) provided an explanation for the failure that is satisfactory to the commissioner; and

2841 (ii) cured the failure within ten days after March 1;

2842 (e) the failure of the insurer or health organization to submit an RBC plan to the  
2843 commissioner within the time period set forth in Subsection 31A-17-603(3);

2844 (f) notification by the commissioner to the insurer or health organization that:

2845 (i) the RBC plan or revised RBC plan submitted by the insurer or health organization is  
2846 unsatisfactory; and

2847 (ii) the notification constitutes a regulatory action level event with respect to the insurer  
2848 or health organization, provided the insurer has not challenged the determination under Section

2849 31A-17-607;

2850 (g) if, pursuant to Section 31A-17-607, the insurer or health organization challenges a  
2851 determination by the commissioner under Subsection (1)(f), the notification by the commissioner  
2852 to the insurer or health organization that after a hearing the commissioner rejects the challenge;

2853 or

2854 (h) notification by the commissioner to the insurer or health organization that the insurer  
2855 or health organization has failed to adhere to its RBC plan or revised RBC plan, but only if:

2856 (i) the failure has a substantial adverse effect on the ability of the insurer or health  
2857 organization to eliminate the company action level event in accordance with its RBC plan or  
2858 revised RBC plan; and

2859 (ii) the commissioner has so stated in the notification, provided the insurer or health  
2860 organization has not challenged the determination under Section 31A-17-607; or

2861 (iii) if, pursuant to Section 31A-17-607, the insurer or health organization challenges a  
2862 determination by the commissioner under Subsection (1)(h), the notification by the commissioner  
2863 to the insurer or health organization that after a hearing the commissioner rejects the challenge.

2864 (2) In the event of a regulatory action level event the commissioner shall:

2865 (a) require the insurer or health organization to prepare and submit an RBC plan or, if  
2866 applicable, a revised RBC plan;

2867 (b) perform any examination or analysis the commissioner considers necessary of the  
2868 assets, liabilities, and operations of the insurer or health organization, including a review of its  
2869 RBC plan or revised RBC plan; and

2870 (c) subsequent to the examination or analysis, issue a corrective order specifying the  
2871 corrective action the commissioner determines is required.

2872 (3) In determining a corrective action, the commissioner may take into account such  
2873 factors the commissioner considers relevant with respect to the insurer or health organization based  
2874 upon the commissioner's examination or analysis of the assets, liabilities, and operations of the  
2875 insurer or health organization, including the results of any sensitivity tests undertaken pursuant to  
2876 the RBC instructions. The RBC plan or revised RBC plan shall be submitted:

2877 (a) within 45 days after the occurrence of the regulatory action level event;

2878 (b) if the insurer or health organization challenges an adjusted RBC report pursuant to  
2879 Section 31A-17-607 and the commissioner determines the challenge is not frivolous, within 45

2880 days after the notification to the insurer or health organization that after a hearing the  
2881 commissioner rejects the insurer's or health organization's challenge; or

2882 (c) if the insurer or health organization challenges a revised RBC plan pursuant to Section  
2883 31A-17-607 and the commissioner determines the challenge is not frivolous, within 45 days after  
2884 the notification to the insurer or health organization that after a hearing the commissioner rejects  
2885 the insurer's or health organization's challenge.

2886 Section 45. Section **31A-17-605** is amended to read:

2887 **31A-17-605. Authorized control level event.**

2888 (1) "Authorized control level event" means any of the following events:

2889 (a) the filing of an RBC report by the insurer or health organization that indicates that the  
2890 insurer's or health organization's total adjusted capital is greater than or equal to its mandatory  
2891 control level RBC but less than its authorized control level RBC;

2892 (b) the notification by the commissioner to the insurer or health organization of an adjusted  
2893 RBC report that indicates the event in Subsection (1)(a), provided the insurer or health  
2894 organization does not challenge the adjusted RBC report under Section 31A-17-607;

2895 (c) if, pursuant to Section 31A-17-607, the insurer or health organization challenges an  
2896 adjusted RBC report that indicates the event in Subsection (1)(a), notification by the commissioner  
2897 to the insurer or health organization that after a hearing the commissioner rejects the insurer's or  
2898 health organization's challenge;

2899 (d) the failure of the insurer or health organization to respond, in a manner satisfactory to  
2900 the commissioner, to a corrective order, provided the insurer or health organization has not  
2901 challenged the corrective order under Section 31A-17-607; or

2902 (e) if the insurer or health organization has challenged a corrective order under Section  
2903 31A-17-607 and the commissioner after a hearing rejects the challenge or modifies the corrective  
2904 order, the failure of the insurer or health organization to respond, in a manner satisfactory to the  
2905 commissioner, to the corrective order subsequent to rejection or modification by the commissioner.

2906 (2) (a) In the event of an authorized control level event with respect to an insurer or health  
2907 organization, the commissioner shall:

2908 (i) take any action required under Section 31A-17-604 regarding an insurer or health  
2909 organization with respect to which a regulatory action level event has occurred; or

2910 (ii) take any action as is necessary to cause the insurer or health organization to be placed

2911 under regulatory control under Section 31A-27-201 if the commissioner considers it to be in the  
2912 best interests of:

- 2913       (A) the policyholders [~~and~~] or members;
- 2914       (B) creditors of the insurer or health organization; and
- 2915       (C) the public.

2916       (b) In the event the commissioner takes an action described in Subsection (2)(a), the  
2917 authorized control level event is sufficient grounds for the commissioner to take action under  
2918 Section 31A-27-201, and the commissioner shall have the rights, powers, and duties with respect  
2919 to the insurer or health organization set forth in Section 31A-27-201.

2920       (c) If the commissioner takes an action under Subsection (2)(a) pursuant to an adjusted  
2921 RBC report, the insurer or health organization is entitled to the protections afforded to [~~insurers~~]  
2922 an insurer or health organization under Section 31A-27-203 pertaining to summary proceedings.

2923       Section 46. Section **31A-17-606** is amended to read:

2924       **31A-17-606. Mandatory control level event.**

2925       (1) "Mandatory control level event" means any of the following events:

2926       (a) the filing of an RBC report that indicates that the insurer's or health organization's total  
2927 adjusted capital is less than its mandatory control level RBC;

2928       (b) notification by the commissioner to the insurer or health organization of an adjusted  
2929 RBC report that indicates the event in Subsection (1)(a), provided the insurer or health  
2930 organization does not challenge the adjusted RBC report under Section 31A-17-607; or

2931       (c) if, pursuant to Section 31A-17-607, the insurer or health organization challenges an  
2932 adjusted RBC report that indicates the event in Subsection (1)(a), notification by the commissioner  
2933 to the insurer or health organization that after a hearing the commissioner rejects the insurer's or  
2934 health organization's challenge.

2935       (2) (a) [~~(i)~~] In the event of a mandatory control level event with respect to [~~a life~~] an  
2936 insurer or health organization, the commissioner shall take any actions necessary to place the  
2937 insurer under regulatory control under Section 31A-27-201.

2938       [~~(i)~~] (b) The mandatory control level event is sufficient grounds for the commissioner to  
2939 take action under Section 31A-27-201, and the commissioner shall have the rights, powers, and  
2940 duties with respect to the insurer or health organization as are set forth in Section 31A-27-201.

2941       [~~(ii)~~] (c) If the commissioner takes an action pursuant to an adjusted RBC report, the

2942 insurer or health organization is entitled to the protections of Section 31A-27-203 pertaining to  
2943 summary proceedings.

2944 ~~[(iv)] (d)~~ Notwithstanding the other provisions of Subsection (2), the commissioner may  
2945 forego action for up to 90 days after the mandatory control level event if the commissioner finds  
2946 there is a reasonable expectation that the mandatory control level event may be eliminated within  
2947 the 90-day period.

2948 ~~[(b) (i) In the event of a mandatory control level with respect to a property and casualty~~  
2949 ~~insurer, the commissioner shall take any action necessary to place the insurer under regulatory~~  
2950 ~~control under Section 31A-27-201.]~~

2951 ~~[(ii) The mandatory control level event is sufficient grounds for the commissioner to take~~  
2952 ~~action under Section 31A-27-201 and the commissioner shall have the rights, powers, and duties~~  
2953 ~~with respect to the insurer set forth in Section 31A-27-201.]~~

2954 ~~[(iii) If the commissioner takes actions pursuant to an adjusted RBC report, the insurer~~  
2955 ~~shall be entitled to the protections of Section 31A-27-203 pertaining to summary proceedings.]~~

2956 ~~[(iv) Notwithstanding any other provision of this section, the commissioner may forego~~  
2957 ~~action for up to 90 days after the mandatory control level event if the commissioner finds there is~~  
2958 ~~a reasonable expectation that the mandatory control level event may be eliminated within the~~  
2959 ~~90-day period.]~~

2960 Section 47. Section **31A-17-607** is amended to read:

2961 **31A-17-607. Hearings.**

2962 (1) (a) Following receipt of a notice described in Subsection (2), the insurer or health  
2963 organization shall have the right to a confidential departmental hearing at which the insurer or  
2964 health organization may challenge any determination or action by the commissioner.

2965 (b) The insurer or health organization shall notify the commissioner of its request for a  
2966 hearing within five days after the notification by the commissioner under Subsections  
2967 31A-17-604(1), (2), and (3).

2968 (c) Upon receipt of the insurer's or health organization's request for a hearing, the  
2969 commissioner shall set a date for the hearing, which date shall be no less than ten nor more than  
2970 30 days after the date of the insurer's or health organization's request.

2971 (2) An insurer or health organization has the right to a hearing under Subsection (1) after:

2972 (a) notification to an insurer or health organization by the commissioner of an adjusted

2973 RBC report;

2974 (b) notification to an insurer or health organization by the commissioner that:

2975 (i) the insurer's or health organization's RBC plan or revised RBC plan is unsatisfactory;

2976 and

2977 (ii) the notification constitutes a regulatory action level event with respect to the insurer  
2978 or health organization;

2979 (c) notification to any insurer or health organization by the commissioner that the insurer  
2980 or health organization has failed to adhere to its RBC plan or revised RBC plan and that the failure  
2981 has substantial adverse effect on the ability of the insurer or health organization to eliminate the  
2982 company action level event with respect to the insurer or health organization in accordance with  
2983 its RBC plan or revised RBC plan; or

2984 (d) notification to an insurer or health organization by the commissioner of a corrective  
2985 order with respect to the insurer or health organization.

2986 Section 48. Section **31A-17-608** is amended to read:

2987 **31A-17-608. Confidentiality -- Prohibition on announcements -- Prohibition on use**  
2988 **in ratemaking.**

2989 (1) (a) The commissioner shall keep confidential to the extent that information in a report  
2990 or plan is not required to be included in a publicly available annual statement schedule, any detail  
2991 in an RBC report or RBC plan including the results or report of any examination or analysis of an  
2992 insurer or health organization performed pursuant to this part, that is filed by a domestic or foreign  
2993 insurer or health organization with the commissioner or any corrective order issued by the  
2994 commissioner pursuant to examination or analysis.

2995 (b) Information kept confidential under Subsection (1)(a) may not be made public or be  
2996 subject to subpoena, other than by the commissioner and then only for the purpose of enforcement  
2997 actions taken by the commissioner pursuant to this part or any other provision of the insurance  
2998 laws of this state.

2999 (2) (a) Except as otherwise required under this part, any insurer or health organization,  
3000 agent, broker, or other person engaged in any manner in the insurance business may not publish,  
3001 disseminate, circulate or place before the public, or cause, directly or indirectly, the publishing,  
3002 disseminating, circulating or placing before the public including, in a newspaper, magazine, other  
3003 publication, a notice, circular, pamphlet, letter, or poster, or over any radio or television station,

3004 an advertisement, announcement, or statement containing an assertion, representation, or statement  
3005 with regard to the RBC levels of any insurer or health organization, or of any component derived  
3006 in the calculation.

3007 (b) If any materially false statement with respect to the comparison regarding an insurer's  
3008 or health organization's total adjusted capital to its RBC levels, or an inappropriate comparison of  
3009 any other amount to the insurer's or health organization's RBC levels is published in any written  
3010 publication and the insurer or health organization is able to demonstrate to the commissioner with  
3011 substantial proof the falsity of the statement or the inappropriateness, the insurer or health  
3012 organization may publish an announcement in a written publication if the sole purpose of the  
3013 announcement is to rebut the materially false statement or inappropriate comparison.

3014 (3) The commissioner may not use an RBC instruction, report, plan, or revised plan:

3015 (a) for ratemaking;

3016 (b) as evidence in any rate proceeding; or

3017 (c) to calculate or derive any element of an appropriate premium level or rate of return for  
3018 any line of insurance or coverage that an insurer or health organization or any affiliate is authorized  
3019 to write or cover.

3020 Section 49. Section **31A-17-609** is amended to read:

3021 **31A-17-609. Alternate adjusted capital.**

3022 (1) Except as provided in Section 31A-17-602, [~~insurers~~] an insurer or health organization  
3023 licensed under Chapters 5, 7, 8, 9, and 14 shall maintain total adjusted capital as defined in Section  
3024 31A-1-301 in an amount equal to the greater of:

3025 (a) 175% of the minimum required capital, or of the minimum permanent surplus in the  
3026 case of nonassessable mutuals, required by Section 31A-5-211, 31A-7-201, 31A-8-209,  
3027 31A-9-209, or 31A-14-205; or

3028 (b) the net total of:

3029 (i) 10% of net insurance premiums earned during the year; plus

3030 (ii) 5% of the admitted value of common stocks and real estate; plus

3031 (iii) 2% of the admitted value of all other invested assets, exclusive of cash deposits,  
3032 short-term investments, policy loans, and premium notes; less

3033 (iv) the amount of any asset valuation reserve being maintained by the insurer or health  
3034 organization, but not to exceed the sum of Subsections (1)(b)(ii) and (iii).

3035 (2) As used in Subsection (1)(b), "premiums earned" means premiums and other  
3036 consideration earned for insurance in the 12-month period ending on the date the calculation is  
3037 made.

3038 (3) The commissioner may consider an insurer or health organization to be financially  
3039 hazardous under Subsection 31A-27-307(3), if the insurer or health organization does not have  
3040 qualified assets in an aggregate value exceeding the sum of the insurer's or health organization's  
3041 liabilities and the total adjusted capital required by Subsection (1).

3042 (4) The commissioner shall consider an insurer or health organization to be financially  
3043 hazardous under Subsection 31A-27-307(3) if the insurer or health organization does not have  
3044 qualified assets in an aggregate value exceeding the sum of the insurer's or health organization's  
3045 liabilities and 70% of the total adjusted capital required by Subsection (1).

3046 Section 50. Section **31A-17-610** is amended to read:

3047 **31A-17-610. Foreign insurers.**

3048 (1) (a) Any foreign insurer or health organization shall, upon the written request of the  
3049 commissioner, submit to the commissioner an RBC report as of the end of the most recent calendar  
3050 year by the later of:

3051 (i) the date an RBC report would be required to be filed by a domestic insurer or health  
3052 organization under this part; or

3053 (ii) 15 days after the request is received by the foreign insurer or health organization.

3054 (b) Any foreign insurer or health organization shall, at the written request of the  
3055 commissioner, promptly submit to the commissioner a copy of any RBC plan that is filed with the  
3056 insurance commissioner of any other state.

3057 (2) (a) The commissioner may require a foreign insurer or health organization to file an  
3058 RBC plan with the commissioner if:

3059 (i) there is a company action level event, regulatory action level event, or authorized  
3060 control level event with respect to the foreign insurer or health organization as determined under:

3061 (A) the RBC statute applicable in the state of domicile of the insurer or health  
3062 organization; or[;]

3063 (B) if no RBC statute is in force in that state, under [~~the provisions of~~] this part; and

3064 (ii) the insurance commissioner of the state of domicile of the foreign insurer or health  
3065 organization fails to require the foreign insurer or health organization to file an RBC plan in the

3066 manner specified under:

3067 (A) that state's RBC statute; or~~;~~

3068 (B) if no RBC statute is in force in that state, under Section 31A-17-603.

3069 (b) If the commissioner requires a foreign insurer or health organization to file an RBC  
3070 plan, the failure of the foreign insurer or health organization to file the RBC plan with the  
3071 commissioner is grounds to order the insurer or health organization to cease and desist from  
3072 writing new insurance business in this state.

3073 (3) The commissioner may make application to the Third District Court for Salt Lake  
3074 County permitted under Section 31A-27-401 with respect to the liquidation of property of a foreign  
3075 ~~[insurers]~~ insurer or health organization found in this state if:

3076 (a) a mandatory control level event occurs with respect to any foreign insurer or health  
3077 organization; and

3078 (b) no domiciliary receiver has been appointed with respect to the foreign insurer or health  
3079 organization under the rehabilitation and liquidation statute applicable in the state of domicile of  
3080 the foreign insurer or health organization.

3081 Section 51. Section **31A-17-613** is amended to read:

3082 **31A-17-613. Effective date of notice.**

3083 A notice by the commissioner to an insurer or health organization that may result in  
3084 regulatory action under this chapter is effective the sooner of:

3085 (1) the date the insurer or health organization receives the notice; or

3086 (2) three days after mailing the notice.

3087 Section 52. Section **31A-18-105** is amended to read:

3088 **31A-18-105. Permitted classes of investments.**

3089 The following classes of investment may be counted for the purposes specified under  
3090 Chapter 17, Part 6, Risk-Based Capital:

3091 (1) bonds or other evidences of indebtedness of:

3092 (a) (i) governmental units in the United States or Canada~~[-or]~~;

3093 (ii) instrumentalities of ~~[those]~~ the governmental units~~[-]~~ described in Subsection (1)(a)(i);

3094 or ~~[of]~~

3095 (iii) private corporations domiciled in the United States~~[-]~~; and

3096 (b) including demand deposits and certificates of deposits in solvent banks and savings and

- 3097 loan institutions;
- 3098 (2) equipment trust obligations or certificates [~~which~~] that are adequately secured
- 3099 instruments evidencing an interest in transportation equipment [~~which~~] that is located wholly or
- 3100 in part within the United States, with a right to receive determined portions of the rental, or to
- 3101 purchase other fixed obligatory payments for the use or purchase of the transportation equipment;
- 3102 (3) loans secured by:
- 3103 (a) mortgages[;];
- 3104 (b) trust deeds[;]; or
- 3105 (c) other statutorily authorized types of security interests in real estate located in the United
- 3106 States;
- 3107 (4) loans secured by pledged securities or evidences of debt eligible for investment under
- 3108 this section;
- 3109 (5) preferred stocks of United States corporations;
- 3110 (6) common stocks of United States corporations;
- 3111 (7) real estate which is used as the home office or branch office of the insurer;
- 3112 (8) real estate in the United States which produces substantial income;
- 3113 (9) loans upon the security of the insurer's own policies in amounts that are adequately
- 3114 secured by the policies and that do not exceed the surrender value of the policies;
- 3115 (10) financial futures contracts used for hedging and not for speculation, as approved under
- 3116 rules adopted by the commissioner;
- 3117 (11) investments in foreign securities of the classes permitted under this section as required
- 3118 for compliance with Section 31A-18-103;
- 3119 (12) investments permitted under Subsection 31A-18-102(2); and
- 3120 (13) other investments as the commissioner authorizes by rule.
- 3121 Section 53. Section **31A-19a-101** is amended to read:
- 3122 **31A-19a-101. Title -- Scope and purposes.**
- 3123 (1) This chapter is known as the "Utah Rate Regulation Act."
- 3124 (2) (a) (i) Except as provided in Subsection (2)(a)(ii), this chapter applies to all kinds and
- 3125 lines of direct insurance written on risks or operations in this state by an insurer authorized to do
- 3126 business in this state.
- 3127 (ii) This chapter does not apply to:

- 3128 (A) life insurance other than credit life insurance;
- 3129 (B) variable and fixed annuities;
- 3130 (C) health and ~~[disability]~~ accident and health insurance other than credit ~~[disability]~~
- 3131 accident and health insurance; and
- 3132 (D) reinsurance.
- 3133 (b) This chapter applies to all insurers authorized to do any line of business, except those
- 3134 specified in Subsection (2)(a)(ii).
- 3135 (3) It is the purpose of this chapter to:
- 3136 (a) protect policyholders and the public against the adverse effects of excessive,
- 3137 inadequate, or unfairly discriminatory rates;
- 3138 (b) encourage independent action by and reasonable price competition among insurers so
- 3139 that rates are responsive to competitive market conditions;
- 3140 (c) provide formal regulatory controls for use if independent action and price competition
- 3141 fail;
- 3142 (d) provide regulatory procedures for the maintenance of appropriate data reporting
- 3143 systems;
- 3144 (e) authorize cooperative action among insurers in the rate-making process, and regulate
- 3145 that cooperation to prevent practices that bring about a monopoly or lessen or destroy competition;
- 3146 (f) encourage the most efficient and economic marketing practices; and
- 3147 (g) regulate the business of insurance in a manner that, under the McCarran-Ferguson Act,
- 3148 15 U.S.C. Secs. 1011 through 1015, will preclude application of federal antitrust laws.
- 3149 (4) Rate filings made prior to July 1, 1986, under former Title 31, Chapter 18, are
- 3150 continued. Rate filings made after July 1, 1986, are subject to the requirements of this chapter.

3151 Section 54. Section **31A-21-103** is amended to read:

3152 **31A-21-103. Capacity to contract.**

3153 Any person 16 years of age or older who is otherwise competent to contract under Utah

3154 law, and who is not subject to any legal disability, may contract for insurance. If there is a

3155 conservator appointed under Title 75, the conservator, rather than the person whose property is

3156 subject to the conservatorship, may contract for insurance to protect the property under

3157 conservatorship. In the case of a conservatorship over the person or property of a person under 16

3158 years of age, the conservator may invest funds of the estate in life or ~~[disability]~~ accident and

3159 health insurance or annuity contracts, but only with the approval of the court having jurisdiction  
3160 over the conservatorship.

3161 Section 55. Section **31A-21-104** is amended to read:

3162 **31A-21-104. Insurable interest and consent.**

3163 (1) (a) An insurer may not knowingly provide insurance to a person who does not have or  
3164 expect to have an insurable interest in the subject of the insurance.

3165 (b) A person may not knowingly procure, directly, by assignment, or otherwise, an interest  
3166 in the proceeds of an insurance policy unless he has or expects to have an insurable interest in the  
3167 subject of the insurance.

3168 (c) Except as provided in Subsections (6), (7), and (8), any insurance provided in violation  
3169 of this subsection is subject to Subsection (5).

3170 (2) As used in this chapter:

3171 (a) "Insurable interest" in a person means, for persons closely related by blood or by law,  
3172 a substantial interest engendered by love and affection, or in the case of other persons, a lawful and  
3173 substantial interest in having the life, health, and bodily safety of the person insured continue.  
3174 Policyholders in group insurance contracts need no insurable interest if certificate holders or  
3175 persons other than group policyholders who are specified by the certificate holders are the  
3176 recipients of the proceeds of the policies. Each person has an unlimited insurable interest in his  
3177 own life and health. A shareholder or partner has an insurable interest in the life of other  
3178 shareholders or partners for purposes of insurance contracts that are an integral part of a legitimate  
3179 buy-sell agreement respecting shares or a partnership interest in the business.

3180 (b) "Insurable interest" in property or liability means any lawful and substantial economic  
3181 interest in the nonoccurrence of the event insured against.

3182 (c) "Viatical settlement" means a written contract entered into by a person who is the  
3183 policyholder of a life insurance policy insuring the life of a terminally ill person, under which the  
3184 insured assigns, transfers ownership, irrevocably designates a specific person or otherwise  
3185 alienates all control and right in the insurance policy to another person, when the proceeds of the  
3186 contract is paid to the policyholder of the insurance policy or the policyholder's designee prior to  
3187 the death of the subject.

3188 (3) Except as provided in Subsection (4), an insurer may not knowingly issue an individual  
3189 life or [~~disability~~] accident and health insurance policy to a person other than the one whose life

3190 or health is at risk unless that person, who is 18 years of age or older and not under guardianship  
3191 under Title 75, Chapter 5, Protection of Persons Under Disability and Their Property, has given  
3192 written consent to the issuance of the policy. The person shall express consent either by signing  
3193 an application for the insurance with knowledge of the nature of the document, or in any other  
3194 reasonable way. Any insurance provided in violation of this subsection is subject to Subsection (5).

3195 (4) (a) A life or [~~disability~~] accident and health insurance policy may be taken out without  
3196 consent in the following cases:

3197 (i) A person may obtain insurance on a dependent who does not have legal capacity.

3198 (ii) A creditor may, at the creditor's expense, obtain insurance on the debtor in an amount  
3199 reasonably related to the amount of the debt.

3200 (iii) A person may obtain life and [~~disability~~] accident and health insurance on immediate  
3201 family members living with or dependent on the person.

3202 (iv) A person may obtain [~~a disability~~] an accident and health insurance policy on others  
3203 that would merely indemnify the policyholder against expenses he would be legally or morally  
3204 obligated to pay.

3205 (v) The commissioner may adopt rules permitting issuance of insurance for a limited term  
3206 on the life or health of a person serving outside the continental United States who is in the public  
3207 service of the United States, if the policyholder is related within the second degree by blood or by  
3208 marriage to the person whose life or health is insured.

3209 (b) Consent may be given by another in the following cases:

3210 (i) A parent, a person having legal custody of a minor, or a guardian of the person under  
3211 Title 75, Chapter 5, Protection of Persons Under Disability and Their Property, may consent to the  
3212 issuance of a policy on a dependent child or on a person under guardianship under Title 75,  
3213 Chapter 5, Protection of Persons Under Disability and Their Property.

3214 (ii) A grandparent may consent to the issuance of life or [~~disability~~] accident and health  
3215 insurance on a grandchild.

3216 (iii) A court of general jurisdiction may give consent to the issuance of a life or [~~disability~~]  
3217 accident and health insurance policy on an ex parte application showing facts the court considers  
3218 sufficient to justify the issuance of that insurance.

3219 (5) An insurance policy is not invalid because the policyholder lacks insurable interest or  
3220 because consent has not been given, but a court with appropriate jurisdiction may order the

3221 proceeds to be paid to some person who is equitably entitled to them, other than the one to whom  
3222 the policy is designated to be payable, or it may create a constructive trust in the proceeds or a part  
3223 of them on behalf of such a person, subject to all the valid terms and conditions of the policy other  
3224 than those relating to insurable interest or consent.

3225 (6) This section does not prevent any organization described under 26 U.S.C. Sec.  
3226 501(c)(3), (e), or (f), as amended, and the regulations made under this section, and which is  
3227 regulated under Title 13, Chapter 22, Charitable Solicitations Act, from soliciting and procuring,  
3228 by assignment or designation as beneficiary, a gift or assignment of an interest in life insurance on  
3229 the life of the donor or assignor or from enforcing payment of proceeds from that interest.

3230 (7) This section does not prevent:

3231 (a) any policyholder of life insurance, whether or not the policyholder is also the subject  
3232 of the insurance, from entering into a viatical settlement;

3233 (b) any person from soliciting a person to enter into a viatical settlement; or

3234 (c) a person from enforcing payment of proceeds from the interest obtained under a viatical  
3235 settlement.

3236 (8) Notwithstanding Subsection (1), an insurer authorized under this title to issue a  
3237 workers' compensation policy may issue a workers' compensation policy to a sole proprietorship,  
3238 corporation, or partnership that elects not to include any owner, corporate officer, or partner as an  
3239 employee under the policy even if at the time the policy is issued the sole proprietorship,  
3240 corporation, or partnership has no employees.

3241 Section 56. Section **31A-21-201** is amended to read:

3242 **31A-21-201. Filing and approval of forms.**

3243 (1) (a) A form subject to Subsection 31A-21-101(1), except as exempted under  
3244 Subsections 31A-21-101(2) through (6), may not be used, sold, or offered for sale unless it has  
3245 been filed with the commissioner.

3246 (b) A form is considered filed with the commissioner when the commissioner receives:

3247 (i) the form;

3248 (ii) the applicable filing fee as prescribed under Section 31A-3-103; and

3249 (iii) the applicable transmittal forms as required by the commissioner.

3250 (2) In filing a form for use in this state the insurer is responsible for assuring that the form  
3251 is in compliance with this title and rules adopted by the commissioner.

3252 (3) (a) The commissioner may [~~disapprove~~] prohibit the use of a form at any time upon  
3253 a finding that:

3254 (i) it is:

3255 (A) inequitable;

3256 (B) unfairly discriminatory;

3257 (C) misleading;

3258 (D) deceptive;

3259 (E) obscure;

3260 (F) unfair;

3261 (G) encourages misrepresentation; or

3262 (H) not in the public interest;

3263 (ii) it provides benefits or contains other provisions that endanger the solidity of the  
3264 insurer;

3265 (iii) in the case of the basic policy and the application for a basic policy, it fails to  
3266 conspicuously, as defined by rule, provide:

3267 (A) the exact name of the insurer [~~and~~];

3268 (B) its state of domicile; and

3269 (C) the address of its administrative office.

3270 (iv) it violates a statute or a rule adopted by the commissioner; or

3271 (v) it is otherwise contrary to law.

3272 (b) Subsection (3)(a)(iii) does not apply to riders and endorsements to a basic policy.

3273 (c) (i) Whenever the commissioner [~~disapproves~~] prohibits the use of a form under

3274 Subsection (3)(a), the commissioner may order that, on or before a date not less than 15 days after  
3275 the order, the use of the form be discontinued.

3276 (ii) Once a form has been [~~disapproved~~] prohibited, it may not be used unless appropriate  
3277 changes are filed with and [~~approved~~] reviewed by the commissioner.

3278 (iii) Whenever the commissioner [~~disapproves~~] prohibits the use a form under Subsection  
3279 (3)(a), the commissioner may require the insurer to disclose contract deficiencies to existing  
3280 policyholders.

3281 (d) The commissioner's [~~disapproval~~] prohibition under this Subsection (3) shall:

3282 (i) be in writing [~~and constitutes~~];

3283 (ii) constitute an order[. ~~The order shall~~]; and

3284 (iii) state the reasons for [~~disapproval~~] the prohibition.

3285 (4) (a) If, after a hearing, the commissioner determines that it is in the public interest, the  
3286 commissioner may require by rule or order that certain forms be subject to the commissioner's  
3287 approval prior to their use.

3288 (b) The rule or order described in Subsection (4)(a) shall prescribe the filing procedures  
3289 for the forms if different than stated in this section.

3290 (c) The types of forms that may be addressed under Subsection (4)(a) include:

3291 (i) forms for a particular class of insurance;

3292 (ii) forms for a specific line of insurance;

3293 (iii) a specific type of form; or

3294 (iv) forms for a specific market segment.

3295 Section 57. Section **31A-21-301** is amended to read:

3296 **31A-21-301. Clauses required to be in a prominent position.**

3297 (1) The following portions of insurance policies shall appear conspicuously in the policy:

3298 (a) [~~the name and state of domicile of the insurer~~] as required by Subsection 31A-21-201

3299 (3)(a)(iii)[~~;~~];

3300 (i) the exact name of the insurer;

3301 (ii) the state of domicile of the insurer; and

3302 (iii) the address of the administrative office of the insurer;

3303 (b) information that two or more insurers under Subsection (1)(a) undertake only several  
3304 liability, as required by Section 31A-21-306;

3305 (c) if a policy is assessable, a statement of that;

3306 (d) a statement that benefits are variable, as required by Subsection 31A-22-411(1);

3307 however, the methods of calculation need not be in a prominent position;

3308 (e) the right to return a life or [~~disability~~] accident and health insurance policy under

3309 Sections 31A-22-423 and 31A-22-606; and

3310 (f) the beginning and ending dates of insurance protection.

3311 (2) Each clause listed in Subsection (1) shall be displayed conspicuously and separately  
3312 from any other clause.

3313 Section 58. Section **31A-21-303** is amended to read:

3314 **31A-21-303. Termination of insurance policies by insurers.**

3315 (1) (a) Except as otherwise provided in this section, in other statutes, or by rule under  
3316 Subsection (1)(c), this section applies to all policies of insurance other than life and [disability]  
3317 accident and health insurance and annuities, if the policies of insurance are issued on forms that  
3318 are subject to filing and approval under Subsection 31A-21-201(1).

3319 (b) A policy may provide terms more favorable to insureds than this section requires.

3320 (c) The commissioner may by rule totally or partially exempt from this section classes of  
3321 insurance policies in which the insureds do not need protection against arbitrary or unannounced  
3322 termination.

3323 (d) The rights provided by this section are in addition to and do not prejudice any other  
3324 rights the insureds may have at common law or under other statutes.

3325 (2) (a) As used in this Subsection (2), "grounds" means:

3326 (i) material misrepresentation;

3327 (ii) substantial change in the risk assumed, unless the insurer should reasonably have  
3328 foreseen the change or contemplated the risk when entering into the contract;

3329 (iii) substantial breaches of contractual duties, conditions, or warranties;

3330 (iv) attainment of the age specified as the terminal age for coverage, in which case the  
3331 insurer may cancel by notice under Subsection (2)(c), accompanied by a tender of proportional  
3332 return of premium; or

3333 (v) in the case of automobile insurance, revocation or suspension of the driver's license of  
3334 the named insured or any other person who customarily drives the car.

3335 (b) (i) Except as provided in Subsection (2)(e) or unless the conditions of Subsection  
3336 (2)(b)(ii) are met, an insurance policy may not be canceled by the insurer before the earlier of:

3337 (A) the expiration of the agreed term; or

3338 (B) one year from the effective date of the policy or renewal.

3339 (ii) Notwithstanding Subsection (2)(b)(i), an insurance policy may be canceled by the  
3340 insurer for:

3341 (A) nonpayment of a premium when due; or

3342 (B) on grounds defined in Subsection (2)(a).

3343 (c) (i) The cancellation provided by Subsection (2)(b), except cancellation for nonpayment  
3344 of premium, is effective no sooner than 30 days after the delivery or first-class mailing of a written

3345 notice to the policyholder.

3346 (ii) Cancellation for nonpayment of premium is effective no sooner than ten days after  
3347 delivery or first class mailing of a written notice to the policyholder.

3348 (d) (i) Notice of cancellation for nonpayment of premium shall include a statement of the  
3349 reason for cancellation.

3350 (ii) Subsection (6) applies to the notice required for grounds of cancellation other than  
3351 nonpayment of premium.

3352 (e) (i) Subsections (2)(a) through (d) do not apply to any insurance contract that has not  
3353 been previously renewed if the contract has been in effect less than 60 days when the written notice  
3354 of cancellation is mailed or delivered.

3355 (ii) A cancellation under this Subsection (2)(e) may not be effective until at least ten days  
3356 after the delivery to the insured of a written notice of cancellation.

3357 (iii) If the notice required by this Subsection (2)(e) is sent by first-class mail, postage  
3358 prepaid, to the insured at the insured's last-known address, delivery is considered accomplished  
3359 after the passing, since the mailing date, of the mailing time specified in the Utah Rules of Civil  
3360 Procedure.

3361 (iv) A policy cancellation subject to this Subsection (2)(e) is not subject to the procedures  
3362 described in Subsection (6).

3363 (3) A policy may be issued for a term longer than one year or for an indefinite term if the  
3364 policy includes a clause providing for cancellation by the insurer by giving notice as provided in  
3365 Subsection (4)(b)(i) 30 days prior to any anniversary date.

3366 (4) (a) Subject to Subsections (2), (3), and (4)(b), a policyholder has a right to have the  
3367 policy renewed:

3368 (i) on the terms then being applied by the insurer to similar risks; and

3369 (ii) (A) for an additional period of time equivalent to the expiring term if the agreed term  
3370 is one year or less; or

3371 (B) for one year if the agreed term is longer than one year.

3372 (b) Except as provided in Subsection (4)(c), the right to renewal under Subsection (4)(a)  
3373 is extinguished if:

3374 (i) at least 30 days prior to the policy expiration or anniversary date a notice of intention  
3375 not to renew the policy beyond the agreed expiration or anniversary date is delivered or sent by

3376 first-class mail by the insurer to the policyholder at the policyholder's last-known address;

3377 (ii) not more than 45 nor less than 14 days prior to the due date of the renewal premium,  
3378 the insurer delivers or sends by first-class mail a notice to the policyholder at the policyholder's  
3379 last-known address, clearly stating:

3380 (A) the renewal premium;

3381 (B) how it may be paid; and

3382 (C) that failure to pay the renewal premium by the due date extinguishes the policyholder's  
3383 right to renewal;

3384 (iii) the policyholder has:

3385 (A) accepted replacement coverage; or

3386 (B) requested or agreed to nonrenewal; or

3387 (iv) the policy is expressly designated as nonrenewable.

3388 (c) Unless the conditions of Subsection (4)(b)(iii) or (iv) apply, an insurer may not fail to  
3389 renew an insurance policy as a result of a telephone call or other inquiry that:

3390 (i) references a policy coverage; and

3391 (ii) does not result in a claim being filed or paid.

3392 (5) (a) (i) Subject to Subsection (5)(b), if the insurer offers or purports to renew the policy,  
3393 but on less favorable terms or at higher rates, the new terms or rates take effect on the renewal date  
3394 if the insurer delivered or sent by first-class mail to the policyholder notice of the new terms or  
3395 rates at least 30 days prior to the expiration date of the prior policy.

3396 (ii) If the insurer did not give the prior notification described in Subsection (5)(a)(i) to the  
3397 policyholder the new terms or rates do not take effect until 30 days after the notice is delivered or  
3398 sent by first-class mail, in which case the policyholder may elect to cancel the renewal policy at  
3399 any time during the 30-day period.

3400 (iii) Return premiums or additional premium charges shall be calculated proportionately  
3401 on the basis that the old rates apply.

3402 (b) Subsection (5)(a) does not apply if the only change in terms that is adverse to the  
3403 policyholder is:

3404 (i) a rate increase generally applicable to the class of business to which the policy belongs;

3405 (ii) a rate increase resulting from a classification change based on the altered nature or  
3406 extent of the risk insured against; or

3407 (iii) a policy form change made to make the form consistent with Utah law.

3408 (6) (a) If a notice of cancellation or nonrenewal under Subsection (2)(c) does not state with  
3409 reasonable precision the facts on which the insurer's decision is based, the insurer shall send by  
3410 first-class mail or deliver that information within ten working days after receipt of a written request  
3411 by the policyholder.

3412 (b) A notice under Subsection (2)(c) is not effective unless it contains information about  
3413 the policyholder's right to make the request.

3414 (7) If a risk-sharing plan under Section 31A-2-214 exists for the kind of coverage provided  
3415 by the insurance being cancelled or nonrenewed, a notice of cancellation or nonrenewal required  
3416 under Subsection (2)(c) or (4)(b)(i) may not be effective unless it contains instructions to the  
3417 policyholder for applying for insurance through the available risk-sharing plan.

3418 (8) There is no liability on the part of, and no cause of action against, any insurer, its  
3419 authorized representatives, agents, employees, or any other person furnishing to the insurer  
3420 information relating to the reasons for cancellation or nonrenewal or for any statement made or  
3421 information given by them in complying or enabling the insurer to comply with this section unless  
3422 actual malice is proved by clear and convincing evidence.

3423 (9) This section does not alter any common law right of contract rescission for material  
3424 misrepresentation.

3425 Section 59. Section **31A-21-307** is amended to read:

3426 **31A-21-307. Other insurance.**

3427 (1) When two or more policies promise to indemnify an insured against the same loss  
3428 without intending cumulative coverage, no "other insurance" provisions of the policies may reduce  
3429 the aggregate protection of the insured below the lesser of the actual insured loss suffered by the  
3430 insured and the maximum indemnification promised by any policy without regard to any "other  
3431 insurance" provision.

3432 (2) Subject to Subsection (1), the policies may by their terms define the extent to which  
3433 each insurance is primary and each is excess, but if the "other insurance" terms of the policies are  
3434 inconsistent, there is joint and several liability to the insured on any coverage which overlaps and  
3435 which has inconsistent terms. Subsequent settlement among the insurers does not alter any rights  
3436 of the insured. The commissioner may adopt rules consistent with this section concerning "other  
3437 insurance."

3438 (3) This section does not apply to [disability] accident and health insurance policies. Refer  
3439 to Section 31A-22-619 for the coordination of [disability] accident and health benefits.

3440 Section 60. Section **31A-21-401** is amended to read:

3441 **31A-21-401. Scope and construction of part.**

3442 This part applies to all mass marketed life or [disability] accident and health insurance,  
3443 notwithstanding Subsection 31A-1-103(3)(~~h~~). This part may not be construed to limit the  
3444 application of other provisions of this title to insurers effecting mass marketed life or [disability]  
3445 accident and health insurance policies on persons in this state.

3446 Section 61. Section **31A-21-402** is amended to read:

3447 **31A-21-402. Definitions.**

3448 As used in this part:

3449 (1) "Direct response solicitation" means any offer by an insurer to persons in this state,  
3450 either directly or through a third party, to effect life or [disability] accident and health insurance  
3451 coverage which enables the individual to apply or enroll for the insurance on the basis of the offer.  
3452 Direct response solicitation does not include solicitations for insurance through an employee  
3453 benefit plan exempt from state regulation under preemptive federal law, nor does it include  
3454 solicitations through the individual's creditor with respect to credit life or credit [disability]  
3455 accident and health insurance.

3456 (2) "Mass marketed life or [disability] accident and health insurance" means the insurance  
3457 under any individual, franchise, group, or blanket policy of life or [disability] accident and health  
3458 insurance which is offered by means of direct response solicitation through a sponsoring  
3459 organization or through the mails or other mass communications media and under which the  
3460 person insured pays all or substantially all of the cost of his insurance.

3461 Section 62. Section **31A-21-403** is amended to read:

3462 **31A-21-403. Orders terminating effectiveness of policies.**

3463 Upon the commissioner's order, no mass marketed life or [disability] accident and health  
3464 insurance issued by an insurer may continue to be effected on persons in this state. The  
3465 commissioner may issue an order under this section only if he finds, after a hearing, that the total  
3466 charges for the insurance to the persons insured are unreasonable in relation to the benefits  
3467 provided. The commissioner's findings under this section must be in writing. Orders under this  
3468 section may direct the insurer to cease effecting the insurance until the total charges for the

3469 insurance are found by the commissioner to be reasonable in relation to the benefits provided.

3470 Section 63. Section **31A-21-404** is amended to read:

3471 **31A-21-404. Out-of-state insurers.**

3472 Any insurer extending mass marketed life or [~~disability~~] accident and health insurance  
3473 under a group or blanket policy issued outside of this state to residents of this state shall, with  
3474 respect to the mass marketed life or [~~disability~~] accident and health insurance policy:

3475 (1) comply with Sections 31A-23-302 and 31A-23-303 and Part III of Chapter 26; and

3476 (2) upon the commissioner's request, deliver to the commissioner a copy of any mass  
3477 marketed life or [~~disability~~] accident and health insurance policy, certificates issued under these  
3478 policies, and advertising material used in this state in connection with the policy.

3479 Section 64. Section **31A-21-501** is amended to read:

3480 **31A-21-501. Definitions.**

3481 For purposes of this part:

3482 (1) "Applicant" means:

3483 (a) in the case of an individual life or [~~disability~~] accident and health policy, the person  
3484 who seeks to contract for insurance benefits; or

3485 (b) in the case of a group life or [~~disability~~] accident and health policy, the proposed  
3486 certificate holder.

3487 (2) "Cohabitant" means an emancipated individual pursuant to Section 15-2-1 or an  
3488 individual who is 16 years of age or older who:

3489 (a) is or was a spouse of the other party;

3490 (b) is or was living as if a spouse of the other party;

3491 (c) is related by blood or marriage to the other party;

3492 (d) has one or more children in common with the other party; or

3493 (e) resides or has resided in the same residence as the other party.

3494 (3) "Child abuse" means the commission or attempt to commit against a child a criminal  
3495 offense described in:

3496 (a) Title 76, Chapter 5, Part 1, Assault and Related Offenses;

3497 (b) Title 76, Chapter 5, Part 4, Sexual Offenses;

3498 (c) Subsections 76-9-702(1) through (4), Lewdness- Sexual battery; or

3499 (d) Section 76-9-702.5, Lewdness Involving a Child.

- 3500 (4) "Domestic violence" means any criminal offense involving violence or physical harm  
3501 or threat of violence or physical harm, or any attempt, conspiracy, or solicitation to commit a  
3502 criminal offense involving violence or physical harm, when committed by one cohabitant against  
3503 another and includes commission or attempt to commit, any of the following offenses by one  
3504 cohabitant against another:
- 3505 (a) aggravated assault, as described in Section 76-5-103;
  - 3506 (b) assault, as described in Section 76-5-102;
  - 3507 (c) criminal homicide, as described in Section 76-5-201;
  - 3508 (d) harassment, as described in Section 76-5-106;
  - 3509 (e) telephone harassment, as described in Section 76-9-201;
  - 3510 (f) kidnaping, child kidnaping, or aggravated kidnaping, as described in Sections 76-5-301,  
3511 76-5-301.1, and 76-5-302;
  - 3512 (g) mayhem, as described in Section 76-5-105;
  - 3513 (h) sexual offenses, as described in Title 76, Chapter 5, Part 4, and Title 76, Chapter 5a;
  - 3514 (i) stalking, as described in Section 76-5-106.5;
  - 3515 (j) unlawful detention, as described in Section 76-5-304;
  - 3516 (k) violation of a protective order or ex parte protective order, as described in Section  
3517 76-5-108;
  - 3518 (l) any offense against property described in Title 76, Chapter 6, Part 1, 2, or 3;
  - 3519 (m) possession of a deadly weapon with intent to assault, as described in Section  
3520 76-10-507; or
  - 3521 (n) discharge of a firearm from a vehicle, near a highway, or in the direction of any person,  
3522 building, or vehicle, as described in Section 76-10-508.

3523 (5) "Subject of domestic abuse" means an individual who is, has been, may currently be,  
3524 or may have been subject to domestic violence or child abuse.

3525 Section 65. Section **31A-21-502** is amended to read:

3526 **31A-21-502. Scope of part.**

3527 This part applies to only life and [~~disability~~] accident and health insurance.

3528 Section 66. Section **31A-21-503** is amended to read:

3529 **31A-21-503. Discrimination based on domestic violence or child abuse prohibited.**

3530 (1) Except as provided in Subsection (2), an insurer of life or [~~disability~~] accident and

3531 health insurance may not consider whether an insured or applicant is the subject of domestic abuse  
3532 as a factor to:

3533 (a) refuse to insure the applicant;

3534 (b) refuse to continue to insure the insured;

3535 (c) refuse to renew or reissue a policy to insure the insured or applicant;

3536 (d) limit the amount, extent, or kind of coverage available to the insured or applicant;

3537 (e) charge a different rate for coverage to the insured or applicant;

3538 (f) exclude or limit benefits or coverage under an insurance policy or contract for losses  
3539 incurred;

3540 (g) deny a claim; or

3541 (h) terminate coverage or fail to provide conversion privileges in violation of Sections  
3542 31A-22-612 and 31A-22-710 under a group [~~disability~~] accident and health policy for the insured  
3543 because the coverage was issued in the name of the perpetrator of the domestic violence or abuse.

3544 (2) (a) Notwithstanding Subsection (1), an insurer may underwrite based on the physical  
3545 or mental condition of an insured or applicant if the underwriting is based on a determination that  
3546 there is a correlation between the medical or mental condition and a material increase in insurance  
3547 risk.

3548 (b) For purposes of Subsection (2)(a), the fact that an insured or applicant is a subject of  
3549 domestic abuse is not a mental or physical condition.

3550 (c) The determination required by Subsection (2)(a) shall be made in conformance with  
3551 sound actuarial principles.

3552 (d) Within 30 days after receiving an oral or written request from an insured or applicant,  
3553 an insurer shall disclose in writing:

3554 (i) the basis of an action permitted under Subsection (2)(a); and

3555 (ii) if the policy has been issued or modified, the extent the action taken will impact the  
3556 amount, extent, or kind of coverage or benefits available to the insured.

3557 Section 67. Section **31A-21-505** is amended to read:

3558 **31A-21-505. Limit on liability.**

3559 An insurer that issues a life or [~~disability~~] accident and health insurance policy to an  
3560 individual who is the subject of domestic abuse is not liable civilly or criminally for the death of  
3561 or any injuries to the insured as a result of domestic violence or child abuse beyond the obligations

3562 of the insurer under:

3563 (1) the insurance policy; or

3564 (2) this title.

3565 Section 68. Section **31A-22-403** is amended to read:

3566 **31A-22-403. Incontestability.**

3567 (1) This section does not apply to group policies.

3568 (2) Each life insurance policy is, and shall state that, after it has been in force during the  
3569 lifetime of the insured for a period of two years from its date of issue, it is incontestable except for  
3570 the following:

3571 (a) The policy may be contested for nonpayment of premiums.

3572 (b) The policy may be contested as to:

3573 (i) provisions relating to [~~disability~~] accident and health benefits allowed under Section  
3574 31A-22-609[~~;~~]; and [~~as to~~]

3575 (ii) additional benefits in the event of death by accident [~~or accidental means~~].

3576 (c) If the policy allows the insured, after the policy's issuance and for an additional  
3577 premium, to obtain a death benefit which is larger than when the policy was originally issued, then  
3578 the payment of the additional increment of benefit is contestable until two years after the  
3579 incremental increase of benefits, but the only ground of contest that may arise is in connection with  
3580 the incremental increase.

3581 (3) A reinstated life insurance policy or annuity contract may be contested for two years  
3582 following reinstatement on the same basis as at original issuance, but only as to matters arising in  
3583 connection with the reinstatement. Any grounds for contest available at original issuance continue  
3584 to be available for contest until the policy has been in force for a total of two years during the  
3585 lifetime of the insured.

3586 (4) The limitations on incontestability under this section preclude only a contest of the  
3587 validity of the policy, and do not preclude the good faith assertion at any time of defenses based  
3588 upon provisions in the policy which exclude or qualify coverage, whether or not those  
3589 qualifications or exclusions are specifically excepted in the policy's incontestability clause.  
3590 Provisions on which the contestable period would normally run may not be reformulated as  
3591 coverage exclusions or restrictions to take advantage of this Subsection (4).

3592 Section 69. Section **31A-22-404** is amended to read:

3593 **31A-22-404. Suicide.**

3594 (1) (a) Suicide is not a defense to a claim under a life insurance policy that has been in  
3595 force as to a policyholder or certificate holder for two years from the date [~~the coverage is~~  
3596 ~~effective~~] of issuance of the policy, whether:

- 3597 (i) the suicide was voluntary or involuntary; or  
3598 (ii) the insured was sane or insane.

3599 (b) If a suicide occurs within the two-year period described in Subsection (1)(a), the  
3600 insurer shall pay to the beneficiary an amount not less than the premium paid for the life insurance  
3601 policy.

3602 (2) (a) If after a life insurance policy is in effect the policy allows the insured to obtain a  
3603 death benefit that is larger than when the policy was originally effective for an additional premium,  
3604 the payment of the additional increment of benefit may be limited in the event of a suicide within  
3605 a two-year period beginning on the date the increment increase takes effect.

3606 (b) If a suicide occurs within the two-year period described in Subsection (2)(a), the  
3607 insurer shall pay to the beneficiary an amount not less than the additional premium paid for the  
3608 additional increment of benefit.

3609 (3) This section does not apply to:

- 3610 (a) policies insuring against death by accident only; or  
3611 (b) the accident or double indemnity provisions of an insurance policy.

3612 Section 70. Section **31A-22-415** is amended to read:

3613 **31A-22-415. Simultaneous death.**

3614 Section 75-2-702 applies to all policies of life and [~~disability~~] accident and health  
3615 insurance.

3616 Section 71. Section **31A-22-423** is amended to read:

3617 **31A-22-423. Policy and annuity examination period.**

3618 (1) (a) Except as provided under Subsection (2), all life insurance policies and annuities  
3619 shall contain a notice prominently printed on or attached to the cover or front page stating that the  
3620 policyholder has the right to return the policy for any reason on or before:

- 3621 (i) ten days after delivery; or  
3622 (ii) in case of a replacement policy, 20 days after the replacement policy is delivered.  
3623 (b) For purposes of this section, "return" means a written statement on the policy or an

3624 accompanying writing that the policy is being returned for termination of coverage that is delivered  
3625 to or mailed first class to the insurer or its agent.

3626 (c) A policy returned under this section is void from the date of [~~return~~] issuance.

3627 (d) A policyholder returning a policy is entitled to a refund of any premium paid[~~, except~~  
3628 ~~that the insurer may retain an amount not exceeding that determined by rule adopted by the~~  
3629 ~~commissioner~~].

3630 (2) This section does not apply to:

3631 (a) group policies; and

3632 (b) other classes of life insurance policies that the commissioner specifies by rule after  
3633 finding that a right to return those policies would be impracticable or unnecessary to protect the  
3634 policyholder's interests.

3635 Section 72. Section **31A-22-424** is enacted to read:

3636 **31A-22-424. Documents constituting entire life insurance policy.**

3637 (1) A life insurance policy shall contain a provision that defines the documents and  
3638 agreements that constitute the entire contract between the parties.

3639 (2) Except as permitted by Section 31A-21-106, all documents and agreements defined  
3640 under Subsection (1) shall be attached to the policy.

3641 Section 73. Section **31A-22-510** is amended to read:

3642 **31A-22-510. Requirements for group life insurance delivered in another jurisdiction.**

3643 (1) [~~No~~] A Utah resident may not be enrolled in a policy of group life insurance delivered  
3644 in another jurisdiction in violation of Subsection (2) or (3), notwithstanding any contrary provision  
3645 in Subsection 31A-1-103(3) [~~(1)~~].

3646 (2) Unless specifically authorized by the commissioner under Section 31A-22-509,  
3647 coverage under a group life insurance policy delivered in another jurisdiction may not be initially  
3648 provided to any person unless the policy conforms substantially to one of the types of groups  
3649 specified under Sections 31A-22-502 through 31A-22-508.

3650 (3) [~~No coverage~~] Coverage may not be initially provided to any person in Utah under a  
3651 group life policy issued in another jurisdiction by an insurer not authorized to engage in life  
3652 insurance business in Utah unless the policyholder conforms substantially to the type of group  
3653 specified under Section 31A-22-502, 31A-22-503, or 31A-22-504.

3654 Section 74. Section **31A-22-517** is amended to read:

3655           **31A-22-517. Conversion on termination of eligibility.**

3656           (1) If any portion of the insurance on a person covered under the policy ceases because of  
3657 termination of employment or of membership in the classes eligible for coverage, the person is  
3658 entitled to be issued by the insurer, without evidence of insurability, an individual policy of life  
3659 insurance without [~~disability~~] accident and health or other supplementary benefits, if an application  
3660 for the individual policy is made and the first premium paid to the insurer within 31 days after the  
3661 termination.

3662           (2) The individual policy shall, at the option of the person entitled, be on any form then  
3663 customarily issued by the insurer at the age and for the amount applied for, except that the group  
3664 policy may exclude the option to elect term insurance.

3665           (3) The individual policy shall be for an amount not in excess of the life insurance which  
3666 ceases because of the termination, less the amount of any life insurance for which the person is  
3667 eligible because of the termination and within 30 days after it. Any amount of insurance which  
3668 matures on or before the termination, as an endowment payable to the person insured, whether in  
3669 one sum, in installments, or in the form of an annuity, is not included in the amount which is  
3670 considered to cease because of the termination.

3671           (4) The premium on the individual policy shall be at the insurer's customary rate at the  
3672 time of termination, which is applicable to the form and amount of the individual policy, to the  
3673 class of risk to which the person belonged when terminated from the group policy, and to the age  
3674 attained on the effective date of the individual policy.

3675           (5) Subject to the conditions of this section, the conversion privilege is available:

3676           (a) to a surviving dependent, if any, at the death of the employee or member, with respect  
3677 to the survivor's coverage under the group policy which terminates by reason of the death; and

3678           (b) to the dependent of the employee or member upon termination of coverage of the  
3679 dependent, while the employee or member remains insured, because the dependent ceases to be  
3680 a qualified dependent under the group policy.

3681           Section 75. Section **31A-22-518** is amended to read:

3682           **31A-22-518. Conversion on termination of policy.**

3683           [~~H~~] (1) Subject to Subsection (2), if the group policy terminates or is amended to terminate  
3684 the insurance of any class of covered persons, every insured person whose insurance terminates,  
3685 including the insured dependent of a covered person who has been insured for at least five years

3686 prior to the termination date, is entitled to have the insurer issue to ~~[him]~~ the person an individual  
3687 policy of life insurance, subject to the conditions and limitations in Section 31A-22-517~~[-except~~  
3688 ~~that the]~~.

3689 (2) The group policy [may] described in Subsection (1) shall provide [either] that[:(1)-  
3690 ~~The]~~ the amount of the individual policy may not [exceed] be less than the smaller of:

3691 (a) the amount of the person's life insurance protection ceasing because of the termination  
3692 or amendment of the group policy, less the amount of any life insurance for which [he] the person  
3693 is eligible under any group policy issued or reinstated by the same or another insurer within 30  
3694 days after the termination[:(2) ~~The amount of the individual policy may not exceed]; or~~

3695 (b) \$10,000.

3696 Section 76. Section **31A-22-520** is amended to read:

3697 **31A-22-520. Continuation of coverage during total disability.**

3698 (1) An insured person in a group life insurance policy may continue coverage during the  
3699 total disability of the insured person or dependent by timely payment to the policyholder of that  
3700 portion, if any, of the premium that would have been required on behalf of the insured person in  
3701 the absence of total disability.

3702 (2) The continuation shall be on a premium paying basis until the earlier of:

3703 (a) six months from the date of total disability;

3704 (b) approval by the insurer of continuation of the coverage under any disability provision  
3705 the group insurance policy may contain; or

3706 (c) the discontinuance of the group insurance policy.

3707 (3) If the group policy has a waiting period for ~~[a disability]~~ an accident and health benefit,  
3708 the continuation extends to the end of the waiting period, even if the group policy is otherwise  
3709 discontinued.

3710 Section 77. Section **31A-22-522** is enacted to read:

3711 **31A-22-522. Required provision for notice of termination.**

3712 (1) A policy for group or blanket life insurance coverage issued or renewed after July 1,  
3713 2001, shall include a provision that obligates the policyholder to notify each employee or group  
3714 member:

3715 (a) in writing;

3716 (b) 30 days before the date the coverage is terminated; and

- 3717 (c) (i) that the group or blanket life insurance coverage is being terminated; and  
3718 (ii) the rights the employee or group member has to continue coverage upon termination.  
3719 (2) For a policy for group or blanket life insurance coverage described in Subsection (1),  
3720 an insurer shall:  
3721 (a) include a statement of a policyholder's obligations under Subsection (1) in the insurer's  
3722 monthly notice to the policyholder of premium payments due; and  
3723 (b) provide a sample notice to the policyholder at least once a year.  
3724 Section 78. Section **31A-22-600** is amended to read:  
3725 **31A-22-600. Scope of Part VI.**  
3726 (1) ~~[This]~~ Except where a provision's appreciation is otherwise specifically limited, this  
3727 part applies to all [disability]:  
3728 (a) accident and health insurance contracts, including credit [disability;] accident and  
3729 health;  
3730 (b) franchise[, and];  
3731 (c) group contracts[; except where a provision's application is otherwise specifically  
3732 limited.]; and  
3733 (d) a life insurance and annuity policy, but only if:  
3734 (i) it includes supplemental benefits and riders including accelerated benefits; and  
3735 (ii) receipt of benefits is contingent on morbidity requirements.  
3736 (2) Nothing in this part applies to or affects:  
3737 (a) workers' compensation insurance;  
3738 (b) reinsurance; or  
3739 ~~[(c) annuities or life insurance, or their supplemental contracts which contain only those~~  
3740 ~~provisions relating to disability insurance which provide additional benefits in case of~~  
3741 ~~dismemberment or loss of sight by accident, safeguard the contract against lapse, or give a special~~  
3742 ~~surrender value or special benefit or an annuity if the insured or annuitant becomes totally and~~  
3743 ~~permanently disabled, as defined by the contract or supplemental contract; (d) disability]~~  
3744 (c) accident and health insurance when it is part of or supplemental to liability, steam  
3745 boiler, elevator, automobile, or other insurance covering loss of or damage to property, provided  
3746 the loss, damage, or expense arises out of a hazard directly related to the other insurance.  
3747 (3) Except as provided in Subsection (1), this part does not apply to or affect a life

3748 insurance or annuity policy including a life insurance policy:

3749 (a) with a rider or supplemental benefit that accelerates the death benefit contingent upon  
3750 a mortality risk specifically for one or more of the qualifying events of:

3751 (i) terminal illness;

3752 (ii) medical conditions requiring extraordinary medical intervention; or

3753 (iii) permanent institutional confinement; and

3754 (b) that provides the option of a lump-sum payment for those benefits.

3755 Section 79. Section **31A-22-601** is amended to read:

3756 **31A-22-601. Applicability of life insurance provisions.**

3757 Sections 31A-22-412 through 31A-22-417 apply to death benefits in [~~disability~~] accident  
3758 and health insurance policies.

3759 Section 80. Section **31A-22-602** is amended to read:

3760 **31A-22-602. Premium rates.**

3761 (1) This section does not apply to group [~~disability~~] accident and health insurance.

3762 (2) The benefits in [~~a disability~~] an accident and health insurance policy shall be  
3763 reasonable in relation to the premiums charged.

3764 (3) The commissioner shall disapprove [~~a disability~~] an accident and health insurance  
3765 policy form if it does not satisfy Subsection (2).

3766 Section 81. Section **31A-22-603** is amended to read:

3767 **31A-22-603. Persons insured under an individual accident and health policy.**

3768 A policy of individual [~~disability~~] accident and health insurance may insure only one  
3769 person, except that originally or by subsequent amendment, upon the application of an adult  
3770 policyholder, a policy may insure any two or more eligible members of the policyholder's family,  
3771 including husband, wife, dependent children, and any other person dependent upon the  
3772 policyholder.

3773 Section 82. Section **31A-22-604** is amended to read:

3774 **31A-22-604. Reimbursement by insurers of Medicaid benefits.**

3775 (1) As used in this section, "Medicaid" means the program under Title XIX of the federal  
3776 Social Security Act.

3777 (2) Any [~~disability~~] accident and health insurer, including a group [~~disability~~] accident and  
3778 health insurance plan, as defined in Section 607(1), Federal Employee Retirement Income Security

3779 Act of 1974, or health maintenance organization as defined in Section 31A-8-101, is prohibited  
3780 from considering the availability or eligibility for medical assistance in this or any other state under  
3781 Medicaid, when considering eligibility for coverage or making payments under its plan for eligible  
3782 enrollees, subscribers, policyholders, or certificate holders.

3783 (3) To the extent that payment for covered expenses has been made under the state  
3784 Medicaid program for health care items or services furnished to an individual in any case when a  
3785 third party has a legal liability to make payments, the state is considered to have acquired the rights  
3786 of the individual to payment by any other party for those health care items or services.

3787 (4) Title 26, Chapter 19, Medical Benefits Recovery Act, applies to reimbursement of  
3788 insurers of Medicaid benefits.

3789 Section 83. Section **31A-22-605** is amended to read:

3790 **31A-22-605. Accident and health insurance standards.**

3791 (1) The purposes of this section include:

3792 (a) reasonable standardization and simplification of terms and coverages of individual and  
3793 franchise [~~disability~~] accident and health insurance policies, including [~~disability~~] accident and  
3794 health insurance contracts of insurers licensed under Chapters 7 and 8, to facilitate public  
3795 understanding and comparison in purchasing;

3796 (b) elimination of provisions contained in individual and franchise [~~disability~~] accident  
3797 and health insurance contracts [~~which~~] that may be misleading or confusing in connection with  
3798 either the purchase of those types of coverages or the settlement of claims; and

3799 (c) full disclosure in the sale of individual and franchise [~~disability~~] accident and health  
3800 insurance contracts.

3801 (2) As used in this section:

3802 (a) "Direct response insurance policy" means an individual insurance policy solicited and  
3803 sold without the policyholder having direct contact with a natural person intermediary.

3804 (b) "Medicare" is defined in Subsection 31A-22-620(1)(e).

3805 (c) "Medicare supplement policy" is defined in Subsection 31A-22-620(1)(f).

3806 (3) This section applies to all individual and franchise [~~disability~~] accident and health  
3807 policies.

3808 (4) The commissioner shall adopt rules relating to the following matters:

3809 (a) standards for the manner and content of policy provisions, and disclosures to be made

3810 in connection with the sale of policies covered by this section, dealing with at least the following  
3811 matters:

- 3812 (i) terms of renewability;
  - 3813 (ii) initial and subsequent conditions of eligibility;
  - 3814 (iii) nonduplication of coverage provisions;
  - 3815 (iv) coverage of dependents;
  - 3816 (v) preexisting conditions;
  - 3817 (vi) termination of insurance;
  - 3818 (vii) probationary periods;
  - 3819 (viii) limitations;
  - 3820 (ix) exceptions;
  - 3821 (x) reductions;
  - 3822 (xi) elimination periods;
  - 3823 (xii) requirements for replacement;
  - 3824 (xiii) recurrent conditions;
  - 3825 (xiv) coverage of persons eligible for Medicare; and
  - 3826 (xv) definition of terms;
- 3827 (b) minimum standards for benefits under each of the following categories of coverage in  
3828 policies covered in this section:
- 3829 (i) basic hospital expense coverage;
  - 3830 (ii) basic medical-surgical expense coverage;
  - 3831 (iii) hospital confinement indemnity coverage;
  - 3832 (iv) major medical expense coverage;
  - 3833 (v) ~~disability~~ income ~~protection~~ replacement coverage;
  - 3834 (vi) accident only coverage;
  - 3835 (vii) specified disease or specified accident coverage;
  - 3836 (viii) limited benefit health coverage; and
  - 3837 (ix) nursing home and long-term care coverage;
- 3838 (c) the content and format of the outline of coverage, in addition to that required under  
3839 Subsection (6); ~~and~~
- 3840 (d) the method of identification of policies and contracts based upon coverages

3841 provided[-]; and

3842 (e) rating practices.

3843 (5) Nothing in Subsection (4)(b) precludes the issuance of policies that combine categories  
3844 of coverage in that subsection provided that any combination of categories meets the standards of  
3845 a component category of coverage.

3846 (6) The commissioner may adopt rules relating to the following matters:

3847 (a) establishing disclosure requirements for insurance policies covered in this section,  
3848 designed to adequately inform the prospective insured of the need for and extent of the coverage  
3849 offered, and requiring that this disclosure be furnished to the prospective insured with the  
3850 application form, unless it is a direct response insurance policy;

3851 (b) (i) prescribing caption or notice requirements designed to inform prospective insureds  
3852 that particular insurance coverages are not Medicare Supplement coverages;

3853 (ii) the requirements of Subsection (6)(b)(i) apply to all [~~disability~~] insurance policies and  
3854 certificates sold to persons eligible for Medicare; and

3855 (c) requiring the disclosures or information brochures to be furnished to the prospective  
3856 insured on direct response insurance policies, upon his request or, in any event, no later than the  
3857 time of the policy delivery.

3858 (7) A policy covered by this section may be issued only if it meets the minimum standards  
3859 established by the commissioner under Subsection (4), an outline of coverage accompanies the  
3860 policy or is delivered to the applicant at the time of the application, and, except with respect to  
3861 direct response insurance policies, an acknowledged receipt is provided to the insurer. The outline  
3862 of coverage shall include:

3863 (a) a statement identifying the applicable categories of coverage provided by the policy as  
3864 prescribed under Subsection (4);

3865 (b) a description of the principal benefits and coverage;

3866 (c) a statement of the exceptions, reductions, and limitations contained in the policy;

3867 (d) a statement of the renewal provisions, including any reservation by the insurer of a  
3868 right to change premiums;

3869 (e) a statement that the outline is a summary of the policy issued or applied for and that  
3870 the policy should be consulted to determine governing contractual provisions; and

3871 (f) any other contents the commissioner prescribes.

3872 (8) If a policy is issued on a basis other than that applied for, the outline of coverage shall  
3873 accompany the policy when it is delivered and it shall clearly state that it is not the policy for  
3874 which application was made.

3875 (9) (a) Notwithstanding Subsection 31A-22-609(2), and except as provided under  
3876 Subsection (9)(b), an insurer that elects to use an application form without questions concerning  
3877 the insured's health history or medical treatment history, shall provide coverage under the policy  
3878 for any loss which occurs more than 12 months after the effective date of the policy due to a  
3879 preexisting condition which is not specifically excluded from coverage.

3880 (b) (i) An insurer that issues a specified disease policy, regardless of whether the basis of  
3881 issuance is a detailed application form, a simplified application form, or an enrollment form, may  
3882 not deny a claim for loss due to a preexisting condition which occurs more than six months after  
3883 the effective date of coverage.

3884 (ii) A specified disease policy may not define a preexisting condition more restrictively  
3885 than a condition which first manifested itself within six months prior to the effective date of  
3886 coverage or which was diagnosed by a physician at any time prior to the effective date of coverage.

3887 (iii) A specified disease policy may not include wording that provides a defense based  
3888 upon a preexisting condition except as allowed under this Subsection (9).

3889 (10) Notwithstanding Subsection 31A-22-606(1), limited accident and health policies or  
3890 certificates issued to persons eligible for Medicare shall contain a notice prominently printed on  
3891 or attached to the cover or front page which states that the policyholder or certificate holder has  
3892 the right to return the policy for any reason within 30 days after its delivery and to have the  
3893 premium refunded.

3894 Section 84. Section **31A-22-606** is amended to read:

3895 **31A-22-606. Policy examination period.**

3896 (1) (a) Except as provided in Subsection (2), all [~~disability~~] accident and health policies  
3897 shall contain a notice prominently printed on or attached to the cover or front page stating that the  
3898 policyholder has the right to return the policy for any reason within ten days after its delivery.

3899 (b) "Return" means delivery to the insurer or its agent or mailing of the policy to either,  
3900 properly addressed and stamped for first class handling, with a written statement on the policy or  
3901 an accompanying communication that it is being returned for termination of coverage. A policy  
3902 returned under Subsection (1) is void from the beginning and a policyholder returning his policy

3903 is entitled to a refund of any premium paid.

3904 (2) This section does not apply to:

3905 (a) group policies;

3906 (b) policies issued to persons entitled to a 30-day examination period under Subsection

3907 31A-22-605(10);

3908 (c) single premium nonrenewable policies issued for terms not longer than 60 days;

3909 (d) policies covering accidents only or accidental bodily injury only; and

3910 (e) other classes of policies which the commissioner by rule specifies after a finding that

3911 a right to return those policies would be impracticable or unnecessary to protect the policyholder's  
3912 interests.

3913 Section 85. Section **31A-22-607** is amended to read:

3914 **31A-22-607. Grace period.**

3915 (1) Every individual or franchise [~~disability~~] accident and health insurance policy shall  
3916 contain clauses providing for a grace period of at least seven days for weekly premium policies,  
3917 ten days for monthly premium policies and 30 days for all other policies, for each premium after  
3918 the first. During the grace period, the policy continues in force.

3919 (2) Every group or blanket [~~disability~~] accident and health policy shall provide for a grace  
3920 period of at least 30 days, unless the policyholder gives written notice of discontinuance prior to  
3921 the date of discontinuance, in accordance with the policy terms. In group or blanket policies, the  
3922 policy may provide for payment of a pro rata premium for the period the policy is in effect during  
3923 the grace period under this [~~subsection~~] Subsection (2).

3924 (3) If the insurer has not guaranteed the insured a right to renew [~~a disability~~] an accident  
3925 and health policy, any grace period beyond the expiration or anniversary date may, if provided in  
3926 the policy, be cut off by compliance with the notice provision under Subsection 31A-21-303(4)(b).

3927 Section 86. Section **31A-22-608** is amended to read:

3928 **31A-22-608. Reinstatement of individual or franchise accident and health insurance**  
3929 **policies.**

3930 (1) Every individual or franchise [~~disability~~] accident and health insurance policy shall  
3931 contain a provision which reads as follows:

3932 "REINSTATEMENT: If any renewal premium is not paid within the time granted the  
3933 insured for payment, a subsequent acceptance of premium by the insurer or by any agent duly

3934 authorized by the insurer to accept the premium, without also requiring an application for  
3935 reinstatement, shall reinstate the policy. However, if the insurer or agent requires an application  
3936 for reinstatement and issues a conditional receipt for the premium tendered, the policy shall be  
3937 reinstated upon approval of this application from the insurer or, lacking this approval, upon the  
3938 45th day following the date of the conditional receipt, unless the insurer has previously notified  
3939 the insured in writing of its disapproval of the application. The reinstated policy shall cover only  
3940 loss resulting from such accidental injury as may be sustained after the date of reinstatement and  
3941 loss due to such sickness as may begin more than ten days after that date. In all other respects the  
3942 insured and insurer have the same rights under the reinstated policy as they had under the policy  
3943 immediately before the due date of the defaulted premium, subject to any provisions endorsed on  
3944 or attached to this policy in connection with the reinstatement. Any premium accepted in  
3945 connection with a reinstatement shall be applied to a period for which premium has not been  
3946 previously paid, but not to any period more than 60 days prior to the date of reinstatement."

3947 (2) The last sentence of the provision set forth in Subsection (1) may be omitted from any  
3948 policy [~~which~~] that the insured has the right to continue in force subject to its terms by the timely  
3949 payment of premiums until at least age 50, or in the case of a policy issued after age 44, for at least  
3950 five years from its date of issue.

3951 Section 87. Section **31A-22-609** is amended to read:

3952 **31A-22-609. Incontestability for accident and health insurance.**

3953 (1) [~~No~~] (a) A statement made by an applicant in the application for individual or  
3954 franchise [~~disability~~] accident and health insurance coverage [~~and no~~] or statement made relating  
3955 to the person's insurability by a person insured under a group policy, except fraudulent  
3956 misrepresentation, [~~is~~] may not be a basis for avoidance of the policy or denial of a claim for loss  
3957 incurred or disability commencing after the coverage has been in effect for two years.

3958 (b) The insurer has the burden of proving fraud by clear and convincing evidence.

3959 (c) The policy may provide for incontestability even for fraudulent misstatements.

3960 (2) Except as otherwise provided under Subsection 31A-22-605(9), [~~no~~] a claim for loss  
3961 incurred or disability commencing after two years from the date of issue of the policy may not be  
3962 reduced or denied on the ground that a disease or physical condition existed prior to the effective  
3963 date of coverage, unless the condition was excluded from coverage by name or specific description  
3964 in a provision [~~which~~] that was in effect on the date of loss.

3965 Section 88. Section **31A-22-610** is amended to read:

3966 **31A-22-610. Dependent coverage from moment of birth or adoption.**

3967 (1) As used in this section:

3968 (a) "Child" means, in connection with any adoption, or placement for adoption of the child,  
3969 an individual who is younger than 18 years of age as of the date of the adoption or placement for  
3970 adoption.

3971 (b) "Placement for adoption" means the assumption and retention by a person of a legal  
3972 obligation for total or partial support of a child in anticipation of the adoption of the child.

3973 (2) (a) If any [~~disability~~] accident and health insurance policy provides coverage for any  
3974 members of the policyholder's or certificate holder's family, the policy shall also provide that any  
3975 health insurance benefits applicable to dependents of the insured are applicable on the same basis  
3976 to a newly born child from the moment of birth, and to an adopted child:

3977 (i) beginning from the moment of birth if placement for adoption occurs within 30 days  
3978 of the child's birth; or

3979 (ii) beginning from the date of placement if placement for adoption occurs 30 days or more  
3980 after the child's birth.

3981 (b) This coverage is not subject to any preexisting conditions, and includes any injury or  
3982 sickness, including the necessary care and treatment of medically diagnosed congenital defects and  
3983 birth abnormalities or prematurity.

3984 (c) If the payment of a specific premium is required to provide coverage for a child of the  
3985 policyholder or certificate holder, the policy may require that the insurer be notified of the birth  
3986 or placement for the purpose of adoption, and that the required premium be paid within 30 days  
3987 after the date of birth or placement for the purpose of adoption, in order to have the coverage  
3988 extend beyond that 30-day period.

3989 (3) The coverage required by Subsection (2) as to children placed for the purpose of  
3990 adoption with a policyholder or certificate holder continues in the same manner as it would with  
3991 respect to a child of the policyholder or certificate holder unless the placement is disrupted prior  
3992 to legal adoption and the child is removed from placement. The coverage requirement ends if the  
3993 child is removed from placement prior to being legally adopted.

3994 (4) The provisions of this section apply to employee welfare benefit plans as defined in  
3995 Section 26-19-2.

3996 Section 89. Section **31A-22-610.2** is amended to read:

3997 **31A-22-610.2. Maternity stay minimum limits.**

3998 (1) (a) If an insured has coverage for maternity benefits, the policy may not be limited to  
3999 a less than a 48-hour benefit for both mother and newborn with a normal vaginal delivery.

4000 (b) If an insured has coverage for maternity benefits, the policy may not be limited to a less  
4001 than 96-hour benefit for both mother and newborn with a caesarean section delivery.

4002 (2) Subsection (1) applies to [~~a disability~~] an accident and health insurer who offers  
4003 maternity coverage.

4004 Section 90. Section **31A-22-610.5** is amended to read:

4005 **31A-22-610.5. Dependent coverage.**

4006 (1) As used in this section, "child" has the same meaning as defined in Section 78-45-2.

4007 (2) (a) Any individual or group health insurance policy or health maintenance organization  
4008 contract that provides coverage for a policyholder's or certificate holder's dependent shall not  
4009 terminate coverage of an unmarried dependent by reason of the dependent's age before the  
4010 dependent's 26th birthday and shall, upon application, provide coverage for all unmarried  
4011 dependents up to age 26.

4012 (b) The cost of coverage for unmarried dependents 19 to 26 years of age shall be included  
4013 in the premium on the same basis as other dependent coverage.

4014 (c) This section does not prohibit the employer from requiring the employee to pay all or  
4015 part of the cost of coverage for unmarried dependents.

4016 (3) An individual or group health insurance policy or health maintenance organization  
4017 contract shall reinstate dependent coverage, and for purposes of all exclusions and limitations,  
4018 shall treat the dependent as if the coverage had been in force since it was terminated; if:

4019 (a) the dependent has not reached the age of 26 by July 1, 1995;

4020 (b) the dependent had coverage prior to July 1, 1994;

4021 (c) prior to July 1, 1994, the dependent's coverage was terminated solely due to the age of  
4022 the dependent; and

4023 (d) the policy has not been terminated since the dependent's coverage was terminated.

4024 (4) (a) When a parent is required by a court or administrative order to provide health  
4025 insurance coverage for a child, [~~a disability~~] an accident and health insurer may not deny  
4026 enrollment of a child under the [~~disability~~] accident and health insurance plan of the child's parent

4027 on the grounds the child:

4028 (i) was born out of wedlock and is entitled to coverage under Subsection (6);

4029 (ii) was born out of wedlock and the custodial parent seeks enrollment for the child under  
4030 the custodial parent's policy;

4031 (iii) is not claimed as a dependent on the parent's federal tax return; or

4032 (iv) does not reside with the parent or in the insurer's service area.

4033 (b) ~~[A disability]~~ An accident and health insurer providing enrollment under Subsection  
4034 (4)(a)(iv) is subject to the requirements of Subsection (5).

4035 (5) A health maintenance organization or a preferred provider organization may use  
4036 alternative delivery systems or indemnity insurers to provide coverage under Subsection (4)(a)(iv)  
4037 outside its service area. ~~[The provisions of]~~ Section 31A-8-408 ~~[do]~~ does not apply to this  
4038 Subsection (5).

4039 (6) When a child has ~~[disability]~~ accident and health coverage through an insurer of a  
4040 noncustodial parent the insurer shall:

4041 (a) provide information to the custodial parent as necessary for the child to obtain benefits  
4042 through that coverage, but the insurer or employer, or the agents or employees of either of them,  
4043 are not civilly or criminally liable for providing information in compliance with this Subsection  
4044 (6)(a), whether the information is provided pursuant to a verbal or written request;

4045 (b) permit the custodial parent or the service provider, with the custodial parent's approval,  
4046 to submit claims for covered services without the approval of the noncustodial parent; and

4047 (c) make payments on claims submitted in accordance with Subsection (6)(b) directly to  
4048 the custodial parent, the provider, or the state Medicaid agency.

4049 (7) When a parent is required by a court or administrative order to provide health coverage  
4050 for a child, and the parent is eligible for family health coverage, the insurer shall:

4051 (a) permit the parent to enroll, under the family coverage, a child who is otherwise eligible  
4052 for the coverage without regard to an enrollment season restrictions;

4053 (b) if the parent is enrolled but fails to make application to obtain coverage for the child,  
4054 enroll the child under family coverage upon application of the child's other parent, the state agency  
4055 administering the Medicaid program, or the state agency administering 42 U.S.C. 651 through 669,  
4056 the child support enforcement program; and

4057 (c) not disenroll or eliminate coverage of the child unless the insurer is provided

4058 satisfactory written evidence that:

4059 (i) the court or administrative order is no longer in effect; or

4060 (ii) the child is or will be enrolled in comparable [~~disability~~] accident and health coverage  
4061 through another insurer which will take effect not later than the effective date of disenrollment.

4062 (8) An insurer may not impose requirements on a state agency [~~which~~] that has been  
4063 assigned the rights of an individual eligible for medical assistance under Medicaid and covered for  
4064 [~~disability~~] accident and health benefits from the insurer that are different from requirements  
4065 applicable to an agent or assignee of any other individual so covered.

4066 (9) Insurers may not reduce their coverage of pediatric vaccines below the benefit level  
4067 in effect on May 1, 1993.

4068 (10) When a parent is required by a court or administrative order to provide health  
4069 coverage, which is available through an employer doing business in this state, the employer shall:

4070 (a) permit the parent to enroll under family coverage any child who is otherwise eligible  
4071 for coverage without regard to any enrollment season restrictions;

4072 (b) if the parent is enrolled but fails to make application to obtain coverage of the child,  
4073 enroll the child under family coverage upon application by the child's other parent, by the state  
4074 agency administering the Medicaid program, or the state agency administering 42 U.S.C. 651  
4075 through 669, the child support enforcement program;

4076 (c) not disenroll or eliminate coverage of the child unless the employer is provided  
4077 satisfactory written evidence that:

4078 (i) the court order is no longer in effect;

4079 (ii) the child is or will be enrolled in comparable coverage which will take effect no later  
4080 than the effective date of disenrollment; or

4081 (iii) the employer has eliminated family health coverage for all of its employees; and

4082 (d) withhold from the employee's compensation the employee's share, if any, of premiums  
4083 for health coverage and to pay this amount to the insurer.

4084 (11) An order issued under Section 62A-11-326.1 may be considered a "qualified medical  
4085 support order" for the purpose of enrolling a dependent child in a group [~~disability~~] accident and  
4086 health insurance plan as defined in Section 609(a), Federal Employee Retirement Income Security  
4087 Act of 1974.

4088 (12) This section does not affect any insurer's ability to require as a precondition of any

4089 child being covered under any policy of insurance that:

4090 (a) the parent continues to be eligible for coverage;

4091 (b) the child shall be identified to the insurer; and

4092 (c) the premium shall be paid when due.

4093 (13) The provisions of this section apply to employee welfare benefit plans as defined in  
4094 Section 26-19-2.

4095 Section 91. Section **31A-22-611** is amended to read:

4096 **31A-22-611. Policy extension for handicapped children.**

4097 (1) Every [~~disability~~] accident and health insurance policy or contract that provides that  
4098 coverage of a dependent child of a person insured under the policy shall terminate upon reaching  
4099 a limiting age as specified in the policy, shall also provide that the age limitation does not  
4100 terminate the coverage of a dependent child while the child is and continues to be both:

4101 (a) incapable of self-sustaining employment because of mental retardation or physical  
4102 handicap; and

4103 (b) chiefly dependent upon the person insured under the policy for support and  
4104 maintenance.

4105 (2) The insurer may require proof of the incapacity and dependency be furnished by the  
4106 person insured under the policy within 30 days of the date the child attains the limiting age, and  
4107 at any time thereafter, except that the insurer may not require proof more often than annually after  
4108 the two-year period immediately following attainment of the limiting age by the child.

4109 Section 92. Section **31A-22-612** is amended to read:

4110 **31A-22-612. Conversion privileges for insured former spouse.**

4111 (1) [~~No disability~~] An accident and health insurance policy, which in addition to covering  
4112 the insured also provides coverage to the spouse of the insured, may not contain a provision for  
4113 termination of coverage of a spouse covered under the policy, except by entry of a valid decree of  
4114 divorce or annulment between the parties.

4115 (2) Every policy which contains this type of provision shall provide that upon the entry of  
4116 the divorce decree the spouse is entitled to have issued an individual policy of [~~disability~~] accident  
4117 and health insurance without evidence of insurability, upon application to the company and  
4118 payment of the appropriate premium. The policy shall provide the coverage being issued which  
4119 is most nearly similar to the terminated coverage. Probationary or waiting periods in the policy

4120 are considered satisfied to the extent the coverage was in force under the prior policy.

4121 (3) When the insurer receives actual notice that the coverage of a spouse is to be  
4122 terminated because of a divorce or annulment, the insurer shall promptly provide the spouse  
4123 written notification of the right to obtain individual coverage as provided in Subsection (2), the  
4124 premium amounts required, and the manner, place, and time in which premiums may be paid. The  
4125 premium is determined in accordance with the insurer's table of premium rates applicable to the  
4126 age and class of risk of the persons to be covered and to the type and amount of coverage provided.  
4127 If the spouse applies and tenders the first monthly premium to the insurer within 30 days after  
4128 receiving the notice provided by this subsection, the spouse shall receive individual coverage that  
4129 commences immediately upon termination of coverage under the insured's policy.

4130 (4) This section does not apply to [~~disability~~] accident and health insurance policies  
4131 offered on a group blanket basis.

4132 Section 93. Section **31A-22-613** is amended to read:

4133 **31A-22-613. Permitted provisions for accident and health insurance policies.**

4134 The following provisions may be contained in [~~a disability~~] an accident and health  
4135 insurance policy, but if they are in that policy, they shall conform to at least the [~~following~~]  
4136 minimum requirements for the policyholder [:] in Subsections (1) through (6).

4137 (1) Any provision respecting change of occupation may provide only for a lower maximum  
4138 benefit payment and for reduction of loss payments proportionate to the change in appropriate  
4139 premium rates, if the change is to a higher rated occupation, and this provision shall provide for  
4140 retroactive reduction of premium rates from the date of change of occupation or the last policy  
4141 anniversary date, whichever is the more recent, if the change is to a lower rated occupation.

4142 (2) Section 31A-22-405 applies to misstatement of age in [~~disability~~] accident and health  
4143 policies, with the appropriate modifications of terminology.

4144 (3) Any policy which contains a provision establishing, as an age limit or otherwise, a date  
4145 after which the coverage provided by the policy is not effective, and if that date falls within a  
4146 period for which a premium is accepted by the insurer or if the insurer accepts a premium after that  
4147 date, the coverage provided by the policy continues in force, subject to any right of cancellation,  
4148 until the end of the period for which the premium was accepted. This Subsection (3) does not  
4149 apply if the acceptance of premium would not have occurred but for a misstatement of age by the  
4150 insured.

4151 (4) Any provision dealing with preexisting conditions shall be consistent with Subsections  
4152 31A-22-605(9)(a) and 31A-22-609(2), and any applicable rule adopted by the commissioner.

4153 (5) (a) If an insured is otherwise eligible for maternity benefits, a policy may not contain  
4154 language which requires an insured to obtain any additional preauthorization or preapproval for  
4155 customary and reasonable maternity care expenses or for the delivery of the child after an initial  
4156 preauthorization or preapproval has been obtained from the insurer for prenatal care. A  
4157 requirement for notice of admission for delivery is not a requirement for preauthorization or  
4158 preapproval, however, the maternity benefit may not be denied or diminished for failure to provide  
4159 admission notice. The policy may not require the provision of admission notice by only the  
4160 insured patient.

4161 (b) This Subsection (5) does not prohibit an insurer from:

4162 (i) requiring a referral before maternity care can be obtained;

4163 (ii) specifying a group of providers or a particular location from which an insured is  
4164 required to obtain maternity care; or

4165 (iii) limiting reimbursement for maternity expenses and benefits in accordance with the  
4166 terms and conditions of the insurance contract so long as such terms do not conflict with  
4167 Subsection (5)(a).

4168 (6) An insurer may only represent that a policy:

4169 (a) offers a vision benefit if the policy:

4170 (i) charges a premium for the benefit; and

4171 (ii) provides reimbursement for materials or services provided under the policy; and

4172 (b) covers laser vision correction, whether photorefractive keratectomy, laser assisted  
4173 in-situ keratomeluzis, or related procedure, if the policy:

4174 (i) charges a premium for the benefit; and

4175 (ii) the procedure is at least a partially covered benefit.

4176 Section 94. Section **31A-22-613.5** is amended to read:

4177 **31A-22-613.5. Price and value comparisons of health insurance.**

4178 (1) This section applies generally to all health insurance policies and health maintenance  
4179 organization contracts.

4180 (2) (a) Immediately after the effective date of this section, the commissioner shall appoint  
4181 a Health Benefit Plan Committee.

4182 (b) The committee shall be composed of representatives of carriers, employers, employees,  
4183 health care providers, consumers, and producers.

4184 (c) A member of the committee shall be appointed to a four-year term.

4185 (d) Notwithstanding the requirements of Subsection (2)(c), the commissioner shall, at the  
4186 time of appointment or reappointment, adjust the length of terms to ensure that the terms of  
4187 committee members are staggered so that approximately half of the committee is appointed every  
4188 two years.

4189 (3) When a vacancy occurs in the membership for any reason, the replacement shall be  
4190 appointed for the unexpired term.

4191 (4) (a) Members shall receive no compensation or benefits for their services, but may  
4192 receive per diem and expenses incurred in the performance of the member's official duties at the  
4193 rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

4194 (b) Members may decline to receive per diem and expenses for their service.

4195 (5) ~~[(a)]~~ The committee shall~~[(i)]~~ serve as an advisory committee to the commissioner~~;~~  
4196 ~~and].~~

4197 ~~[(ii) recommend for two or more designated health care plans to be marketed in the state:]~~

4198 ~~[(A) services to be covered:]~~

4199 ~~[(B) copays:]~~

4200 ~~[(C) deductibles:]~~

4201 ~~[(D) levels of coinsurance:]~~

4202 ~~[(E) annual out-of-pocket maximums:]~~

4203 ~~[(F) exclusions; and]~~

4204 ~~[(G) limitations:]~~

4205 ~~[(b) The plans recommended by the committee may include reasonable benefit differentials~~  
4206 ~~applicable to participating and nonparticipating providers.]~~

4207 ~~[(c) The plans recommended by the committee may not prohibit the use of the following~~  
4208 ~~cost management techniques by an insurer:]~~

4209 ~~[(i) preauthorization of health care services:]~~

4210 ~~[(ii) concurrent review of health care services:]~~

4211 ~~[(iii) case management of health care services:]~~

4212 ~~[(iv) retrospective review of medical appropriateness:]~~

4213 ~~[(v) selective contracting with hospitals, physicians, and other health care providers to the~~  
4214 ~~extent permitted by law; and]~~

4215 ~~[(vi) other reasonable techniques intended to manage health care costs.]~~

4216 ~~[(d) The committee shall submit the plans to the commissioner within 180 days after the~~  
4217 ~~appointment of the committee in accordance with this section.]~~

4218 ~~[(e) The commissioner shall adopt two or more health benefit plans within 60 days after~~  
4219 ~~the committee submits recommendations.]~~

4220 ~~[(f) (i) If the committee fails to submit recommendations to the commissioner within 180~~  
4221 ~~days after appointment, the commissioner shall, within 90 days, develop two or more designated~~  
4222 ~~health benefit plans.]~~

4223 ~~[(ii) The commissioner shall, after notice and hearing, adopt two or more designated health~~  
4224 ~~benefit plans.]~~

4225 ~~[(iii) The commissioner shall provide incentives for personal management of health care~~  
4226 ~~expenses by adopting:]~~

4227 ~~[(A) one plan that applies deductibles in the amount of \$1,500; and]~~

4228 ~~[(B) another plan that applies deductibles in the amount of \$2,500.]~~

4229 ~~[(iv) The plans described in Subsection (5)(f)(iii) may include:]~~

4230 ~~[(A) illustrations and explanations showing the premium savings generated by the high~~  
4231 ~~deductibles being applied to a medical savings account for the insured that can be used to pay:]~~

4232 ~~[(F) medical expenses up to the plan deductible;]~~

4233 ~~[(H) any other medical expenses not covered by the insurance; or]~~

4234 ~~[(HI) both the medical expenses described in Subsections (5)(f)(iv)(A)(I) and (H); and]~~

4235 ~~[(B) an explanation that any funds in the savings account belong to the insured.]~~

4236 ~~[(g) The commissioner may reconvene a Health Benefit Plan Committee in accordance~~  
4237 ~~with Subsections (2) and (5) to recommend revisions to the designated benefit plans adopted by~~  
4238 ~~the commissioner.]~~

4239 ~~[(6) (a) Within 180 days after the adoption of the designated benefit plans by the~~  
4240 ~~commissioner, or any changes in the designated plans, an insurer offering health insurance policies~~  
4241 ~~for sale in this state shall, at the request of a potential buyer, offer the current designated plans at~~  
4242 ~~a premium based on factors such as that buyer's previous claims experience, group size,~~  
4243 ~~demographic characteristics, and health status.]~~

4244           ~~[(b) This section does not prohibit an insurer from refusing to insure, under any plan, a~~  
4245 ~~person or group. However, if the insurer offers any policy or contract to that person or group, the~~  
4246 ~~insurer shall offer the designated plans.]~~

4247           ~~[(7) The designated benefit plans, described in Subsection (5) are intended to facilitate~~  
4248 ~~price and value comparisons by consumers. The designated benefit plans are not minimum~~  
4249 ~~standards for health insurance policies. An insurer offering the designated benefit plans may offer~~  
4250 ~~policies that provide more or less coverage than the designated benefit plans.]~~

4251           ~~[(8)]~~ (6) (a) The commissioner shall convene or reconvene a Health Benefit Plan  
4252 Committee for the purpose of developing a Basic Health Care Plan to be offered under the open  
4253 enrollment provisions of Chapter 30.

4254           (b) The commissioner shall adopt a Basic Health Care Plan within 60 days after the  
4255 committee submits recommendations, or if the committee fails to submit recommendations to the  
4256 commissioner within 180 days after appointment, the commissioner shall, within 90 days, adopt  
4257 a Basic Health Care Plan.

4258           (c) (i) Before adoption of a plan under Subsection ~~[(8)]~~(6)(b), the commissioner shall  
4259 submit the proposed Basic Health Care Plan to the Health and Human Services Interim Committee  
4260 for review and recommendations.

4261           (ii) After the commissioner adopts the Basic Health Care Plan, the Health and Human  
4262 Services Interim Committee:

4263           (A) shall provide legislative oversight of the Basic Health Care Plan; and

4264           (B) may recommend legislation to modify the Basic Health Care Plan adopted by the  
4265 commissioner.

4266           (d) The committee's recommendations for the Basic Health Care Plan shall be advisory  
4267 to the commissioner.

4268           ~~[(9)]~~ (7) (a) The commissioner shall promote informed consumer behavior and responsible  
4269 health insurance and health plans by requiring an insurer issuing health insurance policies or health  
4270 maintenance organization contracts to provide to all enrollees, prior to enrollment in the health  
4271 benefit plan or health insurance policy, written disclosure of:

4272           (i) restrictions or limitations on prescription drugs and biologics including the use of a  
4273 formulary and generic substitution; and

4274           (ii) coverage limits under the plan.

4275 (b) In addition to the requirements of Subsections ~~[(9)]~~ (7)(a) and (d), an insurer described  
4276 in Subsection ~~[(9)]~~ (7)(a) shall submit the written disclosure required by this Subsection ~~[(9)]~~ (7)  
4277 to the commissioner:

4278 (i) ~~[annually]~~ upon commencement of operations in the state; and

4279 (ii) anytime the insurer amends any of the following described in Subsection ~~[(9)]~~ (7)(a):

4280 (A) treatment policies;

4281 (B) practice standards;

4282 (C) restrictions; or

4283 (D) coverage limits of the insurer's health benefit plan or health insurance policy.

4284 (c) The commissioner may adopt rules to implement the disclosure requirements of this  
4285 Subsection ~~[(9)]~~ (7), taking into account:

4286 (i) business confidentiality of the insurer;

4287 (ii) definitions of terms; and

4288 (iii) the method of disclosure to enrollees.

4289 (d) If under Subsection ~~[(9)]~~ (7)(a)(i) a formulary is used, the insurer shall make available  
4290 to prospective enrollees and maintain evidence of the fact of the disclosure of:

4291 (i) the drugs included;

4292 (ii) the patented drugs not included; and

4293 (iii) any conditions that exist as a precedent to coverage.

4294 ~~[(10) (a) The commissioner shall annually publish a table comparing the rates charged by~~  
4295 ~~insurers for the designated health plans and other health insurance plans in this state.]~~

4296 ~~[(b) The comparison required by Subsection (10)(a) shall list:]~~

4297 ~~[(i) the top 20 insurers writing the greatest volume by premium dollar per calendar year;~~

4298 ~~and]~~

4299 ~~[(ii) others requesting inclusion in the comparison.]~~

4300 ~~[(c) In conjunction with the rate comparison described in this Subsection (10), the~~  
4301 ~~commissioner shall publish for each of the listed health insurers a table comparing the complaints~~  
4302 ~~filed and the combined loss and expense ratio as described in Subsections 31A-2-208.5(2) and (3).]~~

4303 Section 95. Section **31A-22-614** is amended to read:

4304 **31A-22-614. Claims under accident and health policies.**

4305 (1) Section 31A-21-312 applies generally to claims under ~~[disability]~~ accident and health

4306 policies.

4307 (2) (a) Subject to Subsection (1), [~~no disability~~] an accident and health insurance policy  
4308 may not contain a claim notice requirement less favorable to the insured than one which requires  
4309 written notice of the claim within 20 days after the occurrence or commencement of any loss  
4310 covered by the policy. The policy shall specify to whom claim notices may be given.

4311 (b) If a loss of time benefit under a policy may be paid for a period of at least two years,  
4312 an insurer may require periodic notices that the insured continues to be disabled, unless the insured  
4313 is legally incapacitated. The insured's delay in giving that notice does not impair the insured's or  
4314 beneficiary's right to any indemnity which would otherwise have accrued during the six months  
4315 preceding the date on which that notice is actually given.

4316 (3) [~~No disability~~] An accident and health insurance policy may not contain a time limit  
4317 on proof of loss which is more restrictive to the insured than a provision requiring written proof  
4318 of loss, delivered to the insurer, within the following time:

4319 (a) for a claim where periodic payments are contingent upon continuing loss, within 90  
4320 days after the termination of the period for which the insurer is liable;

4321 (b) for any other claim, within 90 days after the date of the loss.

4322 (4) (a) (i) Section 31A-26-301 applies generally to the payment of claims.

4323 (ii) Indemnity for loss of life is paid in accordance with the beneficiary designation  
4324 effective at the time of payment. If no valid beneficiary designation exists, the indemnity is paid  
4325 to the insured's estate. Any other accrued indemnities unpaid at the insured's death are paid to the  
4326 insured's estate.

4327 (b) Reasonable facility of payment clauses, specified by the commissioner by rule or in  
4328 approving the policy form, are permitted. Payment made in good faith and in accordance with  
4329 those clauses discharges the insurer's obligation to pay those claims.

4330 (c) All or a portion of any indemnities provided under [~~a disability~~] an accident and health  
4331 policy on account of hospital, nursing, medical, or surgical services may, at the insurer's option,  
4332 be paid directly to the hospital or person rendering the services.

4333 Section 96. Section **31A-22-617** is amended to read:

4334 **31A-22-617. Preferred provider contract provisions.**

4335 Health insurance policies may provide for insureds to receive services or reimbursement  
4336 under the policies in accordance with preferred health care provider contracts as follows:

4337 (1) Subject to restrictions under this section, any insurer or third party administrator may  
4338 enter into contracts with health care providers as defined in Section 78-14-3 under which the health  
4339 care providers agree to supply services, at prices specified in the contracts, to persons insured by  
4340 an insurer. [~~The~~]

4341 (a) A health care provider contract may require the health care provider to accept the  
4342 specified payment as payment in full, relinquishing the right to collect additional amounts from  
4343 the insured person.

4344 (b) The insurance contract may reward the insured for selection of preferred health care  
4345 providers by:

4346 (i) reducing premium rates[;];

4347 (ii) reducing deductibles[;];

4348 (iii) coinsurance[; or];

4349 (iv) other copayments[;]; or

4350 (v) in any other reasonable manner.

4351 (c) If the insurer is a managed care organization, as defined in Subsection  
4352 31A-27-311.5(1)(f):

4353 (i) the insurance contract shall provide that in the event the managed care organization  
4354 becomes insolvent, the rehabilitator or liquidator may:

4355 (A) require the health care provider to continue to provide health care services under the  
4356 contract until the later of:

4357 (I) 90 days from the date of the filing of a petition for rehabilitation or the petition for  
4358 liquidation; or

4359 (II) the date the term of the contract ends; and

4360 (B) subject to Subsection (1)(c)(v), reduce the fees the provider is otherwise entitled to  
4361 receive from the managed care organization during the time period described in Subsection  
4362 (1)(c)(i)(A);

4363 (ii) the provider is required to:

4364 (A) accept the reduced payment under Subsection (1)(c)(i)(B) as payment in full; and

4365 (B) relinquish the right to collect additional amounts from the insolvent managed care  
4366 organization's enrollee, as defined in Section 31A-27-311.5(1)(b);

4367 (iii) if the contract between the health care provider and the managed care organization has

4368 not been reduced to writing, or the contract fails to contain the language required by Subsection  
4369 (1)(c)(i), the provider may not collect or attempt to collect from the enrollee:

4370 (A) sums owed by the managed care organization; or  
4371 (B) the amount of the regular fee reduction authorized under Subsection (1)(c)(i)(B);  
4372 (iv) the following may not bill or maintain any action at law against an enrollee to collect  
4373 sums owed by the managed care organization or the amount of the regular fee reduction authorized  
4374 under Subsection (1)(c)(i)(B):

4375 (A) a provider;  
4376 (B) an agent;  
4377 (C) a trustee; or  
4378 (D) an assignee of a person described in Subsections (1)(c)(iv)(A) through (C); and  
4379 (v) notwithstanding Subsection (1)(c)(i):

4380 (A) a rehabilitator or liquidator may not reduce a fee by less than 75% of the provider's  
4381 regular fee set forth in the contract; and

4382 (B) the enrollee shall continue to pay the copayments, deductibles, and other payments for  
4383 services received from the provider that the enrollee was required to pay before the filing of:

4384 (I) a petition for rehabilitation; or  
4385 (II) a petition for liquidation.

4386 (2) (a) Subject to Subsections (2)(b) through (2)(f), an insurer using preferred health care  
4387 provider contracts shall pay for the services of health care providers not under the contract, unless  
4388 the illnesses or injuries treated by the health care provider are not within the scope of the insurance  
4389 contract. As used in this section, "class of health care providers" means all health care providers  
4390 licensed or licensed and certified by the state within the same professional, trade, occupational, or  
4391 facility licensure or licensure and certification category established pursuant to Titles 26 and 58.

4392 (b) When the insured receives services from a health care provider not under contract, the  
4393 insurer shall reimburse the insured for at least 75% of the average amount paid by the insurer for  
4394 comparable services of preferred health care providers who are members of the same class of  
4395 health care providers. The commissioner may adopt a rule dealing with the determination of what  
4396 constitutes 75% of the average amount paid by the insurer for comparable services of preferred  
4397 health care providers who are members of the same class of health care providers.

4398 (c) When reimbursing for services of health care providers not under contract, the insurer

4399 may make direct payment to the insured.

4400 (d) Notwithstanding Subsection (2)(b), an insurer using preferred health care provider  
4401 contracts may impose a deductible on coverage of health care providers not under contract.

4402 (e) When selecting health care providers with whom to contract under Subsection (1), an  
4403 insurer may not unfairly discriminate between classes of health care providers, but may  
4404 discriminate within a class of health care providers, subject to Subsection (7).

4405 (f) For purposes of this section, unfair discrimination between classes of health care  
4406 providers shall include:

4407 (i) refusal to contract with class members in reasonable proportion to the number of  
4408 insureds covered by the insurer and the expected demand for services from class members; and

4409 (ii) refusal to cover procedures for one class of providers that are:

4410 (A) commonly utilized by members of the class of health care providers for the treatment  
4411 of illnesses, injuries, or conditions;

4412 (B) otherwise covered by the insurer; and

4413 (C) within the scope of practice of the class of health care providers.

4414 (3) Before the insured consents to the insurance contract, the insurer shall fully disclose  
4415 to the insured that it has entered into preferred health care provider contracts. The insurer shall  
4416 provide sufficient detail on the preferred health care provider contracts to permit the insured to  
4417 agree to the terms of the insurance contract. The insurer shall provide at least the following  
4418 information:

4419 (a) a list of the health care providers under contract and if requested their business  
4420 locations and specialties;

4421 (b) a description of the insured benefits, including any deductibles, coinsurance, or other  
4422 copayments;

4423 (c) a description of the quality assurance program required under Subsection (4); and

4424 (d) a description of the grievance procedures required under Subsection (5).

4425 (4) (a) An insurer using preferred health care provider contracts shall maintain a quality  
4426 assurance program for assuring that the care provided by the health care providers under contract  
4427 meets prevailing standards in the state.

4428 (b) The commissioner in consultation with the executive director of the Department of  
4429 Health may designate qualified persons to perform an audit of the quality assurance program. The

4430 auditors shall have full access to all records of the organization and its health care providers,  
4431 including medical records of individual patients.

4432 (c) The information contained in the medical records of individual patients shall remain  
4433 confidential. All information, interviews, reports, statements, memoranda, or other data furnished  
4434 for purposes of the audit and any findings or conclusions of the auditors are privileged. The  
4435 information is not subject to discovery, use, or receipt in evidence in any legal proceeding except  
4436 hearings before the commissioner concerning alleged violations of this section.

4437 (5) An insurer using preferred health care provider contracts shall provide a reasonable  
4438 procedure for resolving complaints and grievances initiated by the insureds and health care  
4439 providers.

4440 (6) An insurer may not contract with a health care provider for treatment of illness or  
4441 injury unless the health care provider is licensed to perform that treatment.

4442 (7) (a) ~~[No]~~ A health care provider or insurer may not discriminate against a preferred  
4443 health care provider for agreeing to a contract under Subsection (1).

4444 (b) Any health care provider licensed to treat any illness or injury within the scope of the  
4445 health care provider's practice, who is willing and able to meet the terms and conditions established  
4446 by the insurer for designation as a preferred health care provider, shall be able to apply for and  
4447 receive the designation as a preferred health care provider. Contract terms and conditions may  
4448 include reasonable limitations on the number of designated preferred health care providers based  
4449 upon substantial objective and economic grounds, or expected use of particular services based  
4450 upon prior provider-patient profiles.

4451 (8) Upon the written request of a provider excluded from a provider contract, the  
4452 commissioner may hold a hearing to determine if the insurer's exclusion of the provider is based  
4453 on the criteria set forth in Subsection (7)(b).

4454 (9) Insurers are subject to the provisions of Sections 31A-22-613.5, 31A-22-614.5, and  
4455 31A-22-618.

4456 (10) Nothing in this section is to be construed as to require an insurer to offer a certain  
4457 benefit or service as part of a health benefit plan.

4458 (11) This section does not apply to catastrophic mental health coverage provided in  
4459 accordance with Section 31A-22-625.

4460 Section 97. Section **31A-22-619** is amended to read:

4461 **31A-22-619. Coordination of benefits.**

4462 (1) The commissioner shall adopt rules concerning the coordination of benefits between  
4463 [~~disability~~] accident and health insurance policies.

4464 (2) Rules adopted by the commissioner under Subsection (1):

4465 (a) may not prohibit coordination of benefits with individual [~~disability~~] accident and  
4466 health insurance policies; and

4467 (b) shall apply equally to all [~~disability~~] accident and health insurance policies without  
4468 regard to whether the policies are group or individual policies.

4469 Section 98. Section **31A-22-620** is amended to read:

4470 **31A-22-620. Medicare Supplement Insurance Minimum Standards Act.**

4471 (1) As used in this section:

4472 (a) "Applicant" means:

4473 (i) in the case of an individual Medicare supplement policy, the person who seeks to  
4474 contract for insurance benefits; and

4475 (ii) in the case of a group Medicare supplement policy, the proposed certificate holder.

4476 (b) "Certificate" means any certificate delivered or issued for delivery in this state under  
4477 a group Medicare supplement policy.

4478 (c) "Certificate form" means the form on which the certificate is delivered or issued for  
4479 delivery by the issuer.

4480 (d) "Issuer" includes insurance companies, fraternal benefit societies, health care service  
4481 plans, health maintenance organizations, and any other entity delivering, or issuing for delivery in  
4482 this state, Medicare supplement policies or certificates.

4483 (e) "Medicare" means the "Health Insurance for the Aged Act," Title XVIII of the Social  
4484 Security Amendments of 1965, as then constituted or later amended.

4485 (f) "Medicare Supplement Policy" means a group or individual policy of disability  
4486 insurance, other than a policy issued pursuant to a contract under Section 1876 of the federal Social  
4487 Security Act, 42 U.S.C. Section 1395 et seq., or an issued policy under a demonstration project  
4488 specified in 41 U.S.C. Section 1395ss(g)(1), that is advertised, marketed, or designed primarily as  
4489 a supplement to reimbursements under Medicare for the hospital, medical, or surgical expenses  
4490 of persons eligible for Medicare.

4491 (g) "Policy Form" means the form on which the policy is delivered or issued for delivery

4492 by the issuer.

4493 (2) (a) Except as otherwise specifically provided, this section applies to:

4494 (i) all Medicare supplement policies delivered or issued for delivery in this state on or after  
4495 the effective date of this section;

4496 (ii) all certificates issued under group Medicare supplement policies, that have been  
4497 delivered or issued for delivery in this state on or after the effective date of this section; and

4498 (iii) policies or certificates that were in force prior to the effective date of this section, with  
4499 respect to requirements for benefits, claims payment, and policy reporting practice under  
4500 Subsection (3)(d), and loss ratios under Subsection (4).

4501 (b) This section does not apply to a policy of one or more employers or labor  
4502 organizations, or of the trustees of a fund established by one or more employers or labor  
4503 organizations, or a combination of employers and labor unions, for employees or former employees  
4504 or a combination of employees and former employees, or for members or former members of the  
4505 labor organizations, or a combination of members and former members of labor organizations.

4506 (c) This section does not prohibit, nor does it apply to insurance policies or health care  
4507 benefit plans, including group conversion policies, provided to Medicare eligible persons that are  
4508 not marketed or held out to be Medicare supplement policies or benefit plans.

4509 (3) (a) A Medicare supplement policy or certificate in force in the state may not contain  
4510 benefits that duplicate benefits provided by Medicare.

4511 (b) Notwithstanding any other provision of law of this state, a Medicare supplement policy  
4512 or certificate may not exclude or limit benefits for loss incurred more than six months from the  
4513 effective date of coverage because it involved a preexisting condition. The policy or certificate  
4514 may not define a preexisting condition more restrictively than: "A condition for which medical  
4515 advice was given or treatment was recommended by or received from a physician within six  
4516 months before the effective date of coverage."

4517 (c) The commissioner shall adopt rules to establish specific standards for policy provisions  
4518 of Medicare supplement policies and certificates. The standards adopted shall be in addition to  
4519 and in accordance with applicable laws of this state. A requirement of this title relating to  
4520 minimum required policy benefits, other than the minimum standards contained in this section,  
4521 may not apply to Medicare supplement policies and certificates. The standards may include:

4522 (i) terms of renewability;

- 4523 (ii) initial and subsequent conditions of eligibility;  
4524 (iii) nonduplication of coverage;  
4525 (iv) probationary periods;  
4526 (v) benefit limitations, exceptions, and reductions;  
4527 (vi) elimination periods;  
4528 (vii) requirements for replacement;  
4529 (viii) recurrent conditions; and  
4530 (ix) definitions of terms.

4531 (d) The commissioner shall adopt rules establishing minimum standards for benefits,  
4532 claims payment, marketing practices, compensation arrangements, and reporting practices for  
4533 Medicare supplement policies and certificates.

4534 (e) The commissioner may adopt such rules as are necessary to conform Medicare  
4535 supplement policies and certificates to the requirements of federal law and regulations promulgated  
4536 thereunder, including:

- 4537 (i) requiring refunds or credits if the policies do not meet loss ratio requirements;  
4538 (ii) establishing a uniform methodology for calculating and reporting loss ratios;  
4539 (iii) assuring public access to policies, premiums, and loss ratio information of issuers of  
4540 Medicare supplement insurance;  
4541 (iv) establishing a process for approving or disapproving policy forms and certificate forms  
4542 and proposed premium increases;  
4543 (v) establishing a policy for holding public hearings prior to approval of premium  
4544 increases; and  
4545 (vi) establishing standards for Medicare select policies and certificates.

4546 (f) The commissioner may adopt rules that prohibit policy provisions not otherwise  
4547 specifically authorized by statute that, in the opinion of the commissioner, are unjust, unfair, or  
4548 unfairly discriminatory to any person insured or proposed to be insured under a Medicare  
4549 supplement policy or certificate.

4550 (4) Medicare supplement policies shall return to policyholders benefits that are reasonable  
4551 in relation to the premium charged. The commissioner shall make rules to establish minimum  
4552 standards for loss ratios of Medicare supplement policies on the basis of incurred claims  
4553 experience, or incurred health care expenses where coverage is provided by a health maintenance

4554 organization on a service basis rather than on a reimbursement basis, and earned premiums in  
4555 accordance with accepted actuarial principles and practices.

4556 (5) (a) To provide for full and fair disclosure in the sale of Medicare supplement policies,  
4557 a Medicare supplement policy or certificate may not be delivered in this state unless an outline of  
4558 coverage is delivered to the applicant at the time application is made.

4559 (b) The commissioner shall prescribe the format and content of the outline of coverage  
4560 required by Subsection (5)(a).

4561 (c) For purposes of this section, "format" means style arrangements and overall  
4562 appearance, including such items as the size, color, and prominence of type and arrangement of  
4563 text and captions. The outline of coverage shall include:

4564 (i) a description of the principal benefits and coverage provided in the policy;

4565 (ii) a statement of the renewal provisions, including any reservation by the issuer of a right  
4566 to change premiums; and disclosure of the existence of any automatic renewal premium increases  
4567 based on the policyholder's age; and

4568 (iii) a statement that the outline of coverage is a summary of the policy issued or applied  
4569 for and that the policy should be consulted to determine governing contractual provisions.

4570 (d) The commissioner may make rules for captions or notice if the commissioner finds that  
4571 the rules are:

4572 (i) in the public interest; and

4573 (ii) designed to inform prospective insureds that particular insurance coverages are not  
4574 Medicare supplement coverages, for all accident and health insurance policies sold to person  
4575 eligible for Medicare, other than:

4576 (A) a Medicare supplement policy; or

4577 (B) a disability income policy.

4578 ~~(d)~~ (e) The commissioner may prescribe by rule a standard form and the contents of an  
4579 informational brochure for persons eligible for Medicare, that is intended to improve the buyer's  
4580 ability to select the most appropriate coverage and improve the buyer's understanding of Medicare.  
4581 Except in the case of direct response insurance policies, the commissioner may require by rule that  
4582 the informational brochure be provided concurrently with delivery of the outline of coverage to  
4583 any prospective insureds eligible for Medicare. With respect to direct response insurance policies,  
4584 the commissioner may require by rule that the prescribed brochure be provided upon request to any

4585 prospective insureds eligible for Medicare, but in no event later than the time of policy delivery.

4586       ~~[(e)]~~ (f) The commissioner may adopt reasonable rules to govern the full and fair  
4587 disclosure of the information in connection with the replacement of [~~disability~~] accident and health  
4588 policies, subscriber contracts, or certificates by persons eligible for Medicare.

4589       (6) Notwithstanding Subsection (1), Medicare supplement policies and certificates shall  
4590 have a notice prominently printed on the first page of the policy or certificate, or attached to the  
4591 front page, stating in substance that the applicant has the right to return the policy or certificate  
4592 within 30 days of its delivery and to have the premium refunded if, after examination of the policy  
4593 or certificate, the applicant is not satisfied for any reason. Any refund made pursuant to this  
4594 section shall be paid directly to the applicant by the issuer in a timely manner.

4595       (7) Every issuer of Medicare supplement insurance policies or certificates in this state shall  
4596 provide a copy of any Medicare supplement advertisement intended for use in this state, whether  
4597 through written or broadcast medium, to the commissioner for review.

4598       Section 99. Section **31A-22-623** is amended to read:

4599       **31A-22-623. Coverage of inborn metabolic errors.**

4600       (1) As used in this section:

- 4601       (a) "Dietary products" means medical food or a low protein modified food product that:
- 4602       (i) is specifically formulated to treat inborn errors of amino acid or urea cycle metabolism;
  - 4603       (ii) is not a natural food that is naturally low in protein; and
  - 4604       (iii) is used under the direction of a physician.

4605       (b) "Inborn errors of amino acid or urea cycle metabolism" means a disease caused by an  
4606 inherited abnormality of body chemistry which is treatable by the dietary restriction of one or more  
4607 amino acid.

4608       (2) The commissioner shall establish, by rule, minimum standards of coverage for dietary  
4609 products used for the treatment of inborn errors of amino acid or urea cycle metabolism at levels  
4610 consistent with the major medical benefit provided under [~~a disability~~] an accident and health  
4611 insurance policy.

4612       Section 100. Section **31A-22-624** is amended to read:

4613       **31A-22-624. Primary care physician.**

4614       [~~A disability~~] An accident and health insurance policy that requires an insured to select a  
4615 primary care physician to receive optimum coverage:

4616 (1) shall permit an insured to select a participating provider who is an  
4617 obstetrician/gynecologist and is qualified and willing to provide primary care services, as defined  
4618 by the health care plan, as the insured's provider from whom primary care services are received;

4619 (2) shall clearly state in literature explaining the policy the option available to female  
4620 insureds under Subsection (1); and

4621 (3) may not impose a higher premium, higher copayment requirement, or any other  
4622 additional expense on an insured by virtue of the insured selecting a primary care physician in  
4623 accordance with Subsection (1).

4624 Section 101. Section ~~31A-22-626~~ is amended to read:

4625 **31A-22-626. Coverage of diabetes.**

4626 (1) As used in this section, "diabetes" includes individuals with:

4627 (a) complete insulin deficiency or type 1 diabetes;

4628 (b) insulin resistant with partial insulin deficiency or type 2 diabetes; and

4629 (c) elevated blood glucose levels induced by pregnancy or gestational diabetes.

4630 (2) The commissioner shall establish, by rule, minimum standards of coverage for diabetes  
4631 for ~~[disability]~~ accident and health insurance policies that provide a health insurance benefit before  
4632 July 1, 2000.

4633 (3) In making rules under Subsection (2), the commissioner shall require rules:

4634 (a) with durational limits, amount limits, deductibles, and coinsurance for the treatment  
4635 of diabetes equitable or identical to coverage provided for the treatment of other illnesses or  
4636 diseases; and

4637 (b) that provide coverage for:

4638 (i) diabetes self-management training and patient management, including medical nutrition  
4639 therapy as defined by rule, provided by an accredited or certified program and referred by an  
4640 attending physician within the plan and consistent with the health plan provisions for  
4641 self-management education:

4642 (A) recognized by the federal Health Care Financing ~~[Agency]~~ Administration; or

4643 (B) certified by the Department of Health; and

4644 (ii) the following equipment, supplies, and appliances to treat diabetes when medically  
4645 necessary:

4646 (A) blood glucose monitors, including those for the legally blind;

- 4647 (B) test strips for blood glucose monitors;  
4648 (C) visual reading urine and ketone strips;  
4649 (D) lancets and lancet devices;  
4650 (E) insulin;  
4651 (F) injection aides, including those adaptable to meet the needs of the legally blind, and  
4652 infusion delivery systems;  
4653 (G) syringes;  
4654 (H) prescriptive oral agents for controlling blood glucose levels; and  
4655 (I) glucagon kits.

4656 (4) (a) Before October 1, 2003, the commissioner shall report to the Health and Human  
4657 Services Interim Committee on the effects of Section 31A-22-626. The report shall be based on  
4658 three years of data and shall include, to the extent possible:

- 4659 (i) a review of the rules established under Subsection (3);  
4660 (ii) the change in availability of coverage resulting from this section;  
4661 (iii) the extent to which persons have been benefitted by the provisions of this section; and  
4662 (iv) the impact of this section on premiums.

4663 (b) The Legislature shall consider the results of the report under Subsection (4)(a) when  
4664 determining whether to reauthorize the provisions of this section.

4665 Section 102. Section **31A-22-630** is amended to read:

4666 **31A-22-630. Mastectomy coverage.**

4667 (1) If an insured has coverage that provides medical and surgical benefits with respect to  
4668 a mastectomy, it shall provide coverage, with consultation of the attending physician and the  
4669 patient, for:

- 4670 (a) reconstruction of the breast on which the mastectomy has been performed;  
4671 (b) surgery and reconstruction of the breast on which the mastectomy was not performed  
4672 to produce symmetrical appearance; and  
4673 (c) prostheses and physical complications with regards to all stages of mastectomy,  
4674 including lymphedemas.

4675 (2) (a) This section does not prevent [~~a disability~~] an accident and health insurer from  
4676 imposing cost-sharing measures for health benefits relating to this coverage, if cost-sharing  
4677 measures are not greater than those imposed on any other medical condition.

4678 (b) For purposes of this Subsection (2), cost-sharing measures include imposing a  
4679 deductible or coinsurance requirement.

4680 (3) Written notice of the availability of the coverage described in Subsection (1) shall be  
4681 delivered to the participant:

4682 (a) upon enrollment; and

4683 (b) annually after the enrollment.

4684 Section 103. Section **31A-22-631** is enacted to read:

4685 **31A-22-631. Policy summary or illustration.**

4686 (1) (a) Except as provided in Subsection (1)(b), at the time a life insurance policy is  
4687 delivered, a policy summary or illustration shall be delivered for the life insurance policy if:

4688 (i) the life insurance policy includes riders or supplemental benefits, including accelerated  
4689 benefits; and

4690 (ii) receipt of benefits under the life insurance policy is contingent upon morbidity  
4691 requirements.

4692 (b) In the case of a direct response solicitation, the insurer shall deliver the policy summary  
4693 or illustration at the sooner of:

4694 (i) the applicant's request; or

4695 (ii) at the time of policy delivery regardless of whether the applicant requests a policy  
4696 summary or illustration.

4697 (2) In addition to complying with all applicable requirements, the policy summary or  
4698 illustration shall include:

4699 (a) a clear and prominent disclosure of how the rider or supplemental benefit interacts with  
4700 other components of the policy, including deductions from death benefits and policy values;

4701 (b) an illustration for each covered person of:

4702 (i) the amount of benefits;

4703 (ii) the length of benefits; and

4704 (iii) the guaranteed lifetime benefits, if any;

4705 (c) a disclosure of the maximum premiums for the rider or supplemental benefit;

4706 (d) any exclusions, reductions, or limitations on the benefits of the rider or supplemental  
4707 benefit; and

4708 (e) if applicable to the policy type:

4709 (i) a disclosure of the effects of exercising other rights under the policy; and

4710 (ii) guaranteed maximum lifetime benefits.

4711 Section 104. Section **31A-22-632** is enacted to read:

4712 **31A-22-632. Report to policy holder.**

4713 (1) An insurer shall provide the policyholder a monthly report if an accident and health  
4714 rider or supplemental benefit is:

4715 (a) funded through a life insurance vehicle by acceleration of the death benefit; and

4716 (b) in benefit payment status.

4717 (2) The report required by Subsection (1) shall include:

4718 (a) any rider or supplemental benefits paid out during the month;

4719 (b) an explanation of any changes in the policy due to rider or supplemental benefits being  
4720 paid out such as:

4721 (i) death benefits; or

4722 (ii) cash values; and

4723 (c) the amount of the rider or supplemental benefits existing or remaining.

4724 Section 105. Section **31A-22-701** is amended to read:

4725 **Part VII. Group Accident and Health Insurance**

4726 **31A-22-701. Groups eligible for group or blanket insurance.**

4727 (1) A group or blanket [~~disability~~] accident and health insurance policy may be issued to:

4728 (a) any group to which a group life insurance policy may be issued under Sections

4729 31A-22-502 through 31A-22-507;

4730 (b) a policy issued pursuant to a conversion privilege under Part VII; or

4731 (c) a group specifically authorized by the commissioner upon a finding that:

4732 (i) authorization is not contrary to the public interest;

4733 (ii) the proposed group is actuarially sound;

4734 (iii) formation of the proposed group may result in economies of scale in administrative,  
4735 marketing, and brokerage costs; and

4736 (iv) the health insurance policy, certificate, or other indicia of coverage that will be offered  
4737 to the proposed group is substantially equivalent to policies that are otherwise available to similar  
4738 groups.

4739 (2) Blanket policies may also be issued to:

4740 (a) any common carrier or any operator, owner, or lessee of a means of transportation, as  
4741 policyholder, covering persons who may become passengers as defined by reference to their travel  
4742 status;

4743 (b) an employer, as policyholder, covering any group of employees, dependents, or guests,  
4744 as defined by reference to specified hazards incident to any activities of the policyholder;

4745 (c) an institution of learning, including a school district, school jurisdictional units, or the  
4746 head, principal, or governing board of any of those units, as policyholder, covering students,  
4747 teachers, or employees;

4748 (d) any religious, charitable, recreational, educational, or civic organization, or branch of  
4749 those organizations, as policyholder, covering any group of members or participants as defined by  
4750 reference to specified hazards incident to the activities sponsored or supervised by the  
4751 policyholder;

4752 (e) a sports team, camp, or sponsor of the team or camp, as policyholder, covering  
4753 members, campers, employees, officials, or supervisors;

4754 (f) any volunteer fire department, first aid, civil defense, or other similar volunteer  
4755 organization, as policyholder, covering any group of members or participants as defined by  
4756 reference to specified hazards incident to activities sponsored, supervised, or participated in by the  
4757 policyholder;

4758 (g) a newspaper or other publisher, as policyholder, covering its carriers;

4759 (h) an association, including a labor union, which has a constitution and bylaws and which  
4760 has been organized in good faith for purposes other than that of obtaining insurance, as  
4761 policyholder, covering any group of members or participants as defined by reference to specified  
4762 hazards incident to the activities or operations sponsored or supervised by the policyholder;

4763 (i) a health insurance purchasing association organized and controlled solely by  
4764 participating employers as defined in Section 31A-34-103; and

4765 (j) any other class of risks which, in the judgment of the commissioner, may be properly  
4766 eligible for blanket [~~disability~~] accident and health insurance.

4767 (3) The judgment of the commissioner may be exercised on the basis of:

4768 (a) individual risks [or];

4769 (b) class of risks; or

4770 (c) both Subsections (3)(a) and (b).

4771 Section 106. Section **31A-22-702** is amended to read:

4772 **31A-22-702. Adjustment of premium rate and application of dividends or rate**  
4773 **reductions.**

4774 Any group [~~disability~~] accident and health insurance policy may provide for the adjustment  
4775 of the rate of premium based upon the experience under the contract. If a policy dividend is  
4776 declared or a reduction in rate is made or continued for the first or any subsequent year of  
4777 insurance under any policy of group [~~disability~~] accident and health insurance, the excess, if any,  
4778 of the aggregate dividends or rate reductions under the policy and all other group insurance policies  
4779 of the policyholder over the aggregate expenditure for insurance under those policies made from  
4780 funds contributed by the policyholder, including expenditures made in connection with the  
4781 administration of the policies, shall be applied by the policyholder for the sole benefit of insured  
4782 employees or members unless the insured employee or member explicitly elects otherwise.

4783 Section 107. Section **31A-22-703** is amended to read:

4784 **31A-22-703. Conversion rights on termination of group accident and health**  
4785 **insurance coverage.**

4786 (1) Except as provided in Subsections (2) through (5), all policies of [~~disability~~] accident  
4787 and health insurance offered on a group basis under this title or Title 49, Chapter 8, Group  
4788 Insurance Program Act, shall provide that a person whose insurance under the group policy has  
4789 been terminated for any reason, and who has been continuously insured under the group policy or  
4790 its predecessor for at least six months immediately prior to termination, is entitled to choose  
4791 [~~either~~] a converted individual [~~or group~~] policy of [~~disability~~] accident and health insurance from  
4792 the insurer which conforms to Section 31A-22-708 or an extension of benefits under the group  
4793 policy as provided in Section 31A-22-714.

4794 (2) Subsection (1) does not apply if the policy:

4795 (a) provides catastrophic, aggregate stop loss, or specific stop loss benefits;

4796 (b) provides benefits for specific diseases or for accidental injuries only, or for dental  
4797 service; or

4798 (c) is [~~a disability~~] an income replacement policy.

4799 (3) An employee or group member does not have conversion rights under Subsection (1)  
4800 if:

4801 (a) termination of the group coverage occurred because of failure of the group member to

4802 pay any required individual contribution;

4803 (b) the individual group member acquires other group coverage covering all preexisting  
4804 conditions including maternity, if the coverage existed under the replaced group coverage; or

4805 (c) the person [~~who would be covered is or could be covered by Medicare~~] has:

4806 (i) performed an act or practice that constitutes fraud; or

4807 (ii) made an intentional misrepresentation of material fact under the terms of the coverage.

4808 (4) Notwithstanding Subsections (1), (2), and (3), an employee or group member does not  
4809 have conversion rights under Subsection (1) if the individual or group member qualifies to  
4810 continue coverage under his existing group policy in accordance with the terms of his policy.

4811 (5) (a) Notwithstanding Subsection 31A-22-613(1), an insurer may reduce benefits under  
4812 a converted [~~disability~~] policy covering any person to the extent the benefits provided or available  
4813 to that person under one or more of the sources listed under Subsection (5)(b), together with the  
4814 benefits provided by the converted policy, would result in [~~overinsurance according to the insurer's~~  
4815 ~~standards. The insurer's standards shall bear a reasonable relationship to actual health care costs~~  
4816 ~~in the area in which the insured lives at the time of conversion and shall be filed with the~~  
4817 ~~commissioner prior to their use in denying coverage~~] duplicate coverage.

4818 (b) The benefits sources referred to under Subsection (5)(a) include:

4819 (i) benefits under another insurance policy; and

4820 (ii) benefits under any arrangement of coverage for individuals in a group, whether on an  
4821 insured or an uninsured basis[~~; and~~].

4822 [~~(iii) benefits provided for or available to that person, in accordance with the requirements~~  
4823 ~~of any state or federal law.~~]

4824 (6) (a) The conversion policy shall provide maternity benefits equal to the maternity  
4825 benefits of the group policy until termination of pregnancy that exists on the date of conversion  
4826 if:

4827 (i) one of the following is pregnant on the date of the conversion:

4828 (A) the insured;

4829 (B) a spouse of the insured; or

4830 (C) a dependent of the insured; and

4831 (ii) the accident and health policy had maternity benefits.

4832 (b) The requirements of this Subsection (6) do not apply to a pregnancy that occurs after

4833 the date of conversion.

4834 Section 108. Section **31A-22-704** is amended to read:

4835 **31A-22-704. Conversion rules and procedures.**

4836 (1) Written application for the converted policy shall be made and the first premium paid  
4837 to the insurer no later than 60 days after termination of the group [~~disability~~] accident and health  
4838 insurance.

4839 (2) The converted policy shall be issued without evidence of insurability.

4840 (3) (a) The initial premium for the converted policy for the first 12 months and subsequent  
4841 renewal premiums shall be determined in accordance with premium rates applicable to age, class  
4842 of risk of the person, and the type and amount of insurance provided[-]; and

4843 (b) the initial premium for the first 12 months may not be raised based on pregnancy of  
4844 a covered insured.

4845 (4) Conditions pertaining to health are not an acceptable basis for classification under this  
4846 section.

4847 (5) The premium for converted [~~disability~~] policies shall be payable monthly or quarterly  
4848 as required by the insurer for the policy form and plan selected, unless another mode of premium  
4849 payment is mutually agreed upon.

4850 (6) The converted policy becomes effective at the time the insurance under the group  
4851 policy terminates.

4852 (7) The converted policy covers the employee or member and the dependents who were  
4853 covered by the group policy on the date of termination of insurance. At the option of the insurer,  
4854 a separate converted policy may be issued to cover any dependent.

4855 Section 109. Section **31A-22-705** is amended to read:

4856 **31A-22-705. Provisions in conversion policies.**

4857 (1) A converted policy may include a provision under which the insurer may request from  
4858 the person covered, information in advance of any premium due date as to whether there is other  
4859 coverage as specified under Subsection 31A-22-703(4).

4860 (2) The converted policy may provide that the insurer may refuse to renew the policy or  
4861 the coverage of any person insured:

4862 [~~(a) if the insured could be covered by Medicare;~~]

4863 [~~(b) the converted policy creates an unreasonable over-insurance position;~~]

4864            [~~(c)~~] (a) for fraud or [~~material~~] intentional misrepresentation of a material fact in applying  
4865 for any benefits under the converted policy; or

4866            [~~(d)~~] (b) for any other reason approved by the commissioner by rule or order.

4867            (3) [~~No~~] An insurer may not be required to issue a converted policy which provides  
4868 benefits in excess of those provided under the group policy from which conversion is made.

4869            (4) [~~No~~] A converted policy may not exclude a preexisting condition not excluded under  
4870 the group policy.

4871            (5) During the first policy year, the converted policy may provide that the benefits payable  
4872 under the converted policy, together with the benefits paid for the individual under the group  
4873 policy, do not exceed those that would have been payable had the individual's insurance under the  
4874 group policy remained in force and effect.

4875            Section 110. Section **31A-22-715** is amended to read:

4876            **31A-22-715. Optional rider for alcohol and drug dependency treatment.**

4877            Each group [~~disability~~] accident and health insurance policy shall contain an optional rider  
4878 allowing certificate holders to obtain coverage for alcohol or drug dependency treatment in  
4879 programs licensed by the Department of Human Services, under Title 62A, Chapter 2, inpatient  
4880 hospitals accredited by the joint commission on the accreditation of hospitals, or facilities licensed  
4881 by the Department of Health.

4882            Section 111. Section **31A-22-716** is amended to read:

4883            **31A-22-716. Required provision for notice of termination.**

4884            (1) Every policy for group or blanket [~~disability~~] accident and health coverage issued or  
4885 renewed after July 1, 1990, shall include a provision that obligates the policyholder to give 30 days  
4886 prior written notice of termination to each employee or group member and to notify each employee  
4887 or group member of his rights to continue coverage upon termination.

4888            (2) An insurer's monthly notice to the policyholder of premium payments due shall include  
4889 a statement of the policyholder's obligations as set forth in Subsection (1). Insurers shall provide  
4890 a sample notice to the policyholder at least once a year.

4891            Section 112. Section **31A-22-717** is amended to read:

4892            **31A-22-717. Provisions pertaining to service members and their families affected by**  
4893 **Operation Desert Shield and Operation Desert Storm.**

4894            For any group or blanket [~~disability~~] accident and health coverage, an insurer:

4895 (1) may not refuse to reinstate an insured or his family whose coverage lapsed due to the  
4896 insured's participation in Operation Desert Shield or Operation Desert Storm provided application  
4897 is made within 180 days of release from active duty;

4898 (2) shall reinstate an insured in full upon payment of the first premium without the  
4899 requirement of a waiting period or exclusion for preexisting conditions or any other underwriting  
4900 requirements that were covered previously; and

4901 (3) may not increase the insured's premium in excess of what it would have been increased  
4902 in the normal course of time had the insured not participated in Operation Desert Shield or  
4903 Operation Desert Storm.

4904 Section 113. Section **31A-22-720** is amended to read:

4905 **31A-22-720. Mental health parity.**

4906 (1) (a) A group [~~disability~~] accident and health plan offered by an insurer shall comply  
4907 with Subsection (1)(b) if the group disability plan:

4908 (i) applies an aggregate lifetime limit to plan payments for medical or surgical services  
4909 covered by the group [~~disability~~] accident and health plan; and

4910 (ii) provides a mental health benefit.

4911 (b) A group [~~disability~~] accident and health plan described in Subsection (1)(a) shall:

4912 (i) include in the aggregate lifetime limit for medical or surgical services covered by the  
4913 group [~~disability~~] accident and health plan the payments made under the plan for mental health  
4914 services; or

4915 (ii) establish a separate aggregate lifetime limit to plan payments for mental health services  
4916 covered by the group [~~disability~~] accident and health plan, but only if the dollar amount of the  
4917 aggregate lifetime limit for mental health services covered by that plan is equal to or greater than  
4918 the dollar amount of the aggregate lifetime limit for medical or surgical services covered by that  
4919 plan.

4920 (2) (a) A group [~~disability~~] accident and health plan offered by an insurer shall comply  
4921 with Subsection (2)(b) if the group [~~disability~~] accident and health plan:

4922 (i) applies an annual limit to plan payments for medical or surgical services covered by the  
4923 group [~~disability~~] accident and health plan; and

4924 (ii) provides a mental health benefit.

4925 (b) A group [~~disability~~] accident and health plan described in Subsection (2)(a) shall:

4926 (i) include in the annual limit for medical or surgical services covered by the group  
4927 [~~disability~~] accident and health plan the payments made under the plan for mental health services;  
4928 or

4929 (ii) establish a separate annual limit to plan payments for mental health services covered  
4930 by the group [~~disability~~] accident and health plan, but only if the dollar amount of the annual limit  
4931 for mental health services covered by that plan is equal to or greater than the dollar amount of the  
4932 annual limit for medical or surgical services covered by that plan.

4933 (3) This section does not prohibit a group [~~disability~~] accident and health plan offered by  
4934 an insurer from:

4935 (a) using other forms of cost containment not prohibited under Subsection (1); or

4936 (b) applying requirements that make distinctions between acute care and chronic care.

4937 (4) This section does not apply to:

4938 (a) benefits for:

4939 (i) substance abuse; or

4940 (ii) chemical dependency; or

4941 (b) [~~disability~~] accident and health benefits or plans paid under Title XVII or XIX of the  
4942 Social Security Act.

4943 (5) (a) This section does not apply to plans maintained by employers that employ less than  
4944 50 employees.

4945 (b) For purposes of determining whether an employer is exempt under Subsection (5)(a):

4946 (i) if the employer was not in existence throughout the preceding calendar year, the number  
4947 of employees of the employer is determined based on the average number of employees that the  
4948 employer is reasonably expected to employ on business days in the calendar year for which the  
4949 determination is made; and

4950 (ii) as used in this Subsection (5), "employer" includes a predecessor of the employer.

4951 Section 114. Section **31A-22-801** is amended to read:

4952 **31A-22-801. Scope of part.**

4953 (1) Except as provided under Subsection (2), all life insurance and [~~disability~~] accident and  
4954 health insurance in connection with loans or other credit transactions are subject to this part.

4955 (2) (a) Insurance in connection with a loan or other credit transaction of more than ten  
4956 years duration is not subject to this part, but is subject to other provisions of this title.

4957 (b) Isolated transactions on the part of an insurer [~~which~~] that are not related to an  
4958 agreement or plan for insuring debtors of the creditor are not subject to this part.

4959 Section 115. Section **31A-22-802** is amended to read:

4960 **31A-22-802. Definitions.**

4961 As used in Part VIII:

4962 (1) "Credit [~~disability~~] accident and health insurance" means [~~disability~~] insurance on a  
4963 debtor to provide indemnity for payments coming due on a specific loan or other credit transaction  
4964 while the debtor is disabled.

4965 (2) "Credit life insurance" means life insurance on the life of a debtor in connection with  
4966 a specific loan or credit transaction.

4967 (3) "Credit transaction" means any transaction under which the payment for money loaned  
4968 or for goods, services, or properties sold or leased is to be made on future dates.

4969 (4) "Creditor" means the lender of money or the vendor or lessor of goods, services, or  
4970 property, for which payment is arranged through a credit transaction, or any successor to the right,  
4971 title, or interest of any lender or vendor.

4972 (5) "Debtor" means a borrower of money or a purchaser, including a lessee under a lease  
4973 intended as security, of goods, services, or property, for which payment is arranged through a credit  
4974 transaction.

4975 (6) "Indebtedness" means the total amount payable by a debtor to a creditor in connection  
4976 with a credit transaction, including principal finance charges and interest.

4977 (7) "Net indebtedness" means the total amount required to liquidate the indebtedness,  
4978 exclusive of any unearned interest, any insurance on the monthly outstanding balance coverage,  
4979 or any finance charge.

4980 (8) "Net written premiums" means gross written premiums minus refunds on termination.

4981 Section 116. Section **31A-22-803** is amended to read:

4982 **31A-22-803. Forms of insurance permitted.**

4983 Credit life insurance and credit [~~disability~~] accident and health insurance may be issued  
4984 only in the following forms:

4985 (1) individual policies of term life insurance issued to debtors;

4986 (2) individual policies of term [~~disability~~] accident and health insurance issued to debtors,  
4987 or [~~disability~~] accident and health benefit provisions in individual policies of credit life insurance;

4988 (3) group policies of term life insurance issued to creditors, providing insurance upon the  
4989 lives of debtors;

4990 (4) group policies of term [~~disability~~] accident and health insurance issued to creditors  
4991 insuring debtors, or [~~disability~~] accident and health benefit provisions in group credit life insurance  
4992 policies.

4993 Section 117. Section **31A-22-804** is amended to read:

4994 **31A-22-804. Limitations on amounts of insurance.**

4995 (1) Except as provided under Subsection (2), the initial amount of credit life insurance on  
4996 the life of any one debtor may not exceed the total amount repayable under the contract of  
4997 indebtedness. Where an indebtedness is repayable in substantially equal periodic installments,  
4998 the amount of insurance may not exceed the scheduled or actual amount of unpaid indebtedness,  
4999 whichever is greater.

5000 (2) Subsection (1) does not apply to:

5001 (a) insurance on agricultural credit transaction commitments not exceeding the  
5002 commitment period, which may be written for the amount of the commitment on a nondecreasing  
5003 or level term plan;

5004 (b) insurance on educational credit transaction commitments, which may be written to  
5005 include the portion of the commitment that has not been advanced by the creditor;

5006 (c) insurance on preauthorized lines of credit not exceeding the commitment period which  
5007 may be written for the preauthorized amount on a nondecreasing or level term plan, whether  
5008 secured or unsecured[-]; and

5009 (d) insurance on any other class of lawful credit transaction or commitment, which in the  
5010 commissioner's opinion does not require the application of the restrictions under Subsection (1),  
5011 in which case the commissioner may authorize by rule a class exception to Subsection (1).

5012 (3) The total amount of indemnity payable by credit [~~disability~~] accident and health  
5013 insurance in the event of disability, as defined in the policy, may not exceed the aggregate of the  
5014 periodic scheduled unpaid installments of the indebtedness. The amount of each periodic  
5015 indemnity payment may not exceed the total amount repayable under the contract of indebtedness  
5016 divided by the number of periodic installments.

5017 Section 118. Section **31A-22-805** is amended to read:

5018 **31A-22-805. Beginning date of insurance.**

5019 (1) Except as provided under Subsection (2), any credit life insurance or credit [disability]  
5020 accident and health insurance, subject to acceptance by the insurer, commences on the date when  
5021 the debtor becomes obligated to the creditor.

5022 (2) (a) Where a group policy provides coverage for existing obligations, the insurance on  
5023 a debtor with respect to that indebtedness commences on the effective date of the policy.

5024 (b) Where evidence of insurability is required and the evidence is furnished more than 30  
5025 days after the debtor becomes obligated to the creditor, the insurance may commence when the  
5026 insurance company determines the evidence of insurability to be satisfactory. In this event, the  
5027 insurer shall make an appropriate refund or adjustment of any charge to the debtor for insurance.

5028 (3) The insurance may not extend more than 15 days beyond the scheduled maturity date  
5029 of the indebtedness, unless it does so at no additional cost to the debtor.

5030 (4) If the indebtedness is discharged due to renewal or refinancing prior to the scheduled  
5031 maturity date, the insurance in force shall terminate before any new insurance may be issued in  
5032 connection with the renewed or refinanced indebtedness. In all cases of termination prior to  
5033 scheduled maturity, a refund shall be paid or credited as provided in Section 31A-22-808.

5034 Section 119. Section **31A-22-806** is amended to read:

5035 **31A-22-806. Provisions of policies and certificates.**

5036 (1) All credit life insurance and credit [disability] accident and health insurance shall be  
5037 evidenced by an individual policy, or, in the case of group insurance, by a certificate of insurance  
5038 delivered to the debtor.

5039 (2) Each of these types of policies or certificates shall, in addition to satisfying the  
5040 requirements of Chapter 21, set forth:

5041 (a) the name and home office address of the insurer;

5042 (b) the identity, by name or otherwise, of the persons insured;

5043 (c) the rate, premium, or amount of payment by the debtor, if any, given separately for  
5044 credit life insurance and credit [disability] accident and health insurance;

5045 (d) a description of the amount, term, and coverage, including any exceptions, limitations,  
5046 and restrictions;

5047 (e) that the benefits shall be paid to the creditor to reduce or extinguish the unpaid  
5048 indebtedness; and

5049 (f) that whenever the amount of insurance exceeds the unpaid indebtedness, that excess

5050 is payable to a beneficiary, other than the creditor, named by the debtor or to the debtor's estate.

5051 (3) Except as provided in Subsection (4), the policy or certificate shall be delivered to the  
5052 debtor within 30 days after the date when the indebtedness is incurred.

5053 (4) (a) If the policy or certificate is not delivered to the debtor within 30 days after the date  
5054 the indebtedness is incurred, a copy of the application for the policy or a notice of proposed  
5055 insurance shall be delivered to the debtor.

5056 (b) The application or the notice shall be signed by the debtor and shall set forth:

5057 (i) the name and home office address of the insurer;

5058 (ii) the name of the debtor;

5059 (iii) the premium or amount of payment by the debtor, if any, separately for credit life  
5060 insurance and credit [~~disability~~] accident and health insurance; and

5061 (iv) the amount, term, and a brief description of the coverage provided.

5062 (c) The copy of the application for or notice of proposed insurance, shall also refer  
5063 exclusively to insurance coverage, and shall be separate from the loan, sale, or other credit  
5064 statement of account or instrument, unless the information required by this Subsection (4)(c) is  
5065 prominently set forth therein.

5066 (d) Upon acceptance of the insurance by the insurer and within 60 days after the later of  
5067 the date on which the indebtedness is incurred or the date on which the credit life or credit  
5068 [~~disability~~] accident and health policy was purchased, the insurer shall deliver the individual policy  
5069 or group certificate of insurance to the debtor.

5070 (e) The application or notice shall state that upon acceptance by the insurer, the insurance  
5071 is effective as provided in Section 31A-22-805.

5072 (5) If the named insurer does not accept the risk, the debtor shall receive a policy or  
5073 certificate of insurance setting forth the name and home office address of the substituted insurer  
5074 and the amount of the premium to be charged. If the premium is less than that set forth in the  
5075 notice of proposed insurance, an appropriate refund shall be made.

5076 (6) If a creditor makes available to the debtors more than one plan of credit life or credit  
5077 [~~disability~~] accident and health insurance, all debtors must be informed of the plans applicable to  
5078 the specific type of loan transaction for which the debtor is applying.

5079 Section 120. Section **31A-22-807** is amended to read:

5080 **31A-22-807. Filing and approval of forms -- Loss ratio standards.**

5081 (1) All forms of policies, certificates of insurance, statements of insurance, endorsements,  
5082 and riders intended for use in Utah are subject to Section 31A-21-201.

5083 (2) In addition to the grounds for disapproval under Subsection 31A-21-201(3), it is a  
5084 ground for disapproval that the benefits provided in the form are not reasonable in relation to the  
5085 premium charge.

5086 (3) In ascertaining whether the benefits are reasonable in relation to the premium charged,  
5087 the commissioner shall consider the mortality cost of the life insurance and the morbidity cost of  
5088 the [~~disability~~] accident and health insurance, and the reserves set up for the payment of claims  
5089 unreported or in the process of settlement. The benefits are considered reasonable in relation to  
5090 the premium charged if the premium rate charged develops or may reasonably be expected to  
5091 develop a loss ratio of not less than 50% for credit life insurance and not less than 55% for credit  
5092 [~~disability~~] accident and health insurance given the above costs.

5093 (4) Benefits are considered reasonable in relation to premium charged if the ratio of claims  
5094 incurred to premium earned during the most recent four-year period at the rates in use produces  
5095 a loss ratio that is equal to or exceeds the minimum loss ratio standard specified in Subsection (3).

5096 (5) If the minimum loss ratio test produces a loss ratio that exceeds Subsection (4)'s  
5097 minimum loss ratio standard by five percentage points or more, the insurer may file for approval  
5098 and use rates that are higher than prima facie rates, if it can be expected that the use of those higher  
5099 rates will continue to produce a loss ratio for the accounts to which they are applied that will  
5100 satisfy the minimum loss ratio test.

5101 (6) If the minimum loss ratio test produces a loss ratio that is lower than Subsection (4)'s  
5102 minimum loss standard by five percentage points or more, the commissioner may require that the  
5103 insurer file adjusted rates that can be expected to produce a loss ratio that will satisfy the minimum  
5104 loss ratio test, or to submit reasons acceptable to the commissioner why the insurer should not be  
5105 required to file these adjusted rates.

5106 Section 121. Section **31A-22-808** is amended to read:

5107 **31A-22-808. Premiums and refunds.**

5108 (1) Each policy, certificate, or statement of insurance shall provide that in the event of  
5109 termination of the insurance prior to the scheduled maturity date of the indebtedness, any refund  
5110 of an amount paid by the debtor for insurance shall be paid or credited promptly to the person  
5111 entitled to it. The formula used in computing the refund shall be filed with and approved by the

5112 commissioner under Chapter 21, Part II. No refund is required if it would be less than \$5.

5113 (2) If a creditor requires a debtor to make any payment for credit life or credit [~~disability~~]  
5114 accident and health insurance and an individual policy, certificate, or statement of insurance is not  
5115 issued, the creditor shall immediately give written notice to the debtor and credit the account.

5116 (3) The amount charged the debtor for credit life or [~~disability~~] accident and health  
5117 insurance may not exceed the premiums charged by the insurer as computed at the time the charge  
5118 to the debtor is determined.

5119 Section 122. Section **31A-22-809** is amended to read:

5120 **31A-22-809. Right of debtor to choose insurer.**

5121 When credit life insurance or credit [~~disability~~] accident and health insurance is required  
5122 as security for any indebtedness, the creditor shall inform the debtor of the debtor's option to  
5123 furnish the required insurance through existing policies of insurance owned or controlled by the  
5124 debtor or to procure and furnish the required coverage through any insurer authorized to transact  
5125 life or [~~disability~~] accident and health insurance in Utah.

5126 Section 123. Section **31A-22-1002** is amended to read:

5127 **31A-22-1002. Duration of coverage.**

5128 (1) Any insurer assuming a workers' compensation risk shall carry it until the policy is  
5129 canceled, either:

5130 (a) by agreement between the Division of Industrial Accidents in the Labor Commission,  
5131 the insurer, and the employer; or

5132 (b) after:

5133 (i) [~~30 days~~] notice by the insurer to the employer as provided in Section 31A-21-303; and

5134 (ii) notice to the Division of Industrial Accidents in the Labor Commission as provided  
5135 in Section 34A-2-205.

5136 (2) Subsection (1) does not affect the requirements of Section 31A-22-1001.

5137 Section 124. Section **31A-22-1101** is amended to read:

5138 **31A-22-1101. Combination of lines.**

5139 (1) Legal expense insurance may be transacted alone or together with life insurance,  
5140 [~~disability~~] accident and health insurance, or casualty insurance.

5141 (2) [~~No~~] An insurer may not transact liability insurance and also issue legal expense  
5142 insurance policies providing coverage for the expense of enforcing claims against third persons,

5143 unless the requirements of Subsection (3) are met and the commissioner is satisfied that the  
5144 interests of policyholders of legal expense insurance policies are not endangered by potential  
5145 conflicts of interest within the insurer.

5146 (3) Adequate precautions shall be taken to make sure that the handling of an insured's  
5147 claim for legal assistance in enforcing a claim against a third person is not affected by the insurer's  
5148 actual or potential obligation as a liability insurer to pay the claim for the third person. These  
5149 precautions may include:

5150 (a) a provision in the policy that claims against third persons shall be handled exclusively  
5151 by attorneys selected by the insureds themselves rather than by the insurer, that no information  
5152 about the case other than the name of the defendant and the nature of the claim may be made  
5153 available to the insurer, and that the insurer may not interfere with the handling of the case; or

5154 (b) organizational separation between the legal expense and the liability insurance  
5155 departments with respect to management, accounting, record keeping, and claims handling, with  
5156 appropriate rules and procedures, satisfactory to the commissioner, to prevent the exchange of  
5157 information between the two departments about details of cases.

5158 Section 125. Section **31A-22-1401** is amended to read:

5159 **31A-22-1401. Application.**

5160 (1) The requirements of this part apply to individual policies and to group policies and  
5161 certificates marketed in this state on or after July 1, [~~1991~~] 2001, other than employee and labor  
5162 union group policies and certificates.

5163 (2) Entities subject to this part shall comply with other applicable insurance laws and rules  
5164 unless they are in conflict with this part.

5165 (3) The laws, regulations, and rules designed and intended to apply to Medicare  
5166 supplement insurance policies may not be applied to long-term care insurance.

5167 (4) Any policy or rider advertised, marketed, or offered as long-term care or nursing home  
5168 insurance shall comply with the provisions of this part.

5169 Section 126. Section **31A-22-1402** is amended to read:

5170 **31A-22-1402. Definitions.**

5171 Unless the context requires otherwise, the following definitions apply in this part:

5172 (1) "Applicant" means:

5173 (a) in the case of an individual long-term care insurance policy, the person who seeks to

5174 contract for benefits; and

5175 (b) in the case of a group long-term care insurance policy, the proposed certificate holder.

5176 ~~[(2) (a) "Long-term care insurance" means any insurance policy or rider advertised,~~  
5177 ~~marketed, offered, or designed to provide coverage.]~~

5178 ~~[(i) for not less than 12 consecutive months for each covered person on an expense~~  
5179 ~~incurred, indemnity, prepaid, or other basis;]~~

5180 ~~[(ii) for one or more necessary or medically necessary diagnostic, preventive, therapeutic,~~  
5181 ~~rehabilitative, maintenance, or personal care service, provided in a setting other than an acute care~~  
5182 ~~unit of a hospital.]~~

5183 ~~[(b) The term includes group and individual annuities and life insurance policies or riders~~  
5184 ~~which provide directly or supplement long-term care insurance. The term also includes a policy~~  
5185 ~~or rider which provides for payment of benefits based upon cognitive impairment or the loss of~~  
5186 ~~functional capacity.]~~

5187 ~~[(c) Long-term care insurance does not include any insurance policy which is offered~~  
5188 ~~primarily to provide basic Medicare supplement coverage, basic hospital expense coverage, basic~~  
5189 ~~medical-surgical expense coverage, hospital confinement indemnity coverage, major medical~~  
5190 ~~expense coverage, disability income or related asset-protection coverage, accident only coverage,~~  
5191 ~~specified disease or specified accident coverage, or limited benefit health coverage.]~~

5192 (2) Notwithstanding Section 31A-1-301, "certificate" means a certificate issued under a  
5193 group long-term care insurance policy if the group long-term care insurance policy is delivered or  
5194 issued for delivery in this state.

5195 (3) Notwithstanding Section 31A-1-301, "policy" means a policy, contract subscriber  
5196 agreement, rider, or endorsement, if the policy, contract subscriber agreement, rider, or  
5197 endorsement is delivered or issued:

5198 (a) in this state; and

5199 (b) by:

5200 (i) an insurer;

5201 (ii) a fraternal benefit society;

5202 (iii) a nonprofit health, hospital, or medical service corporation;

5203 (iv) a prepaid health plan;

5204 (v) a health maintenance organization; or

5205 (vi) an entity similar to an entity described in Subsections (4)(b)(i) through (v).

5206 Section 127. Section **31A-22-1407** is amended to read:

5207 **31A-22-1407. Restricted conditional terms.**

5208 (1) A long-term care insurance policy may not contain a provision that conditions  
5209 eligibility:

5210 (a) [~~conditions eligibility~~] for any benefits on a prior hospitalization requirement; [~~or~~]

5211 (b) [~~conditions eligibility~~] for benefits provided in an institutional care setting on the  
5212 receipt of a higher level of institutional care[-]; or

5213 (c) for any benefits on a prior institutionalization requirement except for eligibility for:

5214 (i) waiver of premium;

5215 (ii) post confinement;

5216 (iii) post-acute care; or

5217 (iv) recuperative benefits.

5218 (2) A long-term care insurance policy containing [~~any limitations or conditions for~~  
5219 ~~eligibility other than those prohibited in Subsection (1)] post confinement, post-acute care, or  
5220 recuperative benefits shall clearly label the limitations or conditions, including any required  
5221 number of days of confinement in a separate paragraph of the policy or certificate that is entitled  
5222 "Limitations or Conditions on Eligibility for Benefits."~~

5223 [~~(3) A long-term care insurance policy containing a benefit advertised, marketed, or~~  
5224 ~~offered as a home health care benefit may not condition receipt of benefits on a prior~~  
5225 ~~institutionalization.]~~

5226 [~~(4) A long-term care insurance policy or rider that provides benefits only following~~  
5227 ~~institutionalization may not condition the benefits upon admission to a facility for the same or~~  
5228 ~~related conditions within a period of less than 30 days after discharge from the institution.]~~

5229 (3) A long-term care insurance policy or rider that conditions eligibility of noninstitutional  
5230 benefits on the prior receipt of institutional care may not require a prior institutional stay of more  
5231 than 30 days.

5232 Section 128. Section **31A-22-1409** is amended to read:

5233 **31A-22-1409. Statements of coverage.**

5234 (1) An outline of coverage shall be delivered to a prospective applicant for long-term care  
5235 insurance at the time of initial solicitation through means which prominently direct the attention

5236 of the applicant to the document and its purpose.

5237 (2) The commissioner may prescribe a standard format of an outline of coverage, including  
5238 style, arrangement, and overall appearance, and the content.

5239 (3) In the case of agent solicitations an agent must deliver the outline of coverage prior to  
5240 the presentation of any application or enrollment form.

5241 (4) In the case of direct response solicitations, the outline of coverage must be presented  
5242 in conjunction with any application or enrollment form.

5243 (5) An outline of coverage under this section shall include:

5244 (a) a description of the principal benefits and coverage provided in the policy;

5245 (b) a statement of the principal exclusions, reductions, and limitations contained in the  
5246 policy;

5247 (c) a statement of the terms under which the policy or certificate, or both, may be  
5248 continued in force or discontinued, including any reservation in the policy of a right to change  
5249 premium;

5250 (d) a specific description of continuation or conversion provisions of group coverage;

5251 (e) a statement that the outline of coverage is not a contract of insurance but a summary  
5252 only and that the policy or group master policy contains governing contractual provisions;

5253 (f) a description of the terms under which the policy or certificate may be returned and  
5254 premium refunded; [~~and~~]

5255 (g) a brief description of the relationship of cost of care and benefits[-]; and

5256 (h) a statement that discloses to the policyholder or certificate holder whether the policy  
5257 is intended to be a federally tax-qualified, long-term care insurance contract under Section  
5258 7702B(b), Internal Revenue Code.

5259 (6) A certificate issued pursuant to a group long-term care insurance policy, which policy  
5260 is delivered or issued for delivery in this state, shall include:

5261 (a) a description of the principal benefits and coverage provided in the policy;

5262 (b) a statement of the principal exclusions, reductions, and limitations contained in the  
5263 policy; [~~and~~]

5264 (c) a statement that the group master policy determines governing contractual  
5265 provisions[-]; and

5266 (d) a statement that any long-term care inflation protection option required by rule is not

5267 available under the policy.

5268 (7) If an application for a long-term care contract or certificate is approved, the issuer shall  
5269 deliver the contract or certificate of insurance to the applicant no later than 30 days after the date  
5270 of approval.

5271 [~~7~~] (8) At the time of policy delivery, a policy summary shall be delivered for an  
5272 individual life insurance policy which provides long-term care benefits within the policy or by  
5273 rider. In the case of direct response solicitations, the insurer shall deliver the policy summary upon  
5274 the applicant's request. However, the insurer shall deliver the summary to the applicant no later  
5275 than at the time of policy delivery regardless of request. In addition to complying with all  
5276 applicable requirements, the summary shall also include:

5277 (a) an explanation of how the long-term care benefit interacts with other components of  
5278 the policy, including deductions from death benefits;

5279 (b) an illustration for each covered person of the amount of benefits, the length of benefit,  
5280 and the guaranteed lifetime benefits if any;

5281 (c) any exclusions, reductions, and limitations on benefits of long-term care; and

5282 (d) if applicable to the policy type, the summary shall also include:

5283 (i) a disclosure of the effects of exercising other rights under the policy;

5284 (ii) a disclosure of guarantees related to long-term care costs of insurance charges; and

5285 (iii) current and projected maximum lifetime benefits.

5286 (9) The provisions of the policy summary required under Subsection (8) may be  
5287 incorporated into:

5288 (a) a basic illustration; or

5289 (b) the life insurance policy summary required to be delivered in accordance with rule.

5290 Section 129. Section **31A-22-1411** is amended to read:

5291 **31A-22-1411. Incontestability period.**

5292 (1) For a policy or certificate that has been in force for less than six months, an insurer may  
5293 rescind a long-term care insurance policy or certificate upon a showing of misrepresentation that  
5294 is material to the acceptance for coverage.

5295 (2) For a policy or certificate that has been in force for at least six months but less than two  
5296 years, an insurer may rescind a long-term care insurance policy or certificate upon a showing of  
5297 misrepresentation that:

5298 (a) is material to the acceptance for coverage; and

5299 (b) pertains to the condition for which benefits are sought.

5300 (3) If an insurer has paid benefits under a long-term care insurance policy or certificate,  
5301 the benefit payments may not be recovered by the insurer if the policy or certificate is rescinded.

5302 (4) (a) In the event of the death of the insured:

5303 (i) this section may not apply to the remaining death benefit of a life insurance policy or  
5304 certificate that accelerates benefits for long-term care; and

5305 (ii) the remaining death benefits under the policy or certificate shall be governed by  
5306 Section 31A-22-403 or 31A-22-514.

5307 (b) In a situation other than a situation described in Subsection (4)(a), this section shall  
5308 apply to life insurance policies or certificates that accelerate benefits for long-term care.

5309 Section 130. Section **31A-22-1412** is amended to read:

5310 **31A-22-1412. Nonforfeiture benefits.**

5311 (1) (a) A long-term care insurance policy or certificate may not be delivered or issued for  
5312 delivery in this state unless the ~~[issuer of the policy or certificate offers nonforfeiture benefits to~~  
5313 ~~the defaulting or surrendering policyholder or certificate holder]~~ policyholder or certificate holder  
5314 has been offered the option of purchasing a policy or certificate including a nonforfeiture benefit.

5315 (b) The offer of a nonforfeiture benefit under Subsection (1)(a) may be in the form of a  
5316 rider that is attached to the policy.

5317 (c) If the policyholder or certificate holder declines the nonforfeiture benefit offered under  
5318 this Subsection (1), the insurer shall provide a contingent benefit upon lapse of the policy or  
5319 certificate that is available for a specified period of time following a substantial increase in  
5320 premium rates.

5321 (d) (i) Except as provided in Subsection (1)(d)(ii), if a group long-term care insurance  
5322 policy is issued, the offer required in this Subsection (1) shall be made to the group policyholder.

5323 (ii) If the policy is issued to a group authorized under Section 31A-22-509, the offer  
5324 required under this Subsection (1) shall be made to each proposed certificate holder.

5325 (2) The commissioner shall make rules:

5326 (a) specifying the types of nonforfeiture benefits ~~[and]~~ to be offered as part of a long-term  
5327 care insurance policy or certificate;

5328 (b) specifying the standards for ~~[the]~~ nonforfeiture benefits ~~[to be included in the policies]~~

5329 ~~and certificates.]; and~~

5330 (c) regarding contingent benefits upon lapse, including a determination of:

5331 (i) the specified period of time during which a contingent benefit upon lapse will be  
5332 available as provided in Subsection (1); and

5333 (ii) the substantial premium rate increase that triggers a contingent benefit upon lapse as  
5334 provided in Subsection (1).

5335 Section 131. Section **31A-22-1413** is enacted to read:

5336 **31A-22-1413. Claim information.**

5337 If a claim under a long-term care insurance contract is denied, within 60 days of the date  
5338 a written request by the policyholder or a representative of a policyholder is filed with the insurer,  
5339 the insurer shall:

5340 (1) provide a written explanation of the reason for the denial; and

5341 (2) make available all information directly related to the denial.

5342 Section 132. Section **31A-22-1414** is enacted to read:

5343 **31A-22-1414. Marketing.**

5344 A policy or rider shall comply with this part if it is advertised, marketed, or offered as:

5345 (1) long-term care insurance; or

5346 (2) nursing home insurance.

5347 Section 133. Section **31A-23-101** is amended to read:

5348 **31A-23-101. Purposes.**

5349 The purposes of this chapter include:

5350 (1) promoting the professional competence of insurance agents, brokers, and consultants;

5351 (2) providing maximum freedom of marketing methods for insurance, consistent with the  
5352 interests of the Utah public;

5353 (3) preserving and encouraging competition at the consumer level; [~~and~~]

5354 (4) regulating insurance marketing practices in conformity with the general purposes of

5355 [~~the Insurance Code.~~] this title; and

5356 (5) governing the qualifications and procedures for the licensing of insurance producers.

5357 Section 134. Section **31A-23-102** is amended to read:

5358 **31A-23-102. Definitions.**

5359 As used in this chapter:

5360 ~~[(1) Except as provided in Subsection (2):]~~

5361 ~~[(a) "Escrow" is a license category that allows a person to conduct escrows, settlements,~~  
5362 ~~or closings on behalf of a title insurance agency or a title insurer.]~~

5363 ~~[(b) "Limited license" means a license that is issued for a specific product of insurance and~~  
5364 ~~limits an individual or agency to transact only for those products.]~~

5365 ~~[(c) "Search" is a license category that allows a person to issue title insurance~~  
5366 ~~commitments or policies on behalf of a title insurer.]~~

5367 ~~[(d) "Title marketing representative" means a person who:]~~

5368 ~~[(i) represents a title insurer in soliciting, requesting, or negotiating the placing of:]~~

5369 ~~[(A) title insurance; or]~~

5370 ~~[(B) escrow, settlement, or closing services; and]~~

5371 ~~[(ii) does not have a search or escrow license.]~~

5372 ~~[(2) The following persons are not acting as agents, brokers, title marketing~~  
5373 ~~representatives, or consultants when acting in the following capacities:]~~

5374 ~~[(a) any regular salaried officer, employee, or other representative of an insurer or licensee~~  
5375 ~~under this chapter who devotes substantially all of the officer's, employee's, or representative's~~  
5376 ~~working time to activities other than those described in Subsection (1) and Subsections~~  
5377 ~~31A-1-301(51), (52), and (54) including the clerical employees of persons required to be licensed~~  
5378 ~~under this chapter;]~~

5379 ~~[(b) a regular salaried officer or employee of a person seeking to purchase insurance, who~~  
5380 ~~receives no compensation that is directly dependent upon the amount of insurance coverage~~  
5381 ~~purchased;]~~

5382 ~~[(c) a person who gives incidental advice in the normal course of a business or professional~~  
5383 ~~activity, other than insurance consulting, if neither that person nor that person's employer receives~~  
5384 ~~direct or indirect compensation on account of any insurance transaction that results from that~~  
5385 ~~advice;]~~

5386 ~~[(d) a person who, without special compensation, performs incidental services for another~~  
5387 ~~at the other's request, without providing advice or technical or professional services of a kind~~  
5388 ~~normally provided by an agent, broker, or consultant;]~~

5389 ~~[(e) a holder of a group insurance policy, or any other person involved in mass marketing,~~  
5390 ~~but only:]~~

5391 ~~[(i) with respect to administrative activities in connection with that type of policy,~~  
5392 ~~including the collection of premiums; and]~~

5393 ~~[(ii) if the person receives no compensation for the activities described in Subsection~~  
5394 ~~(2)(c)(i) beyond reasonable expenses including a fair payment for the use of capital; and]~~

5395 ~~[(f) a person who gives advice or assistance without direct or indirect compensation or any~~  
5396 ~~expectation of direct or indirect compensation.]~~

5397 ~~[(3)]~~ (1) "Actuary" means a person who is a member in good standing of the American  
5398 Academy of Actuaries.

5399 ~~[(4)]~~ (2) "Agency" means a person other than an individual, and includes a sole  
5400 proprietorship by which a natural person does business under an assumed name.

5401 ~~[(5)]~~ (3) "Broker" means an insurance broker or any other person, firm, association, or  
5402 corporation that for any compensation, commission, or other thing of value acts or aids in any  
5403 manner in soliciting, negotiating, or procuring the making of any insurance contract on behalf of  
5404 an insured other than itself.

5405 ~~[(6)]~~ (4) "Bail bond agent" means ~~any~~ an individual:

5406 (a) appointed by an authorized bail bond surety insurer or appointed by a licensed bail  
5407 bond surety company to execute or countersign undertakings of bail in connection with judicial  
5408 proceedings; and

5409 (b) who receives or is promised money or other things of value for this service.

5410 ~~[(7)]~~ (5) "Captive insurer" means:

5411 (a) an insurance company owned by another organization whose exclusive purpose is to  
5412 insure risks of the parent organization and affiliated companies; or

5413 (b) in the case of groups and associations, an insurance organization owned by the insureds  
5414 whose exclusive purpose is to insure risks of member organizations, group members, and their  
5415 affiliates.

5416 ~~[(8)]~~ (6) "Controlled insurer" means a licensed insurer that is either directly or indirectly  
5417 controlled by a broker.

5418 ~~[(9)]~~ (7) "Controlling broker" means a broker who either directly or indirectly controls an  
5419 insurer.

5420 ~~[(10)]~~ (8) "Controlling person" means any person, firm, association, or corporation that  
5421 directly or indirectly has the power to direct or cause to be directed, the management, control, or

5422 activities of a reinsurance intermediary.

5423 (9) "Escrow" means a license category that allows a person to conduct escrows,

5424 settlements, or closings on behalf of:

5425 (a) a title insurance agency; or

5426 (b) a title insurer.

5427 (10) (a) "Financial institution" means:

5428 (i) a depository institution as defined in Section 7-1-103;

5429 (ii) any employee or agent of a depository institution; or

5430 (iii) any nondepository affiliate or subsidiary of a depository institution, if the

5431 nondepository affiliate or subsidiary is soliciting the sale or purchase of insurance:

5432 (A) recommended or sponsored by the depository institution;

5433 (B) on the premises of the depository institution; or

5434 (C) in connection with a product offering of the depository institution.

5435 (b) "Financial institution" does not include an insurance company.

5436 (11) "Home state" means any state or territory of the United States or the District of

5437 Columbia in which an insurance producer:

5438 (a) maintains the insurance producer's principal:

5439 (i) place of residence; or

5440 (ii) place of business; and

5441 (b) is licensed to act as an insurance producer.

5442 [(H)] (12) "Insurer" is as defined in Section 31A-1-301, except the following persons or  
5443 similar persons are not insurers for purposes of Part 6, Broker Controlled Insurers:

5444 (a) all risk retention groups as defined in:

5445 (i) the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499;

5446 (ii) the Risk Retention Act, 15 U.S.C. Sec. 3901 et seq.; and

5447 (iii) [~~Title 31A;~~] Chapter 15, Part II, Risk Retention Groups Act;

5448 (b) all residual market pools and joint underwriting authorities or associations; and

5449 (c) all captive insurers.

5450 (13) "License" is defined in Section 31A-1-301.

5451 (14) "Limited license" means a license that:

5452 (a) is issued for a specific product of insurance; and

- 5453 (b) limits an individual or agency to transact only for that product or insurance.
- 5454 (15) "Limited line insurance" includes:
- 5455 (a) bail bond;
- 5456 (b) credit life;
- 5457 (c) credit disability;
- 5458 (d) credit property;
- 5459 (e) credit unemployment;
- 5460 (f) involuntary unemployment;
- 5461 (g) legal expense;
- 5462 (h) mortgage life;
- 5463 (i) mortgage guaranty;
- 5464 (j) mortgage disability;
- 5465 (k) motor club;
- 5466 (l) rental car-related;
- 5467 (m) travel insurance; and
- 5468 (n) any other form of limited insurance or insurance offered in connection with an
- 5469 extension of credit that:
- 5470 (i) is limited to partially or wholly extinguishing that credit obligation; and
- 5471 (ii) the commissioner determines should be designated a form of limited line insurance.
- 5472 (16) (a) "Loan" means an agreement to:
- 5473 (i) lend money; or
- 5474 (ii) to finance goods or services.
- 5475 (b) "Loan" does not include any of the following:
- 5476 (i) the financing of insurance premiums;
- 5477 (ii) a loan from the cash value of an insurance policy; or
- 5478 (iii) a loan wholly collateralized by securities that are made by a broker or dealer registered
- 5479 in this state under Title 61, Chapter 1, Utah Uniform Securities Act.
- 5480 ~~[(12)]~~ (17) (a) "Managing general agent" means any person, firm, association, or
- 5481 corporation that:
- 5482 (i) manages all or part of the insurance business of an insurer, including the management
- 5483 of a separate division, department, or underwriting office;

5484 (ii) acts as an agent for the insurer whether it is known as a managing general agent,  
5485 manager, or other similar term;

5486 (iii) with or without the authority, either separately or together with affiliates, directly or  
5487 indirectly produces and underwrites an amount of gross direct written premium equal to, or more  
5488 than 5% of, the policyholder surplus as reported in the last annual statement of the insurer in any  
5489 one quarter or year; and

5490 (iv) [~~either~~] (A) adjusts or pays claims in excess of an amount determined by the  
5491 commissioner[;]; or [that]

5492 (B) negotiates reinsurance on behalf of the insurer.

5493 (b) Notwithstanding Subsection [~~(12)~~] (17)(a), the following persons may not be  
5494 considered as managing general agent for the purposes of this chapter:

5495 (i) an employee of the insurer;

5496 (ii) a [~~U.S.~~] United States manager of the United States branch of an alien insurer;

5497 (iii) an underwriting manager that, pursuant to contract:

5498 (A) manages all the insurance operations of the insurer;

5499 (B) is under common control with the insurer;

5500 (C) is subject to [~~Title 31A,~~] Chapter 16, Insurance Holding Companies; and

5501 (D) is not compensated based on the volume of premiums written; and

5502 (iv) the attorney-in-fact authorized by and acting for the subscribers of a reciprocal insurer  
5503 or inter-insurance exchange under powers of attorney.

5504 (18) "Negotiate" means the act of conferring directly with or offering advice directly to a  
5505 purchaser or prospective purchaser of a particular contract of insurance concerning any of the  
5506 substantive benefits, terms or conditions of the contract if the person engaged in that act:

5507 (a) sells insurance; or

5508 (b) obtains insurance from insurers for purchasers.

5509 [~~(13)~~] (19) "Producer" [is] means a person [who arranges for insurance coverages between  
5510 insureds and insurers] required to be licensed under the laws of this state to sell, solicit, or  
5511 negotiate insurance.

5512 [~~(14)~~] (20) "Qualified [~~U.S.~~] United States financial institution" means an institution that:

5513 (a) is organized or, in the case of a [~~U.S.~~] United States office of a foreign banking  
5514 organization licensed, under the laws of the United States or any state;

5515 (b) is regulated, supervised, and examined by [~~U.S.~~] United States federal or state  
5516 authorities having regulatory authority over banks and trust companies; and

5517 (c) [~~has been determined by either the commissioner, or the Securities Valuation Office~~  
5518 ~~of the National Association of Insurance Commissioners, to meet~~] meets the standards of financial  
5519 condition and standing that are considered necessary and appropriate to regulate the quality of  
5520 financial institutions whose letters of credit will be acceptable to the commissioner[~~;~~] as  
5521 determined by:

5522 (i) the commissioner; or

5523 (ii) the Securities Valuation Office of the National Association of Insurance  
5524 Commissioners.

5525 [~~(15)~~] (21) "Reinsurance intermediary" means a reinsurance intermediary-broker or a  
5526 reinsurance intermediary-manager as these terms are defined in Subsections [~~(16)~~] (22) and [~~(17)~~]  
5527 (23).

5528 [~~(16)~~] (22) "Reinsurance intermediary-broker" means a person other than an officer or  
5529 employee of the ceding insurer, firm, association, or corporation who solicits, negotiates, or places  
5530 reinsurance cessions or retrocessions on behalf of a ceding insurer without the authority or power  
5531 to bind reinsurance on behalf of the insurer.

5532 [~~(17)~~] (23) (a) "Reinsurance intermediary-manager" means a person, firm, association, or  
5533 corporation who:

5534 (i) has authority to bind or who manages all or part of the assumed reinsurance business  
5535 of a reinsurer, including the management of a separate division, department, or underwriting  
5536 office; and

5537 (ii) acts as an agent for the reinsurer whether the person, firm, association, or corporation  
5538 is known as a reinsurance intermediary-manager, manager, or other similar term.

5539 (b) Notwithstanding Subsection [~~(17)~~] (23)(a), the following persons may not be  
5540 considered reinsurance intermediary-managers for the purpose of this chapter with respect to the  
5541 reinsurer:

5542 (i) an employee of the reinsurer;

5543 (ii) a [~~U.S.~~] United States manager of the United States branch of an alien reinsurer;

5544 (iii) an underwriting manager that, pursuant to contract:

5545 (A) manages all the reinsurance operations of the reinsurer;

- 5546 (B) is under common control with the reinsurer;
- 5547 (C) is subject to [~~Title 31A,~~] Chapter 16, Insurance Holding Companies; and
- 5548 (D) is not compensated based on the volume of premiums written; and
- 5549 (iv) the manager of a group, association, pool, or organization of insurers that:
- 5550 (A) engage in joint underwriting or joint reinsurance; and
- 5551 (B) are subject to examination by the insurance commissioner of the state in which the
- 5552 manager's principal business office is located.
- 5553 ~~[(18)]~~ (24) "Reinsurer" means any person, firm, association, or corporation duly licensed
- 5554 in this state as an insurer with the authority to assume reinsurance.
- 5555 (25) "Search" means a license category that allows a person to issue title insurance
- 5556 commitments or policies on behalf of a title insurer.
- 5557 (26) "Sell" means to exchange a contract of insurance:
- 5558 (a) by any means;
- 5559 (b) for money or its equivalent; and
- 5560 (c) on behalf of an insurance company.
- 5561 (27) "Solicit" means:
- 5562 (a) attempting to sell insurance; or
- 5563 (b) asking or urging a person to apply:
- 5564 (i) for a particular kind of insurance; and
- 5565 (ii) from a particular insurance company.
- 5566 ~~[(19)]~~ (28) "Surplus lines broker" means a person licensed under Subsection
- 5567 31A-23-204(5) to place insurance with unauthorized insurers in accordance with Section
- 5568 31A-15-103.
- 5569 (29) "Terminate" means:
- 5570 (a) the cancellation of the relationship between:
- 5571 (i) an insurance producer; and
- 5572 (ii) a particular insurer; or
- 5573 (b) the termination of the producer's authority to transact insurance on behalf of a
- 5574 particular insurance company.
- 5575 (30) "Title marketing representative" means a person who:
- 5576 (a) represents a title insurer in soliciting, requesting, or negotiating the placing of:

5577 (i) title insurance; or

5578 (ii) escrow, settlement, or closing services; and

5579 (b) does not have a search or escrow license.

5580 ~~[(20)]~~ (31) "Underwrite" means the authority to accept or reject risk on behalf of the

5581 insurer.

5582 (32) "Uniform application" means the version of the National Association of Insurance

5583 Commissioner's uniform application for resident and nonresident producer licensing at the time

5584 the application is filed.

5585 (33) "Uniform business entity application" means the version of the National Association

5586 of Insurance Commissioner's uniform business entity application for resident and nonresident

5587 business entities at the time the application is filed.

5588 Section 135. Section **31A-23-201** is amended to read:

5589 **31A-23-201. Requirement of license.**

5590 (1) (a) Unless exempted from the licensing requirement under ~~[Subsection (2) or]~~ Section

5591 31A-23-201.5 or 31A-23-214, a person, including a financial institution may not perform, offer

5592 to perform, or advertise any service as an agent, broker, or consultant in Utah, without a valid

5593 license under Section 31A-23-203.

5594 (b) A person may not utilize the services of another as an agent, broker, or consultant if

5595 ~~[he]~~ that person knows or should know that the other does not have a license as required by law.

5596 ~~[(2) The commissioner may by rule exempt certain classes of persons from the license~~

5597 ~~requirement of Subsection (1) if either of these circumstances exist:]~~

5598 ~~[(a) the functions they perform do not require special competence, trustworthiness, or the~~

5599 ~~regulatory surveillance made possible by licensing; or]~~

5600 ~~[(b) other existing safeguards make regulation unnecessary.]~~

5601 (2) This part may not be construed to require an insurer to obtain an insurance producer

5602 license.

5603 (3) ~~[No]~~ An insurance contract is not invalid as a result of a violation of this section.

5604 Section 136. Section **31A-23-201.5** is enacted to read:

5605 **31A-23-201.5. Exceptions to licensing.**

5606 (1) The commissioner may not require a license as an insurance producer of:

5607 (a) an officer, director, or employee of an insurer or of an insurance producer if:

5608 (i) the officer, director, or employee does not receive any commission on a policy written  
5609 or sold to insure risks residing, located, or to be performed in this state; and  
5610 (ii) (A) the officer's, director's, or employee's activities are:  
5611 (I) executive, administrative, managerial, clerical, or a combination of these activities; and  
5612 (II) only indirectly related to the sale, solicitation, or negotiation of insurance;  
5613 (B) the officer's, director's, or employee's function relates to:  
5614 (I) underwriting;  
5615 (II) loss control;  
5616 (III) inspection; or  
5617 (IV) the processing, adjusting, investigating or settling of a claim on a contract of  
5618 insurance; or  
5619 (C) (I) the officer, director, or employee is acting in the capacity of a special agent or  
5620 agency supervisor assisting an insurance producer;  
5621 (II) the officer's, director's, or employee's activities are limited to providing technical  
5622 advice and assistance to a licensed insurance producer; and  
5623 (III) the officer's, director's, or employee's activities do not include the sale, solicitation,  
5624 or negotiation of insurance;  
5625 (b) a person who:  
5626 (i) is paid no commission for the services described in Subsection (1)(b)(ii); and  
5627 (ii) secures and furnishes information for the purpose of:  
5628 (A) group life insurance;  
5629 (B) group property and casualty insurance;  
5630 (C) group annuities;  
5631 (D) group or blanket accident and health insurance;  
5632 (E) enrolling individuals under plans;  
5633 (F) issuing certificates under plans; or  
5634 (G) otherwise assisting in administering plans;  
5635 (c) a person who:  
5636 (i) is paid no commission for the services described in Subsection (1)(c)(ii); and  
5637 (ii) performs administrative services related to mass marketed property and casualty  
5638 insurance;

- 5639 (d) (i) any of the following if the conditions of Subsection (1)(d)(ii) are met:
- 5640 (A) an employer or association; or
- 5641 (B) an officer, director, employee, or trustee of an employee trust plan;
- 5642 (ii) a person listed in Subsection (1)(d)(i):
- 5643 (A) to the extent that the employer, officer, employee, director, or trustee is engaged in the
- 5644 administration or operation of a program of employee benefits for:
- 5645 (I) the employer's or association's own employees; or
- 5646 (II) the employees of a subsidiary or affiliate of an employer or association;
- 5647 (B) the program involves the use of insurance issued by an insurer; and
- 5648 (C) the employer, association, officer, director, employee, or trustee is not in any manner
- 5649 compensated, directly or indirectly, by the company issuing the contract;
- 5650 (e) an employee of an insurer or organization employed by an insurer who:
- 5651 (i) is engaging in:
- 5652 (A) the inspection, rating, or classification of risks; or
- 5653 (B) the supervision of the training of insurance producers; and
- 5654 (ii) is not individually engaged in the sale, solicitation, or negotiation of insurance;
- 5655 (f) a person whose activities in this state are limited to advertising:
- 5656 (i) without the intent to solicit insurance in this state;
- 5657 (ii) through communications in mass media including:
- 5658 (A) a printed publication; or
- 5659 (B) a form of electronic mass media;
- 5660 (iii) that is distributed to residents outside of the state; and
- 5661 (iv) if the person does not sell, solicit, or negotiate insurance that would insure risks
- 5662 residing, located, or to be performed in this state;
- 5663 (g) a person who:
- 5664 (i) is not a resident of this state;
- 5665 (ii) sells, solicits, or negotiates a contract of insurance:
- 5666 (A) for commercial property and casualty risks to an insured with risks located in more
- 5667 than one state insured under that contract; and
- 5668 (B) insures risks located in a state in which the person is licensed as provided in
- 5669 Subsection (1)(g)(iii); and

5670 (iii) is licensed as an insurance producer to sell, solicit, or negotiate that insurance in the  
5671 state where the insured maintains its principal place of business;

5672 (h) if the employee does not sell, solicit, or receive a commission for a contract of  
5673 insurance, a salaried full-time employee who counsels or advises the employee's employer relating  
5674 to the insurance interests of:

5675 (i) the employer; or  
5676 (ii) a subsidiary or business affiliate of the employer; or  
5677 (i) an employee of an insurer or of an insurance producer if the employee:  
5678 (i) responds to requests from existing policyholders on existing policies;  
5679 (ii) is not directly compensated based on the volume of premiums that may result from the  
5680 services; and

5681 (iii) does not otherwise sell, solicit, or negotiate insurance.

5682 (2) The commissioner may by rule exempt a class of persons from the license requirement  
5683 of Subsection 31A-23-201(1) if:

5684 (a) the functions performed by the class of persons does not require:

5685 (i) special competence;  
5686 (ii) special trustworthiness; or  
5687 (iii) regulatory surveillance made possible by licensing; or  
5688 (b) other existing safeguards make regulation unnecessary.

5689 Section 137. Section **31A-23-202** is amended to read:

5690 **31A-23-202. Application for license.**

5691 (1) ~~The~~ (a) Subject to Subsection (2) the application for a resident license as an agent,  
5692 a broker, or a consultant shall be:

5693 (i) made to the commissioner on forms and in a manner ~~he~~ the commissioner prescribes[~~-~~  
5694 The]; and

5695 (ii) accompanied by an applicable fee that is not refunded if the application is denied; and  
5696 (b) the application for a nonresident license as an agent, a broker, or a consultant shall be:  
5697 (i) made on the uniform application; and  
5698 (ii) accompanied by an applicable fee that is not refunded if the application is denied.

5699 (2) An application described in Subsection (1) shall provide:  
5700 (a) information about the applicant's identity[;];

- 5701 (b) the applicant's:  
5702 (i) social security number[-]; or  
5703 (ii) federal employer identification number;  
5704 (c) the applicant's personal history, experience, education, and business record[-, and];  
5705 (d) if the applicant is a natural person, whether the applicant is 18 years of age or older;  
5706 (e) whether the applicant has committed an act that is a ground for denial, suspension, or  
5707 revocation as set forth in Section 31A-23-216; and  
5708 (f) any other information the commissioner reasonably requires.  
5709 (3) The commissioner may require any documents reasonably necessary to verify the  
5710 information contained in an application.  
5711 ~~[(2)]~~ (4) ~~[An applicant's social security number is a]~~ The following are private [record]  
5712 records under Subsection 63-2-302(1)(g)[-] an applicant's:  
5713 (a) social security number; or  
5714 (b) federal employer identification number.  
5715 Section 138. Section **31A-23-203** is amended to read:  
5716 **31A-23-203. General requirements for license issuance and renewal.**  
5717 (1) The commissioner shall issue or renew a license to act as an agent, broker, or  
5718 consultant to any person who, as to the license classification applied for under Section  
5719 31A-23-204:  
5720 (a) has satisfied the character requirements under Section 31A-23-205;  
5721 (b) has satisfied any applicable continuing education requirements under Section  
5722 31A-23-206;  
5723 (c) has satisfied any applicable examination requirements under Section 31A-23-207;  
5724 (d) has satisfied any applicable training period requirements under Section 31A-23-208;  
5725 (e) if a nonresident:  
5726 (i) has complied with Section 31A-23-209; and  
5727 (ii) holds an active similar license in that person's state of residence;  
5728 (f) as to applicants for licenses to act as title insurance agents, has satisfied the  
5729 requirements of Section 31A-23-211; and  
5730 (g) has paid the applicable fees under Section 31A-3-103.  
5731 (2) (a) This Subsection (2) applies to the following persons:

- 5732 (i) an applicant for a pending producer's license; or  
5733 (ii) a licensed producer.
- 5734 (b) A person described in Subsection (2)(a) shall report to the commissioner:  
5735 (i) any administrative action taken against the person:  
5736 (A) in another jurisdiction; or  
5737 (B) by another regulatory agency in this state; and  
5738 (ii) any criminal prosecution taken against the person in any jurisdiction.
- 5739 (c) The report required by Subsection (2)(b) shall:  
5740 (i) be filed:  
5741 (A) at the time the person files the application for a producer's license; or  
5742 (B) within 30 days of the initiation of an action or prosecution described in Subsection  
5743 (2)(b); and  
5744 (ii) include a copy of the complaint or other relevant legal documents related to the action  
5745 or prosecution described in Subsection (2)(b).
- 5746 [~~2~~] (3) (a) The department may request:  
5747 (i) criminal background information maintained pursuant to Title 53, Chapter 10, Part 2,  
5748 from the Bureau of Criminal Identification; and  
5749 (ii) complete Federal Bureau of Investigation criminal background checks through the  
5750 national criminal history system.
- 5751 (b) Information obtained by the department from the review of criminal history records  
5752 received under Subsection [~~2~~] (3)(a) shall be used by the department for the purposes of:  
5753 (i) determining if a person satisfies the character requirements under Section 31A-23-205  
5754 for issuance or renewal of a license;  
5755 (ii) determining if a person has failed to maintain the character requirements under Section  
5756 31A-23-205; and  
5757 (iii) preventing persons who violate the federal Violent Crime Control and Law  
5758 Enforcement Act of 1994, 18 U.S.C. Secs. 1033 and 1034, from engaging in the business of  
5759 insurance in the state.
- 5760 (c) If the department requests the criminal background information, the department shall:  
5761 (i) pay to the Department of Public Safety the costs incurred by the Department of Public  
5762 Safety in providing the department criminal background information under Subsection [~~2~~]

5763 ~~(3)~~(a)(i);

5764 (ii) pay to the Federal Bureau of Investigation the costs incurred by the Federal Bureau of  
5765 Investigation in providing the department criminal background information under Subsection~~[(2)]~~

5766 ~~(3)~~(a)(ii); and

5767 (iii) charge the person applying for a license or for renewal of a license a fee equal to the  
5768 aggregate of Subsections ~~[(2)]~~ ~~(3)~~(c)(i) and (ii).

5769 Section 139. Section **31A-23-204** is amended to read:

5770 **31A-23-204. License classifications.**

5771 [~~Licenses~~] A resident or nonresident license issued under this chapter shall be issued under  
5772 the classifications described under Subsections (1) through (6). These classifications are intended  
5773 to describe the matters to be considered under any education, examination, and training required  
5774 of license applicants under Sections 31A-23-206 through 31A-23-208.

5775 (1) [~~Agent~~] An agent and broker license [~~classifications include~~] classification includes:

5776 (a) life insurance, including nonvariable [~~annuities~~] contracts;

5777 (b) variable [~~annuities~~] contracts;

5778 (c) [~~disability~~] accident and health insurance, including contracts issued to policyholders  
5779 under Chapter 7 or 8;

5780 (d) property/liability insurance, which includes:

5781 (i) property insurance;

5782 (ii) liability insurance;

5783 (iii) surety and other bonds; and

5784 (iv) policies containing any combination of these coverages;

5785 (e) title insurance under one of the following categories:

5786 (i) search, including authority to act as a title marketing representative;

5787 (ii) escrow, including authority to act as a title marketing representative;

5788 (iii) search and escrow, including authority to act as a title marketing representative; and

5789 (iv) title marketing representative only; and

5790 (f) workers' compensation insurance.

5791 (2) [~~Limited~~] A limited license [~~product~~] classification includes:

5792 (a) credit life and credit [~~disability~~] accident and health insurance;

5793 (b) travel insurance;

- 5794 (c) motor club insurance;
- 5795 (d) car rental related insurance;
- 5796 (e) credit involuntary unemployment insurance [~~and~~];
- 5797 (f) credit property insurance;
- 5798 [~~(f)~~] (g) bail bond agent; and
- 5799 [~~(g)~~] (h) customer service representative.
- 5800 (3) [~~Consultant~~] A consultant license classification includes:
- 5801 (a) life insurance, including nonvariable [~~annuities~~] contracts;
- 5802 (b) variable [~~annuities~~] contracts;
- 5803 (c) [~~disability~~] accident and health insurance, including contracts issued to policyholders
- 5804 under Chapter 7 or 8;
- 5805 (d) property/liability insurance, which includes:
- 5806 (i) property insurance;
- 5807 (ii) liability insurance;
- 5808 (iii) surety and other bonds; and
- 5809 (iv) policies containing any combination of these coverages; and
- 5810 (e) workers' compensation insurance.
- 5811 (4) A holder of licenses under Subsections (1)(a) and (1)(c) has all qualifications necessary
- 5812 to act as a holder of a license under Subsection (2)(a).
- 5813 (5) (a) Upon satisfying the additional applicable requirements, a holder of a brokers license
- 5814 may obtain a license to act as a surplus lines broker.
- 5815 (b) A license to act as a surplus lines broker gives the holder the authority to arrange
- 5816 insurance contracts with unauthorized insurers under Section 31A-15-103, but only as to the types
- 5817 of insurance under Subsection (1) for which the broker holds a brokers license.
- 5818 (6) The commissioner may by rule recognize other agent, broker, limited license, or
- 5819 consultant license classifications as to kinds of insurance not listed under Subsections (1), (2), and
- 5820 (3).
- 5821 Section 140. Section **31A-23-206** is amended to read:
- 5822 **31A-23-206. Continuing education requirements -- Regulatory authority.**
- 5823 (1) The commissioner shall by rule prescribe the continuing education requirements for
- 5824 each class of agent's license under Subsection 31A-23-204(1), except that the commissioner may

5825 not impose a continuing education requirement on a holder of a license under:

5826 (a) Subsection 31A-23-204(2); or

5827 (b) a license classification other than under Subsection 31A-23-204(2) that is recognized  
5828 by the commissioner by rule as provided in Subsection 31A-23-204(6).

5829 (2) (a) The commissioner may not state a continuing education requirement in terms of  
5830 formal education.

5831 (b) The commissioner may state a continuing education requirement in terms of classroom  
5832 hours, or their equivalent, of insurance-related instruction received.

5833 (c) Insurance-related formal education may be a substitute, in whole or in part, for  
5834 classroom hours, or their equivalent, required under Subsection (2)(b).

5835 (3) (a) The commissioner shall impose continuing education requirements in accordance  
5836 with a two-year licensing period in which the licensee meets the requirements of this Subsection  
5837 (3).

5838 (b) Except as provided in Subsection (3)(c), for a two-year licensing period described in  
5839 Subsection (3)(a) the commissioner shall require that the licensee for each line of authority held  
5840 by the licensee:

5841 (i) receive six hours of continuing education; or

5842 (ii) pass a line of authority continuing education examination.

5843 (c) Notwithstanding Subsection (3)(b):

5844 (i) the commissioner may not require continuing education for more than four lines of  
5845 authority held by the licensee;

5846 (ii) the commissioner shall require:

5847 (A) a minimum of:

5848 (I) 12 hours of continuing education;

5849 (II) passage of two line of authority continuing education examinations; or

5850 (III) a combination of Subsections (3)(c)(ii)(A)(I) and (II);

5851 (B) that the minimum continuing education requirement of Subsection (3)(c)(ii)(A)

5852 include:

5853 (I) at least six hours or one line of authority continuing education examination for each line  
5854 of authority held by the licensee not to exceed four lines of authority held by the licensee; and

5855 (II) three hours of ethics training, which may be taken in place of three hours of the hours

5856 required for a line of authority.

5857 (d) (i) If a licensee completes the licensee's continuing education requirement without  
5858 taking a line of authority continuing education examination, the licensee shall complete at least ½  
5859 of the required hours through classroom hours of insurance-related instruction.

5860 (ii) The hours not completed through classroom hours in accordance with Subsection  
5861 (3)(d)(i) may be obtained through:

5862 (A) home study;

5863 (B) video tape;

5864 (C) experience credit; or

5865 (D) other method provided by rule.

5866 (e) (i) A licensee may obtain continuing education hours at any time during the two-year  
5867 licensing period.

5868 (ii) The licensee may not take a line of authority continuing education examination more  
5869 than 90 calendar days before the date on which the licensee's license is renewed.

5870 (f) The commissioner shall make rules for the content and procedures for line of authority  
5871 continuing education examinations.

5872 (g) (i) Beginning May 3, 1999, a licensee is exempt from continuing education  
5873 requirements under this section if:

5874 (A) as of April 1, 1990, the licensee has completed 20 years of licensure in good standing;

5875 (B) the licensee requests an exemption from the department; and

5876 (C) the department approves the exemption.

5877 (ii) If the department approves the exemption under Subsection (3)(g)(i), the licensee is  
5878 not required to apply again for the exemption.

5879 (h) A licensee with a variable [~~annuity~~] contract line of authority is exempt from the  
5880 requirement for continuing education for that line of authority so long as the:

5881 (i) National Association of Securities Dealers requires continuing education for licensees  
5882 having a securities license; and

5883 (ii) licensee complies with the National Association of Securities Dealers' continuing  
5884 education requirements for securities licensees.

5885 (i) The commissioner shall, by rule:

5886 (i) publish a list of insurance professional designations whose continuing education

5887 requirements can be used to meet the requirements for continuing education under Subsection  
5888 (3)(c); and

5889 (ii) authorize professional agent associations to:

5890 (A) offer qualified programs for all classes of licenses on a geographically accessible basis;

5891 and

5892 (B) collect reasonable fees for funding and administration of the continuing education  
5893 program, subject to the review and approval of the commissioner.

5894 (j) (i) The fees permitted under Subsection (3)(i)(ii) that are charged to fund and administer  
5895 the program shall reasonably relate to the costs of administering the program.

5896 (ii) Nothing in this section prohibits a provider of continuing education programs or  
5897 courses from charging fees for attendance at courses offered for continuing education credit.

5898 (iii) The fees permitted under Subsection (3)(i)(ii) that are charged for attendance at a  
5899 professional agent association program may be less for an association member, based on the  
5900 member's affiliation expense, but shall preserve the right of a nonmember to attend without  
5901 affiliation.

5902 (4) The commissioner shall designate courses, including those presented by insurers,  
5903 which satisfy the requirements of this section.

5904 (5) The requirements of this section apply only to applicants who are natural persons.

5905 ~~[(6) The commissioner may waive the requirements of this section as to any person who  
5906 has been an active insurance agent or broker in another state for two years immediately prior to  
5907 applying for a license in this state, but only if the applicant's state of residence has imposed upon  
5908 the applicant education requirements which are substantially as rigorous as those of this state.]~~

5909 (6) A nonresident producer is considered to have satisfied this state's continuing education  
5910 requirements if:

5911 (a) the nonresident producer satisfies the nonresident producer's home state's continuing  
5912 education requirements for a licensed insurance producer; and

5913 (b) on the same basis as under this Subsection (6) the nonresident producer's home state  
5914 considers satisfaction of Utah's continuing education requirements for a producer as satisfying the  
5915 continuing education requirements of the home state.

5916 Section 141. Section **31A-23-207** is amended to read:

5917 **31A-23-207. Examination requirements.**

5918 (1) (a) The commissioner may require applicants for any particular class of license under  
5919 Section 31A-23-204 to pass an examination as a requirement for a license, except that ~~[no]~~ an  
5920 examination may not be required of applicants for:

5921 (i) licenses under Subsection 31A-23-204(2); or

5922 (ii) other license classifications recognized by the commissioner by rule as provided in  
5923 Subsection 31A-23-204(6).

5924 (b) The examination described in Subsection (1)(a):

5925 (i) shall reasonably relate to the specific classes for which it is prescribed~~[-The~~  
5926 ~~examination]; and~~

5927 (ii) may be administered by the commissioner or as otherwise specified by rule.

5928 (2) The commissioner ~~[may]~~ shall waive the requirement of an examination for a  
5929 nonresident applicant who ~~[has held a similar license in his home state for the two years~~  
5930 ~~immediately preceding application in this state, but only if the applicant's state of residence has~~  
5931 ~~imposed upon the applicant examination requirements which are substantially as rigorous as those~~  
5932 ~~of this state.];~~

5933 (a) applies for an insurance producer license in this state;

5934 (b) has been licensed for the same line of authority in another state; and

5935 (c) (i) is licensed in the state described in Subsection (2)(b) at the time the applicant  
5936 applies for an insurance producer license in this state; or

5937 (ii) if the application is received within 90 days of the cancellation of the applicant's  
5938 previous license:

5939 (A) the prior state certifies that at the time of cancellation, the applicant was in good  
5940 standing in that state; or

5941 (B) the state's producer database records maintained by the National Association of  
5942 Insurance Commissioners or the National Association of Insurance Commissioner's affiliates or  
5943 subsidiaries, indicates that the producer is or was licensed in good standing for the line of authority  
5944 requested.

5945 (3) (a) To become a resident licensee in accordance with Sections 31A-23-202 and  
5946 31A-23-203, a person licensed as an insurance producer in another state who moves to this state  
5947 shall make application within 90 days of establishing legal residence in this state.

5948 (b) A person who becomes a resident licensee under Subsection (3)(a) may not be required

5949 to meet preclicensing education or examination requirements to obtain any line of authority  
5950 previously held in the prior state unless:

5951 (i) the prior state would require a prior resident of this state to meet the prior state's  
5952 preclicensing education or examination requirements to become a resident licensee; or

5953 (ii) the commissioner imposes the requirements by rule.

5954 ~~[(3)]~~ (4) This section's requirement may only be applied to applicants who are natural  
5955 persons.

5956 Section 142. Section **31A-23-209** is amended to read:

5957 **31A-23-209. Nonresident jurisdictional agreement.**

5958 ~~(1) (a) [Nonresident applicants for licenses under this chapter shall]~~ If a nonresident  
5959 license applicant has a valid license from the nonresident license applicant's home state and the  
5960 conditions of Subsection (1)(b) are met, the commissioner shall:

5961 (i) waive any license requirement for a license under this chapter; and

5962 (ii) issue the nonresident license applicant a nonresident producer license.

5963 (b) Subsection (1)(a) applies if:

5964 (i) the nonresident license applicant:

5965 (A) is licensed as a resident in the nonresident license applicant's home state at the time  
5966 the nonresident license applicant applies for a nonresident producer license;

5967 (B) has submitted the proper request for licensure;

5968 (C) has submitted to the commissioner:

5969 (I) the application for licensure that the nonresident license applicant submitted to the  
5970 applicant's home state; or

5971 (II) a completed uniform application; and

5972 (D) has paid the applicable fees under Section 31A-3-103;

5973 (ii) the nonresident license applicant's license in the applicant's home state is in good  
5974 standing; and

5975 (iii) the nonresident license applicant's home state awards nonresident producer licenses  
5976 to residents of this state on the same basis as this state awards licenses to residents of that home  
5977 state.

5978 (2) A nonresident applicant shall execute, in a form acceptable to the commissioner, an  
5979 agreement to be subject to the jurisdiction of the Utah commissioner and courts on any matter

5980 related to the applicant's insurance activities in this state, on the basis of:

5981        (a) service of process under Sections 31A-2-309 and 31A-2-310; or [other]

5982        (b) service authorized;

5983        (i) in the Utah Rules of Civil Procedure; or

5984        (ii) under Section 78-27-25.

5985        (3) The commissioner may verify the producer's licensing status through the producer  
5986 database maintained by:

5987        (a) the National Association of Insurance Commissioners; or

5988        (b) an affiliate or subsidiary of the National Association of Insurance Commissioners.

5989        (4) The commissioner may not assess a greater fee for an insurance license or related

5990 service to a person not residing in this state solely on the fact that the person does not reside in this  
5991 state.

5992        Section 143. Section **31A-23-211.7** is amended to read:

5993        **31A-23-211.7. Special requirements for variable annuity line of authority.**

5994        (1) Before applying for a variable [~~annuity~~] contracts line of authority, an agent, broker,  
5995 or consultant shall be licensed under Section 61-1-3 as a:

5996        (a) broker-dealer; or

5997        (b) agent.

5998        (2) An agent's, broker's, or consultant's variable [~~annuity~~] contracts line of authority is  
5999 revoked on the day on which an agent's, broker's, or consultant's license under Section 61-1-3 is  
6000 no longer valid.

6001        Section 144. Section **31A-23-212** is amended to read:

6002        **31A-23-212. Form and contents of license.**

6003        (1) Licenses issued under this chapter shall be in the form the commissioner prescribes and  
6004 shall set forth:

6005        (a) the name, address, and telephone number of the licensee;

6006        (b) the license classifications under Section 31A-23-204;

6007        (c) the date of license issuance; and

6008        (d) any other information the commissioner considers necessary.

6009        (2) An insurance producer doing business under any other name than the producer's legal  
6010 name shall notify the commissioner prior to using the assumed name in this state.

6011           ~~[(2)]~~ (3) (a) An agency shall be licensed as an agency if the agency acts as:

6012           (i) an agent;

6013           (ii) a broker;

6014           (iii) a surplus lines broker;

6015           (iv) a managing general agent; or

6016           (v) a consultant.

6017           (b) The agency license ~~[required]~~ issued under ~~[Subsections (2)]~~ Subsection (3)(a) shall  
6018 set forth the names of all natural persons licensed under this chapter who are authorized to act in  
6019 those capacities for the agency in this state.

6020           ~~[(3)]~~ (4) (a) So far as is practicable, the commissioner shall issue a single license to each  
6021 agent, broker, or consultant for a single fee.

6022           (b) For purposes of the fee described in Subsection (4)(a), the less expensive license is  
6023 included within the most expensive license.

6024           Section 145. Section **31A-23-216** is amended to read:

6025           **31A-23-216. Termination of license.**

6026           (1) A license issued under this chapter remains in force until:

6027           (a) revoked, suspended, or limited under Subsection (2);

6028           (b) lapsed under Subsection (3);

6029           (c) surrendered to and accepted by the commissioner; or

6030           (d) the licensee dies or is adjudicated incompetent as defined under Title 75, Chapter 5,  
6031 Part 3, Guardians of Incapacitated Persons or Part 4, Protection of Property of Persons Under  
6032 Disability and Minors.

6033           ~~[(2) (a) After an adjudicative proceeding under Title 63, Chapter 46b, Administrative~~  
6034 ~~Procedures Act, the commissioner may revoke, suspend, or limit in whole or in part the license of~~  
6035 ~~any agent, broker, surplus lines broker, or consultant who is found:]~~

6036           ~~[(i) to be unqualified;]~~

6037           ~~[(ii) to have violated an insurance statute, valid rule under Subsection 31A-2-201(3), or~~  
6038 ~~a valid order under Subsection 31A-2-201(4); or]~~

6039           ~~[(iii) if the licensee's methods and practices in the conduct of business endanger the~~  
6040 ~~legitimate interests of customers and the public.]~~

6041           ~~[(b) Every order suspending a license issued under this chapter shall specify the period for~~

6042 ~~which the suspension is effective, but in no event may the period exceed 12 months.]~~

6043 (2) (a) If the commissioner makes a finding under Subsection (2)(b), after an adjudicative  
6044 proceeding under Title 63, Chapter 46b, Administrative Procedures Act, the commissioner may:

6045 (i) revoke a license of an agent, broker, surplus lines broker, or consultant;

6046 (ii) suspend for a specified period of 12 months or less a license of an agent, broker,  
6047 surplus lines broker, or consultant; or

6048 (iii) limit in whole or in part the license of any agent, broker, surplus lines broker, or  
6049 consultant.

6050 (b) The commissioner may take an action described in Subsection (2)(a) if the  
6051 commissioner finds that the licensee:

6052 (i) is unqualified for a license under Section 31A-23-203;

6053 (ii) has violated:

6054 (A) an insurance statute;

6055 (B) a rule that is valid under Subsection 31A-2-201(3); or

6056 (C) an order that is valid under Subsection 31A-2-201(4);

6057 (iii) is insolvent or the subject of receivership, conservatorship, rehabilitation, or other  
6058 delinquency proceedings in any state;

6059 (iv) fails to pay any final judgment rendered against the person in this state within 60 days  
6060 after the day the judgment became final;

6061 (v) fails to meet the same good faith obligations in claims settlement that is required of  
6062 admitted insurers;

6063 (vi) is affiliated with and under the same general management or interlocking directorate  
6064 or ownership as another insurance producer that transacts business in this state without a license;

6065 (vii) refuses to be examined or to produce its accounts, records, and files for examination;

6066 (viii) has an officer who refuses to:

6067 (A) give information with respect to the administrator's affairs; or

6068 (B) perform any other legal obligation as to an examination;

6069 (ix) provided information in the license application that is:

6070 (A) incorrect;

6071 (B) misleading;

6072 (C) incomplete; or

- 6073 (D) materially untrue;
- 6074 (x) has violated any insurance law, valid rule, or valid order of another state's insurance
- 6075 department;
- 6076 (xi) has obtained or attempted to obtain a license through misrepresentation or fraud;
- 6077 (xii) has improperly withheld, misappropriated, or converted any monies or properties
- 6078 received in the course of doing insurance business;
- 6079 (xiii) has intentionally misrepresented the terms of an actual or proposed:
- 6080 (A) insurance contract; or
- 6081 (B) application for insurance;
- 6082 (xiv) has been convicted of a felony;
- 6083 (xv) has admitted or been found to have committed any insurance unfair trade practice or
- 6084 fraud;
- 6085 (xvi) in the conduct of business in this state or elsewhere has:
- 6086 (A) used fraudulent, coercive, or dishonest practices; or
- 6087 (B) demonstrated incompetence, untrustworthiness, or financial irresponsibility;
- 6088 (xvii) has had an insurance license, or its equivalent, denied, suspended, or revoked in any
- 6089 other state, province, district, or territory;
- 6090 (xviii) has forged another's name to:
- 6091 (A) an application for insurance; or
- 6092 (B) any document related to an insurance transaction;
- 6093 (xix) has improperly used notes or any other reference material to complete an
- 6094 examination for an insurance license;
- 6095 (xx) has knowingly accepted insurance business from an individual who is not licensed;
- 6096 (xxi) has failed to comply with an administrative or court order imposing a child support
- 6097 obligation;
- 6098 (xxii) has failed to:
- 6099 (A) pay state income tax; or
- 6100 (B) comply with any administrative or court order directing payment of state income tax;
- 6101 (xxiii) has violated or permitted others to violate the federal Violent Crime Control and
- 6102 Law Enforcement Act of 1994, 18 U.S.C. Secs. 1033 and 1034; or
- 6103 (xxiv) has engaged in methods and practices in the conduct of business that endanger the

6104 legitimate interests of customers and the public.

6105 (3) (a) Any license issued under this chapter shall lapse if the licensee fails to pay when  
6106 due a fee under Section 31A-3-103.

6107 (b) A licensee whose license lapses due to military service or some other extenuating  
6108 circumstances such as long-term medical disability may request:

6109 (i) reinstatement of the license; and

6110 (ii) waiver of any of the following imposed for failure to comply with renewal procedures:

6111 (A) an examination requirement;

6112 (B) a fine; or

6113 (C) other sanction imposed for failure to comply with renewal procedures.

6114 (c) The commissioner shall by rule prescribe the license renewal and reinstatement  
6115 procedures, in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

6116 (4) A licensee under this chapter whose license is suspended, revoked, or lapsed, but who  
6117 continues to act as a licensee, is subject to the penalties for acting as a licensee without a license.

6118 (5) Any person licensed in this state shall immediately report to the commissioner:

6119 (a) a suspension or revocation of that person's license in any other state, District of  
6120 Columbia, or territory of the United States;

6121 (b) the imposition of a disciplinary sanction imposed on that person by any other state,  
6122 District of Columbia, or territory of the United States; and

6123 (c) a judgment or injunction entered against that person on the basis of conduct involving  
6124 fraud, deceit, misrepresentation, or violation of an insurance law or rule.

6125 (6) An order revoking a license under Subsection (2) may specify a time, not to exceed five  
6126 years, within which the former licensee may not apply for a new license. If no time is specified,  
6127 the former licensee may not apply for a new license for five years without express approval by the  
6128 commissioner.

6129 (7) Any person whose license is suspended or revoked under Subsection (2) shall, when  
6130 the suspension ends or a new license is issued, pay all fees that would have been payable if the  
6131 license had not been suspended or revoked, unless the commissioner by order waives the payment  
6132 of the interim fees. If a new license is issued more than three years after the revocation of a similar  
6133 license, this subsection applies only to the fees that would have accrued during the three years  
6134 immediately following the revocation.

6135 (8) The division shall promptly withhold, suspend, restrict, or reinstate the use of a license  
6136 issued under this part if so ordered by a court.

6137 Section 146. Section **31A-23-218** is amended to read:

6138 **31A-23-218. Temporary insurance producer license -- Trustee for terminated**  
6139 **licensee's business.**

6140 (1) (a) [Upon the request of the spouse, guardian, conservator, or personal representative  
6141 of a deceased or disabled agent or broker, or upon the request of a person whose license has been  
6142 terminated under Section 31A-23-216, the commissioner may appoint a trustee to provide  
6143 continuing service to the insureds who procured insurance through the deceased, disabled, or  
6144 unlicensed person.] The commissioner may issue a temporary insurance producer license:

6145 (i) to a person listed in Subsection (1)(b):

6146 (A) if the commissioner considers that the temporary license is necessary:

6147 (I) for the servicing of an insurance business in the public interest; and

6148 (II) to provide continued service to the insureds who procured insurance in a circumstance  
6149 described in Subsection (1)(b);

6150 (B) for a period not to exceed 180 days; and

6151 (C) without requiring an examination; or

6152 (ii) in any other circumstance:

6153 (A) if the commissioner considers the public interest will best be served by issuing the  
6154 temporary license;

6155 (B) for a period not to exceed 180 days; and

6156 (C) without requiring an examination.

6157 (b) The commissioner may issue a temporary insurance producer license in accordance  
6158 with Subsection (1)(a) to:

6159 (i) the surviving spouse or court-appointed personal representative of a licensed insurance  
6160 producer who dies or becomes mentally or physically disabled to allow adequate time for:

6161 (A) the sale of the insurance business owned by the producer;

6162 (B) recovery or return of the producer to the business; or

6163 (C) the training and licensing of new personnel to operate the producer's business;

6164 (ii) to a member or employee of a business entity licensed as an insurance producer upon  
6165 the death or disability of an individual designated in:

6166 (A) the business entity application; or

6167 (B) the license; or

6168 (iii) the designee of a licensed insurance producer entering active service in the armed  
6169 forces of the United States of America.

6170 (2) If a person's license is terminated under Section 31A-23-216, the commissioner may  
6171 appoint a trustee to provide in the public interest continuing service to the insureds who procured  
6172 insurance through the person whose license is terminated:

6173 (a) at the request of the person whose license is terminated; or

6174 (b) upon the commissioner's own initiative.

6175 (3) This section does not apply if the deceased or disabled agent or broker [~~owned or owns~~  
6176 ~~no~~] does not or did not own any ownership interest in the accounts and associated expiration lists  
6177 [~~which~~] that were previously serviced by the agent or broker. [~~Any~~]

6178 (4) (a) A person issued a temporary license under Subsection (1) receives the license and  
6179 shall perform the duties under the license subject to the commissioner's authority to:

6180 (i) require a temporary licensee to have a suitable sponsor who:

6181 (A) is a licensed producer; and

6182 (B) assumes responsibility for all acts of the temporary licensee; or

6183 (ii) impose other requirements that are:

6184 (A) designed to protect the insureds and the public; and

6185 (B) similar to the condition described in Subsection (4)(a)(i).

6186 (b) A trustee appointed under [~~this section~~] Subsection (2) shall [~~receive his appointment~~]  
6187 be appointed and perform [~~his~~] the trustee's duties subject to the [~~following~~] terms and  
6188 conditions[?] described in Subsections (4)(b)(i) through (vi).

6189 [~~(f) Trustees~~] (i) (A) A trustee appointed under [~~this section~~] Subsection (2) shall be  
6190 licensed under this chapter to perform the services required by the trustor's clients.

6191 (B) When possible, the commissioner shall appoint a trustee who is no longer actively  
6192 engaged on [~~his~~] the trustee's own behalf in business as an agent or broker.

6193 (C) The commissioner shall only select [~~persons~~] a person to act as trustee who [~~are~~] is  
6194 trustworthy and competent to perform the necessary services.

6195 [~~(2)~~] (ii) (A) If the deceased, disabled, or unlicensed person for whom the trustee is acting  
6196 was an agent, the insurers through which the former agent's business was written shall cooperate

6197 with the trustee in allowing ~~[him]~~ the trustee to service the policies written through the insurer.

6198 (B) The trustee shall abide by the terms of the agency agreement between the former agent  
6199 and the issuing insurer, except that terms in those agreements terminating the agreement upon the  
6200 death, disability, or license termination of the former agent do not bar the trustee from continuing  
6201 to act under the agreement.

6202 ~~[(3)]~~ (iii) (A) The commissioner shall set the trustee's compensation, which:

6203 (I) may be stated in terms of a percentage of commissions~~[-, but which is required to]; and~~

6204 (II) shall be equitable.

6205 (B) The compensation shall be paid exclusively from:

6206 (I) the commissions generated by the former agent or broker's insurance accounts serviced  
6207 by the trustee; and ~~[from]~~

6208 (II) other funds the former agent or broker or ~~[his]~~ the agent's or broker's successor in  
6209 interest agree to pay.

6210 (C) The trustee has no special priority to commissions over the former agent or broker's  
6211 creditors.

6212 ~~[(4) Neither the]~~ (iv) (A) The commissioner ~~[nor]~~ or the state ~~[of Utah]~~ may not be held  
6213 liable for errors or omissions of:

6214 (I) the former agent or broker; or

6215 (II) the trustee.

6216 (B) The trustee may not be held liable for errors and omissions ~~[which]~~ that were caused  
6217 in any material way by the negligence of the former agent or broker.

6218 (C) The trustee may be held liable for errors and omissions which arise solely from the  
6219 trustee's negligence.

6220 (D) The trustee's compensation level shall be sufficient to allow the trustee to purchase  
6221 errors and omissions coverage, if that coverage is not provided the trustee by:

6222 (I) the former agent or broker; or ~~[his]~~

6223 (II) the agent's or broker's successor in interest.

6224 ~~[(5)]~~ (v) (A) It is a breach of the trustee's fiduciary duty to capture the accounts of trustor's  
6225 clients, either directly or indirectly.

6226 (B) The trustee may not purchase the accounts or expiration lists of the former agent or  
6227 broker, unless the commissioner expressly ratifies the terms of the sale.

- 6228           (C) The commissioner may adopt rules [~~which~~] that:
- 6229           (I) further define the trustee's fiduciary duties; and
- 6230           (II) explain how the trustee is to carry out [~~his~~] the trustee's responsibilities.
- 6231           [~~(6)~~] (vi) (A) The trust may be terminated by:
- 6232           (I) the commissioner; or [~~by~~]
- 6233           (II) the person that requested the trust be established.
- 6234           (B) The trust is terminated by written notice being delivered to:
- 6235           (I) the trustee; and
- 6236           (II) the commissioner.
- 6237           (5) (a) The commissioner may by order:
- 6238           (i) limit the authority of any temporary licensee or trustee in any way the commissioner
- 6239 considers necessary to protect insureds and the public; and
- 6240           (ii) revoke a temporary license or trustee's appointment if the commissioner finds that the
- 6241 insureds or the public are endangered.
- 6242           (b) A temporary license or trustee's appointment may not continue after the owner or
- 6243 personal representative disposes of the business.
- 6244           Section 147. Section **31A-23-302** is amended to read:
- 6245           **31A-23-302. Unfair marketing practices.**
- 6246           (1) (a) (i) [~~A person who is or should be licensed under this title, an employee or agent of~~
- 6247 ~~that licensee or person who should be licensed, a person whose primary interest is as a competitor~~
- 6248 ~~of a person licensed under this title, and a person on behalf of any of these persons] Any of the~~
- 6249 following may not make or cause to be made any communication that contains false or misleading
- 6250 information, relating to an insurance contract, any insurer, or other licensee under this title,
- 6251 including information that is false or misleading because it is incomplete[-]:
- 6252           (A) a person who is or should be licensed under this title;
- 6253           (B) an employee or agent of a person described in Subsection (1)(a)(i)(A);
- 6254           (C) a person whose primary interest is as a competitor of a person licensed under this title;
- 6255 and
- 6256           (D) a person on behalf of any of the persons listed in this Subsection (1)(a)(i).
- 6257           (ii) As used in this Subsection (1), "false or misleading information" includes:
- 6258           (A) assuring the nonobligatory payment of future dividends or refunds of unused

6259 premiums in any specific or approximate amounts, but reporting fully and accurately past  
6260 experience is not false or misleading information; and

6261 (B) with intent to deceive a person examining it, filing a report, making a false entry in a  
6262 record, or wilfully refraining from making a proper entry in a record.

6263 (iii) An insurer or other licensee under this title may not:

6264 (A) use any business name, slogan, emblem, or related device that is misleading or likely  
6265 to cause the insurer or other licensee to be mistaken for another insurer or other licensee already  
6266 in business[-]; or

6267 (B) use any advertisement or other insurance promotional material that would cause a  
6268 reasonable person to mistakenly believe that a state or federal government agency:

6269 (I) is responsible for the insurance sales activities of the person;

6270 (II) stands behind the credit of the person;

6271 (III) guarantees any returns on insurance products of or sold by the person; or

6272 (IV) is a source of payment of any insurance obligation of or sold by the person.

6273 (iv) A person who is not an insurer may not assume or use any name that deceptively  
6274 implies or suggests that it is an insurer.

6275 (v) A person other than persons licensed as health maintenance organizations under  
6276 Chapter 8 may not use the term "Health Maintenance Organization" or "HMO" in referring to  
6277 itself.

6278 (b) If an insurance agent or third party administrator distributes cards or documents,  
6279 exhibits a sign, or publishes an advertisement that violates Subsection (1) (a), with reference to a  
6280 particular insurer that the agent represents, or for whom the third party administrator processes  
6281 claims, and if the cards, documents, signs, or advertisements are supplied or approved by that  
6282 insurer, the agent's or the third party administrator's violation creates a rebuttable presumption that  
6283 the violation was also committed by the insurer.

6284 (2) (a) (i) An insurer or licensee under this chapter, or an officer or employee of either may  
6285 not induce any person to enter into or continue an insurance contract or to terminate an existing  
6286 insurance contract by offering benefits not specified in the policy to be issued or continued,  
6287 including premium or commission rebates.

6288 (ii) An insurer may not make or knowingly allow any agreement of insurance that is not  
6289 clearly expressed in the policy to be issued or renewed.

- 6290 (iii) Subsection (2)(a) does not preclude:
- 6291 (A) insurers from reducing premiums because of expense savings;
- 6292 (B) the usual kinds of social courtesies not related to particular transactions; or
- 6293 (C) an insurer from receiving premiums under an installment payment plan.
- 6294 (b) An agent, broker, or insurer may not absorb the tax under Section 31A-3-301.
- 6295 (c) (i) A title insurer or agent or any officer or employee of either may not pay, allow, give,
- 6296 or offer to pay, allow, or give, directly or indirectly, as an inducement to obtaining any title
- 6297 insurance business, any rebate, reduction, or abatement of any rate or charge made incident to the
- 6298 issuance of the insurance, any special favor or advantage not generally available to others, or any
- 6299 money or other consideration or material inducement.
- 6300 (ii) "Charge made incident to the issuance of the insurance" includes escrow, settlement,
- 6301 and closing charges, and any other services that are prescribed by the commissioner.
- 6302 (iii) An insured or any other person connected, directly or indirectly, with the transaction,
- 6303 including a mortgage lender, real estate broker, builder, attorney, or any officer, employee, or agent
- 6304 of any of them, may not knowingly receive or accept, directly or indirectly, any benefit referred
- 6305 to in Subsection (2)(c)(i).
- 6306 (3) (a) An insurer may not unfairly discriminate among policyholders by charging different
- 6307 premiums or by offering different terms of coverage, except on the basis of classifications related
- 6308 to the nature and the degree of the risk covered or the expenses involved.
- 6309 (b) Rates are not unfairly discriminatory if they are averaged broadly among persons
- 6310 insured under a group, blanket, or franchise policy, and the terms of those policies are not unfairly
- 6311 discriminatory merely because they are more favorable than in similar individual policies.
- 6312 (4) A person who is or should be licensed under this title, an employee or agent of that
- 6313 licensee or person who should be licensed, a person whose primary interest is as a competitor of
- 6314 a person licensed under this title, and one acting on behalf of any of these persons, may not commit
- 6315 or enter into any agreement to participate in any act of boycott, coercion, or intimidation that tends
- 6316 to produce an unreasonable restraint of the business of insurance or a monopoly in that business.
- 6317 (5) (a) A person may not restrict in the choice of an insurer or insurance agent or broker,
- 6318 another person who is required to pay for insurance as a condition for the conclusion of a contract
- 6319 or other transaction or for the exercise of any right under a contract. The person requiring the
- 6320 coverage may, however, reserve the right to disapprove the insurer or the coverage selected on

6321 reasonable grounds.

6322 (b) The form of corporate organization of an insurer authorized to do business in this state  
6323 is not a reasonable ground for disapproval, and the commissioner may by rule specify additional  
6324 grounds that are not reasonable. This Subsection (5) does not bar an insurer from declining an  
6325 application for insurance.

6326 (6) A person may not make any charge other than insurance premiums and premium  
6327 financing charges for the protection of property or of a security interest in property, as a condition  
6328 for obtaining, renewing, or continuing the financing of a purchase of the property or the lending  
6329 of money on the security of an interest in the property.

6330 (7) (a) An agent may not refuse or fail to return promptly all indicia of agency to the  
6331 principal on demand.

6332 (b) A licensee whose license is suspended, limited, or revoked under Section 31A-2-308,  
6333 31A-23-216, or 31A-23-217 may not refuse or fail to return the license to the commissioner on  
6334 demand.

6335 (8) A person may not engage in any other unfair method of competition or any other unfair  
6336 or deceptive act or practice in the business of insurance, as defined by the commissioner by rule,  
6337 after a finding that they are misleading, deceptive, unfairly discriminatory, provide an unfair  
6338 inducement, or unreasonably restrain competition.

6339 Section 148. Section **31A-23-303** is amended to read:

6340 **31A-23-303. Inherent unsuitability.**

6341 [~~In the event~~] (1) If the commissioner finds after a hearing that a certain type of [~~disability~~]  
6342 accident and health insurance, life insurance, or annuity product is inherently unsuitable for  
6343 persons of certain ages or in certain conditions of health, the commissioner shall [~~promulgate~~]  
6344 make a rule declaring [~~this disability~~] the accident and health insurance, life insurance, or annuity  
6345 product as inherently unsuitable for persons of certain ages or in certain conditions of health. [~~No~~  
6346 ~~disability~~]

6347 (2) An accident and health insurance, life insurance, or annuity product that is subject to  
6348 the rule may not be sold to a person for whom the product has been determined as inherently  
6349 unsuitable unless that person purchasing the product signs a receipt acknowledging having  
6350 received a statement [~~which~~] that expresses that the product has been determined by the  
6351 commissioner to be inherently unsuitable for persons of certain ages or in certain conditions of

6352 health.

6353           (3) Unless the insurer or its agent establishes that its sale of coverage [~~which~~] is  
6354 inconsistent with the rule made under Subsection (1) is due to excusable neglect, the purchaser  
6355 may treat the sale as voidable, if acted upon by the insured within a two-year period from the date  
6356 of sale.

6357           Section 149. Section **31A-23-307** is amended to read:

6358           **31A-23-307. Title insurance agents' business.**

6359           A title insurance agent may engage in the escrow, settlement, or closing business, or any  
6360 combination of such businesses, and operate as escrow, settlement, or closing agent provided that  
6361 all the following exist:

6362           (1) The title insurance agent is properly licensed under this chapter.

6363           (2) (a) (i) All funds deposited with the agent in connection with any escrow, settlement,  
6364 or closing are deposited in a federally insured financial institution in separate trust accounts, with  
6365 the funds being the property of the persons entitled to them under the provisions of the escrow,  
6366 settlement, or closing.

6367           (ii) The funds shall be segregated escrow by escrow, settlement by settlement, or closing  
6368 by closing in the records of the agent. [~~These funds~~]

6369           (iii) Earnings on funds held in escrow may be paid out of the escrow account to any person  
6370 in accordance with the provisions of the escrow agreement if the agreement does not otherwise  
6371 provide for payment of the earnings or any portion of the earnings on the escrow funds.

6372           (iv) Funds held in escrow:

6373           (A) are not subject to any debts of the agent; and

6374           (B) may only be used to fulfill the terms of the individual escrow, settlement, or closing  
6375 under which the funds were accepted. [~~None of the funds~~]

6376           (v) Funds held in escrow may be used until all conditions of the escrow, settlement, or  
6377 closing have been met.

6378           [~~(b) Any interest received on funds deposited with the agent in connection with any~~  
6379 ~~escrow, settlement, or closing shall be paid over to the depositing party to the escrow, settlement,~~  
6380 ~~or closing and may not be transferred to the account of the agent.]~~

6381           (b) Assets or property other than escrow funds received by an agent in accordance with an  
6382 escrow agreement shall be maintained in a manner that will:

6383 (i) reasonably preserve and protect the asset or property from loss, theft, or damages; and

6384 (ii) otherwise comply with all general duties and responsibilities of a fiduciary or bailee.

6385 (c) [No] A check may not be drawn, executed or dated, or funds otherwise disbursed

6386 unless the segregated escrow account from which funds are to be disbursed contains a sufficient

6387 credit balance consisting of collected or cleared funds at the time the check is drawn, executed or

6388 dated, or funds are otherwise disbursed.

6389 (d) As used in this Subsection (2), funds are considered to be "collected or cleared," and

6390 may be disbursed as follows:

6391 (i) cash may be disbursed on the same day it is deposited;

6392 (ii) wire transfers may be disbursed on the same day they are deposited;

6393 (iii) cashier's checks, certified checks, teller's checks, U.S. Postal Service money orders,

6394 and checks drawn on a Federal Reserve Bank or Federal Home Loan Bank may be disbursed on

6395 the day following the date of deposit; and

6396 (iv) other checks or deposits may be disbursed within the time limits provided under the

6397 Expedited Funds Availability Act, 12 U.S.C. Section 4001 et seq., as amended, and related

6398 regulations of the Federal Reserve System or upon written notification from the financial

6399 institution to which the funds have been deposited, that final settlement has occurred on the

6400 deposited item.

6401 (3) The title insurance agent shall maintain records of all receipts and disbursements of

6402 escrow, settlement, and closing funds.

6403 (4) The title insurance agent shall comply with any rules adopted by the commissioner

6404 governing escrows, settlements, or closings.

6405 Section 150. Section **31A-23-310** is amended to read:

6406 **31A-23-310. Trust obligation for funds collected.**

6407 (1) Every agent or broker is a trustee for all funds received or collected as an agent or

6408 broker for forwarding to insurers or to insureds. Except for amounts necessary to pay bank

6409 charges, and except for funds paid by insureds and belonging in part to the agent or broker as fees

6410 or commissions, an agent or broker may not commingle trust funds with the agent or broker's own

6411 funds or with funds held in any other capacity. Except as provided under Subsection (4), every

6412 agent or broker owes to insureds and insurers the fiduciary duties of a trustee with respect to

6413 money to be forwarded to insurers or insureds through the agent or broker. Unless the funds are

6414 sent to the appropriate payee by the close of the next business day after their receipt, the licensee  
6415 shall deposit them in an account authorized under Subsection (2). Funds so deposited shall remain  
6416 in an account authorized under Subsection (2) until sent to the appropriate payee.

6417 (2) Funds required to be deposited under Subsection (1) shall be deposited:

6418 (a) in a federally insured trust account with a financial institution located in this state; or

6419 (b) in some other account, approved by the commissioner by rule or order, providing safety  
6420 comparable to federally insured trust accounts.

6421 (3) It is not a violation of Subsection (2)(a) if the amounts in the accounts exceed the  
6422 amount of the federal insurance on the accounts.

6423 (4) A trust account into which funds are deposited may be interest bearing. [~~Except as~~  
6424 ~~provided under Subsection 31A-23-307(2)(b), the~~] The interest accrued on the account may be  
6425 paid to the agent or broker, so long as the agent or broker otherwise complies with this section and  
6426 with the contract with the insurer.

6427 (5) A financial institution or other organization holding trust funds under this section may  
6428 not offset or impound trust account funds against debts and obligations incurred by the agent or  
6429 broker.

6430 (6) Any licensee who, not being lawfully entitled thereto, diverts or appropriates any  
6431 portion of the funds held under Subsection (1) to the licensee's own use, is guilty of theft under  
6432 Title 76, Chapter 6, Part 4. Section 76-6-412 applies in determining the classification of the  
6433 offense. Sanctions under Section 31A-2-308 also apply.

6434 Section 151. Section **31A-23-312** is amended to read:

6435 **31A-23-312. Place of business and residence address -- Records.**

6436 (1) (a) All licensees under this chapter shall register with the commissioner the address  
6437 and telephone numbers of their principal place of business.

6438 (b) If the licensee is an individual, [~~he~~] in addition to complying with Subsection (1)(a)  
6439 the individual shall [~~also~~] provide [~~his~~] to the commissioner the individual's residence address and  
6440 telephone number. [~~Licensees~~]

6441 (c) A licensee shall notify the commissioner, in writing, within 30 days of any change of  
6442 address or telephone number.

6443 (2) (a) Except as provided under Subsection (3), every licensee under this chapter shall  
6444 keep at the principal place of business address registered under Subsection (1), [~~a record~~] separate

6445 and distinct books and records of all transactions consummated under the Utah license. [~~The~~  
6446 ~~record~~]

6447 (b) The books and records described in Subsection (2)(a) shall:

6448 (i) be in an organized form;

6449 (ii) be available to the commissioner for inspection upon reasonable notice; and [~~shall~~]

6450 (iii) include all of the following:

6451 [~~(a)~~] (A) if the licensee is an agent or broker:

6452 [~~(i)~~] (I) a record of each insurance contract procured by or issued through the licensee, with  
6453 the names of insurers and insureds, the amount of premium and commissions or other  
6454 compensation, and the subject of the insurance;

6455 [~~(ii)~~] (II) the names of any other agents or brokers from whom business is accepted, and  
6456 of persons to whom commissions or allowances of any kind are promised or paid; and

6457 (III) a record of all consumer complaints forwarded to the licensee by an insurance  
6458 regulator;

6459 [~~(b)~~] (B) if the licensee is a consultant, a record of each agreement outlining the work  
6460 performed and the fee for the work; and

6461 [~~(c)~~] (C) any additional information which:

6462 (I) is customary for a similar business[;]; or [~~which~~]

6463 (II) may reasonably be required by the commissioner by rule.

6464 (3) Subsection (2) is satisfied if the books and records specified in [~~that~~] Subsection (2)  
6465 can be obtained immediately from a central storage place or elsewhere by on-line computer  
6466 terminals located at the registered address.

6467 (4) An agent who represents only a single insurer satisfies Subsection (2) if the insurer  
6468 maintains the books and records pursuant to Subsection (2) at a place satisfying Subsections (1)  
6469 and (5).

6470 (5) (a) The books and records maintained [~~as to a transaction~~] under Subsection (2) or  
6471 Section 31A-23-313 shall be available for the inspection of the commissioner during all business  
6472 hours for a period of time after the date of the transaction as specified by the commissioner by rule,  
6473 but in no case for less than three years.

6474 (b) Discarding books and records after the applicable record retention period has expired  
6475 does not place the licensee in violation of a later-adopted longer record retention period.

6476 Section 152. Section **31A-23-316** is amended to read:

6477 **31A-23-316. Solicitations to loan applicants.**

6478 (1) (a) A person authorized to engage in insurance activities in this state, including a  
6479 financial institution, shall prominently disclose in writing the information described in Subsection  
6480 (1)(b) to a person seeking an extension of credit if:

6481 (i) the person authorized to engage in insurance activities also extends credit directly or  
6482 through a subsidiary or an affiliate;

6483 (ii) the person requires a customer to obtain insurance in connection with an extension of  
6484 credit; and

6485 (iii) the person offers to the person seeking an extension of credit the line of insurance  
6486 required in connection with the extension of credit.

6487 (b) The disclosure required by Subsection (1)(a) shall be in a form substantially similar  
6488 to the following. "You may obtain insurance required in connection with your extension of credit  
6489 from any insurance agent, broker, producer, or approved insurer that sells such insurance. Your  
6490 choice of insurance provider will not affect our credit decision or your credit terms."

6491 (c) The person shall make the required disclosure under this Subsection (1)[~~(a)~~]:

6492 (i) [~~at the time~~] prior to completion of any written application for an extension of credit;

6493 or

6494 (ii) if there is no written application, before the closing of the extension of credit.

6495 (2) (a) Prior to the sale of any insurance policy by any person listed in Subsection (2)(b)

6496 shall clearly and conspicuously disclose in writing to the customer that the insurance policy:

6497 (i) is not a deposit;

6498 (ii) is not insured by:

6499 (A) the Federal Deposit Insurance Corporation; or

6500 (B) when applicable, the National Credit Union Share Insurance Fund;

6501 (iii) is not guaranteed by the financial institution; and

6502 (iv) when appropriate, involves investment risk, including potential loss of principal.

6503 (b) Subsection (2)(a) applies to:

6504 (i) a financial institution;

6505 (ii) an employee of a financial institution;

6506 (iii) an agent of a financial institution; or

- 6507 (iv) a person soliciting the purchase of or selling insurance:  
6508 (A) on the premises of a financial institution;  
6509 (B) in connection with a product offering of a financial institution; or  
6510 (C) using a name or logo identifiable with a financial institution.
- 6511 ~~[(2)]~~ (3) (a) The ~~[disclosure]~~ disclosures required by ~~[Subsection (1)(c)(ii)]~~ Subsections  
6512 (1) and (2) may be in a verbal, electronic, or other unwritten form if a printed disclosure is  
6513 included with the first printed statement of terms and conditions of the extension of credit sent to  
6514 the person seeking the extension of credit.
- 6515 (b) A person required to make a disclosure under Subsection (1) or (2) shall obtain in a  
6516 separate document a written acknowledgment:
- 6517 (i) from the customer that the customer received a disclosure required by Subsection (1)  
6518 or (2);
- 6519 (ii) that includes:  
6520 (A) the date the customer received the disclosure; and  
6521 (B) the customer's:  
6522 (I) name;  
6523 (II) address; and  
6524 (III) account number; and  
6525 (iii) that is obtained:  
6526 (A) prior to completion of any written application for extension of credit; or  
6527 (B) if there is not written application, before the closing of the extension of credit.
- 6528 (4) (a) For a transaction described in Subsection (4)(b), a financial institution may not  
6529 condition the transaction on or require in connection with that transaction that the a customer  
6530 obtain insurance from:
- 6531 (i) the financial institution;  
6532 (ii) a subsidiary or affiliate of the financial institution; or  
6533 (iii) a particular insurer, agent, or broker.
- 6534 (b) Subsection (4)(a) applies to:  
6535 (i) an extension of credit;  
6536 (ii) the sale of a product or service that is equivalent to the extension of credit;  
6537 (iii) the lease or sale of property of any kind;

6538 (iv) furnishing any services; or  
6539 (v) fixing or varying the consideration for a transaction described in Subsections (4)(b)(i)  
6540 through (iv).

6541 (c) This Subsection (4) does not prohibit a financial institution from:  
6542 (i) engaging in any activity described in this section that would not violate Section 106 of  
6543 the Bank Holding Company Act Amendments of 1970, 15 U.S.C. 6801 et seq., as interpreted by  
6544 the Board of Governors of the Federal Reserve System; or  
6545 (ii) informing a customer or prospective customer that:  
6546 (A) insurance is required to obtain a loan or credit;  
6547 (B) loan or credit approval is contingent on the customer procuring acceptable insurance;  
6548 or  
6549 (C) insurance is available from the financial institution.

6550 (5) A financial institution may not:  
6551 (a) reject an insurance policy solely because the policy is issued or underwritten by a  
6552 person who is not associated with the financial institution or a subsidiary or affiliate of the  
6553 financial institution if the insurance is required in connection with a loan or extension of credit,  
6554 except that the financial institution may impose reasonable requirements concerning:  
6555 (i) the credit worthiness of the insurance provider; and  
6556 (ii) the scope of coverage chosen; or  
6557 (b) unless the charge is required when the financial institution, or a subsidiary or affiliate  
6558 of the financial institution is the licensed agent or broker providing the insurance, require a debtor,  
6559 insurer, insurance agent, or insurance broker to pay a separate charge in connection with:  
6560 (i) the handling of insurance that is required in connection with a loan or extension of  
6561 credit; or  
6562 (ii) providing a traditional financial institution product.

6563 (6) Other than credit insurance or flood insurance, if a customer obtains insurance as a  
6564 condition of obtaining credit:  
6565 (a) the credit and insurance transactions shall be completed through separate documents;  
6566 and  
6567 (b) the expense of insurance premiums may not be included in the primary credit  
6568 transaction without the express written consent of the customer.

6569            [~~(3)~~] (7) This section does not apply [~~when~~] if:

6570            (a) a person is contacting a person in the course of direct or mass marketing to a group of  
6571 persons in a manner that bears no relation to the person's application for an extension of credit or  
6572 credit decision; and

6573            (b) an agreement for the extension of credit is changed or extended, if the person who  
6574 originally sought the extension of credit is not required to purchase new or additional insurance.

6575            [~~(4)~~] (8) (a) For purposes of this section, "approved insurer" means an insurer that is  
6576 approved to issue insurance related to the extension of credit by the person that extends the credit.

6577            (b) The commissioner shall make rules establishing standards that govern the approval  
6578 under Subsection [~~(4)~~] (8)(a) of an insurer by a person that extends credit.

6579            Section 153. Section **31A-23-317** is enacted to read:

6580            **31A-23-317. Customer privacy.**

6581            (1) As used in this section:

6582            (a) "customer" means a person with an investment, security, deposit, trust, or credit  
6583 relationship with a financial institution; and

6584            (b) "insurance information" means information concerning:

6585            (i) the premiums, terms, and conditions of insurance coverage including:

6586            (A) expiration dates; and

6587            (B) rates; or

6588            (ii) insurance claims of a customer contained in the records of a financial institution.

6589            (2) Without the written consent of a customer, a financial institution may not use health  
6590 information obtained from the insurance records of the customer for any purpose other than for its  
6591 activities as a licensed agent or broker.

6592            (3) Except as provided in Subsection (4), without the written consent of the customer or  
6593 entity, a financial institution may not release the insurance information of a customer or entity for  
6594 the purpose of soliciting or selling insurance other than the insurance information of the financial  
6595 institution's:

6596            (a) officer;

6597            (b) director;

6598            (c) employee;

6599            (d) agent;

6600 (e) subsidiary; or

6601 (f) an affiliate.

6602 (4) A financial institution may:

6603 (a) transfer insurance information to an unaffiliated company, agent, or broker in  
6604 connection with:

6605 (i) transferring insurance in force on existing insureds of the financial institution; or

6606 (ii) a merger with or acquisition of an unaffiliated insurance company, agent, or broker;

6607 and

6608 (b) release insurance information as otherwise authorized by state or federal law.

6609 (5) The commissioner shall adopt rules to implement:

6610 (a) this section; or

6611 (b) the customer privacy provisions of the federal Gramm-Leach-Bliley Act of 1999, 15  
6612 U.S.C. 6801, et. seq.

6613 Section 154. Section **31A-23-404** is amended to read:

6614 **31A-23-404. Sharing commissions.**

6615 (1) (a) Except as provided in Subsection 31A-15-103(3), a licensee under this chapter or  
6616 an insurer may only pay consideration or reimburse out-of-pocket expenses to a person if the  
6617 licensee knows that the person is licensed under this chapter to act as an agent or broker in Utah  
6618 as to the particular type of insurance.

6619 (b) A person may only accept commission compensation or other compensation as an  
6620 agent, broker, or consultant that is directly or indirectly the result of any insurance transaction if  
6621 that person is licensed under this chapter to act as an agent or broker as to the particular type of  
6622 insurance.

6623 (2) (a) Except as provided in Section 31A-23-301, a consultant may not pay or receive any  
6624 commission or other compensation that is directly or indirectly the result of any insurance  
6625 transaction.

6626 (b) A consultant may share a consultant fee or other compensation received for consulting  
6627 services performed within Utah only with another consultant licensed under this chapter, and only  
6628 to the extent that the other consultant contributed to the services performed.

6629 (3) This section does not prohibit the payment of renewal commissions to former licensees  
6630 under this chapter, former Title 31, Chapter 17, or their successors in interest under a deferred

6631 compensation or agency sales agreement.

6632 (4) This section does not prohibit compensation paid to or received by an individual for  
6633 referral of a potential customer that seeks to purchase or obtain an opinion or advice on an  
6634 insurance product if:

6635 (a) the person is not licensed to sell insurance;

6636 (b) the person sells or provides opinions or advice on the product; and

6637 (c) the compensation does not depend on whether the referral results in a purchase or sale.

6638 [~~4~~] (5) In selling any policy of title insurance, no sharing of commissions under  
6639 Subsection (1) may occur if it will result in an unlawful rebate, or in compensation in connection  
6640 with controlled business, or in payment of a forwarding fee or finder's fee. A person may share  
6641 compensation for the issuance of a title insurance policy only to the extent that he contributed to  
6642 the search and examination of the title or other services connected with it.

6643 [~~5~~] (6) This section does not apply to bail bond agents or bail enforcement agents as  
6644 defined in Section 31A-35-102.

6645 Section 155. Section **31A-23-503** is amended to read:

6646 **31A-23-503. Duties of insurers.**

6647 (1) The insurer shall have on file an independent financial examination, in a form  
6648 acceptable to the commissioner, of each managing general agent with which it has done business.

6649 (2) If a managing general agent establishes loss reserves, the insurer shall annually obtain  
6650 the opinion of an actuary attesting to the adequacy of loss reserves established for losses incurred  
6651 and outstanding on business produced by the managing general agent. This is in addition to any  
6652 other required loss reserve certification.

6653 (3) The insurer shall at least semiannually conduct an on-site review of the underwriting  
6654 and claims processing operations of the managing general agent.

6655 (4) Binding authority for all reinsurance contracts or participation in insurance or  
6656 reinsurance syndicates shall rest with an officer of the insurer, who may not be affiliated with the  
6657 managing general agent.

6658 (5) Within 30 days after entering into or terminating a contract with a managing general  
6659 agent, the insurer shall provide written notification of the appointment or termination to the  
6660 commissioner. A notice of appointment of a managing general agent shall include:

6661 (a) a statement of duties that the applicant is expected to perform on behalf of the insurer;

6662 (b) the lines of insurance for which the applicant is to be authorized to act; and  
6663 (c) any other information the commissioner may request.  
6664 (6) An insurer shall review its books and records each quarter to determine if any producer,  
6665 as defined by Subsection 31A-23-102[~~(13)~~](20), has become a managing general agent as defined  
6666 in Subsection 31A-23-102[~~(12)~~](17). If the insurer determines that a producer has become a  
6667 managing general agent, the insurer shall promptly notify the producer and the commissioner of  
6668 the determination. The insurer and producer shall fully comply with the provisions of this chapter  
6669 within 30 days.

6670 (7) An insurer may not appoint officers, directors, employees, subproducers, or controlling  
6671 shareholders of its managing general agents to its board of directors. This Subsection (7) does not  
6672 apply to relationships governed by Title 31A, Chapter 16, Insurance Holding Companies, or  
6673 Chapter 23, Part 6, Broker Controlled Insurers, if it applies.

6674 Section 156. Section **31A-23-601** is amended to read:

6675 **31A-23-601. Applicability.**

6676 This part applies to licensed insurers, as defined in Subsection 31A-23-102[~~(11)~~](12),  
6677 which are either domiciled in this state or domiciled in a state that does not have a substantially  
6678 similar law. All provisions of Title 31A, Chapter 16, Insurance Holding Companies, to the extent  
6679 they are not superseded by this part, continue to apply to all parties within holding company  
6680 systems subject to this part.

6681 Section 157. Section **31A-23-702** is amended to read:

6682 **31A-23-702. Required contract provisions -- Reinsurance intermediary-broker.**

6683 Transactions between a reinsurance intermediary-broker and the insurer it represents in that  
6684 capacity may only be entered into pursuant to a written authorization, which specifies the  
6685 responsibilities of each party. The authorization shall, at a minimum, provide that the reinsurance  
6686 intermediary-broker:

- 6687 (1) may have his authority terminated by the insurer at any time;
- 6688 (2) will render accounts to the insurer accurately detailing all material transactions,  
6689 including information necessary to support all commissions, charges and other fees received by,  
6690 or owing to the reinsurance intermediary-broker, and that he will remit all funds due to the insurer  
6691 within 30 days of receipt;
- 6692 (3) shall hold, in a fiduciary capacity, all funds collected for the insurer's account in a bank,

6693 which is a qualified [~~U.S.~~] United States financial institution;

6694 (4) will comply with Section 31A-23-703;

6695 (5) will comply with the written standards established by the insurer for the cession or  
6696 retrocession of all risks; and

6697 (6) will disclose to the insurer any relationship with any reinsurer to which business will  
6698 be ceded or retroceded.

6699 Section 158. Section **31A-23-705** is amended to read:

6700 **31A-23-705. Required contract provisions -- Reinsurance intermediary-manager.**

6701 Transactions between a reinsurance intermediary-manager and the reinsurer it represents  
6702 in that capacity may only be entered into pursuant to a written contract, which specifies the  
6703 responsibilities of each party, and which shall be approved by the reinsurer's board of directors.

6704 At least 30 days before the reinsurer assumes or cedes business through the producer, a true copy  
6705 of the approved contract shall be filed with the commissioner for approval. The contract shall, at  
6706 a minimum, provide or require the following:

6707 (1) The reinsurer may terminate the contract for cause upon written notice to the  
6708 reinsurance intermediary-manager. The reinsurer may immediately suspend the authority of the  
6709 reinsurance intermediary-manager to assume or cede business during the pendency of any dispute  
6710 regarding the cause for termination.

6711 (2) The reinsurance intermediary-manager will render accounts to the reinsurer accurately  
6712 detailing all material transactions, including information necessary to support all commissions,  
6713 charges, and other fees received by, or owing to the reinsurance intermediary-manager, and he shall  
6714 remit all funds due under the contract to the reinsurer at least monthly.

6715 (3) All funds collected for the reinsurer's account will be held by the reinsurance  
6716 intermediary-manager in a fiduciary capacity in a bank which is a qualified [~~U.S.~~] United States  
6717 financial institution. The reinsurance intermediary-manager may retain no more than three months  
6718 estimated claims payments and allocated loss adjustment expenses. The reinsurance  
6719 intermediary-manager shall maintain a separate bank account for each reinsurer that it represents.

6720 (4) For at least ten years after expiration of each contract of reinsurance transacted by the  
6721 reinsurance intermediary-manager, he shall keep a complete record for each transactions showing:

6722 (a) the type of contract, limits, underwriting restrictions, classes of risks, and territory;

6723 (b) period of coverage, including effective and expiration dates, cancellation provisions

6724 and notice required of cancellation, and disposition of outstanding reserves on covered risks;

6725 (c) reporting and settlement requirements of balances;

6726 (d) rates used to compute the reinsurance premium;

6727 (e) names and addresses of reinsurers;

6728 (f) rates of all reinsurance commissions, including the commissions on any retrocessions  
6729 handled by the reinsurance intermediary-manager;

6730 (g) related correspondence and memoranda;

6731 (h) proof of placement;

6732 (i) details regarding retrocessions handled by the reinsurance intermediary-manager, as  
6733 permitted by Subsection 31A-23-707 (4), including the identity of retrocessionaires and percentage  
6734 of each contract assumed or ceded;

6735 (j) financial records, including premium and loss accounts; and

6736 (k) when the reinsurance intermediary-manager places a reinsurance contract on behalf of  
6737 a ceding insurer:

6738 (i) directly from any assuming reinsurer, written evidence that the assuming reinsurer has  
6739 agreed to assume the risk; or

6740 (ii) if placed through a representative of the assuming reinsurer, other than an employee,  
6741 written evidence that the reinsurer has delegated binding authority to the representative.

6742 (5) The reinsurer will have access and the right to copy all accounts and records  
6743 maintained by the reinsurance intermediary-manager which are related to its business, in a form  
6744 usable by the reinsurer.

6745 (6) The contract cannot be assigned in whole or in part by the reinsurance  
6746 intermediary-manager.

6747 (7) The reinsurance intermediary-manager will comply with the written underwriting and  
6748 rating standards established by the insurer for the acceptance, rejection, or cession of all risks.

6749 (8) The contract shall set forth the rates, terms, and purposes of commissions, charges, and  
6750 other fees which the reinsurance intermediary-manager may levy against the reinsurer.

6751 (9) If the contract permits the reinsurance intermediary-manager to settle claims on behalf  
6752 of the reinsurer:

6753 (a) All claims will be reported to the reinsurer in a timely manner.

6754 (b) A copy of the claim file will be sent to the reinsurer at its request or as soon as it

6755 becomes known that the claim:

6756 (i) has the potential to exceed the lesser of an amount determined by the commissioner or  
6757 the limit set by the reinsurer;

6758 (ii) involves a coverage dispute;

6759 (iii) may exceed the reinsurance intermediary-manager claims settlement authority;

6760 (iv) is open for more than six months; or

6761 (v) is closed by payment of the lesser of an amount set by the commissioner or an amount  
6762 set by the reinsurer.

6763 (c) All claim files will be the joint property of the reinsurer and reinsurance  
6764 intermediary-manager. However, upon an order of liquidation of the reinsurer the files shall  
6765 become the sole property of the reinsurer or its estate. The reinsurance intermediary-manager shall  
6766 have reasonable access to and the right to copy the files on a timely basis.

6767 (d) Any settlement authority granted to the reinsurance intermediary-manager may be  
6768 terminated for cause upon the reinsurer's written notice to the reinsurance intermediary-manager,  
6769 or upon the termination of the contract. The reinsurer may suspend the settlement authority during  
6770 the pendency of the dispute regarding the cause of termination.

6771 (10) If the contract provides for a sharing of interim profits by the reinsurance  
6772 intermediary-manager, that the contract shall provide interim profits will not be paid until one year  
6773 after the end of each underwriting period for property business and five years after the end of each  
6774 underwriting period for casualty business, or a later time period set by the commissioner for  
6775 specified lines of insurance, and not until the adequacy of reserves on remaining claims has been  
6776 verified pursuant to Subsection 31A-23-707 (3).

6777 (11) The reinsurance intermediary-manager will annually provide the reinsurer with a  
6778 statement of its financial condition prepared by an independent certified public accountant.

6779 (12) The reinsurer shall at least semi-annually conduct an on-site review of the  
6780 underwriting and claims processing operations of the reinsurance intermediary-manager.

6781 (13) The reinsurance intermediary-manager will disclose to the reinsurer any relationship  
6782 it has with any insurer prior to ceding or assuming any business with the insurer pursuant to this  
6783 contract.

6784 (14) Within the scope of its actual or apparent authority the acts of the reinsurance  
6785 intermediary-manager shall be considered to be the acts of the reinsurer on whose behalf it is

6786 acting.

6787 Section 159. Section **31A-25-102** is amended to read:

6788 **31A-25-102. Scope and purposes.**

6789 (1) This chapter applies to all third party administrators.

6790 (2) The purposes of this chapter include:

6791 (a) encouraging disclosure of contracts between insurers and third party administrators,  
6792 both to potential insureds and to the commissioner;

6793 (b) promoting the financial responsibility of [~~insurance~~] third party administrators;

6794 (c) subjecting persons administering insurance in Utah to the jurisdiction of the Utah  
6795 commissioner and courts; [~~and~~]

6796 (d) regulating [~~insurance~~] third party administrators' practices in conformity with the  
6797 general purposes of [~~the Insurance Code.~~] this title; and

6798 (e) governing the qualifications and procedures for the licensing of third party  
6799 administrators.

6800 Section 160. Section **31A-25-202** is amended to read:

6801 **31A-25-202. Application for license.**

6802 (1) (a) An application for a license as a third party administrator shall be:

6803 (i) made to the commissioner on forms and in a manner [~~he~~] the commissioner  
6804 prescribes[;]; and [~~be~~]

6805 (ii) accompanied by the applicable fee, which is not refundable if the application is denied.

6806 (b) The application for a license as a third party administrator shall:

6807 (i) state the applicant's:

6808 (A) social security number; or

6809 (B) federal employer identification number;

6810 (ii) provide information about:

6811 (A) the applicant's identity[;];

6812 (B) the applicant's personal history, experience, education, and business record[;];

6813 (C) if the applicant is a natural person, whether the applicant is 18 years of age or older;

6814 and

6815 (D) whether the applicant has committed an act that is a ground for denial, suspension, or

6816 revocation as set forth in Section 31A-25-208; and

6817 (iii) any other information as the commissioner reasonably requires.

6818 (2) The commissioner may require documents reasonably necessary to verify the  
6819 information contained in the application.

6820 (3) The following are private records under Subsection 63-2-302(1)(g):

6821 (a) an applicant's social security number; and

6822 (b) an applicant's federal employer identification number.

6823 Section 161. Section **31A-25-203** is amended to read:

6824 **31A-25-203. General requirements for license issuance.**

6825 (1) The commissioner shall issue a license to act as a third party administrator to any  
6826 person who has:

6827 (a) satisfied the character requirements under Section 31A-25-204;

6828 (b) satisfied the financial responsibility requirement under Section 31A-25-205;

6829 (c) if a nonresident, complied with Section 31A-25-206; and

6830 (d) paid the applicable fees under Section 31A-3-103.

6831 (2) The license of each third party administrator licensed under former Title 31, Chapter  
6832 15a, is continued under this chapter.

6833 (3) (a) This Subsection (3) applies to the following persons:

6834 (i) an applicant for a third party administrator's license; or

6835 (ii) a licensed third party administrator.

6836 (b) A person described in Subsection (3)(a) shall report to the commissioner:

6837 (i) any administrative action taken against the person:

6838 (A) in another jurisdiction; or

6839 (B) by another regulatory agency in this state; and

6840 (ii) any criminal prosecution taken against the person in any jurisdiction.

6841 (c) The report required by Subsection (3)(b) shall:

6842 (i) be filed:

6843 (A) at the time the person applies for a third party administrator's license; or

6844 (B) within 30 days of the initiation of an action or prosecution described in Subsection

6845 (3)(b); and

6846 (ii) include a copy of the complaint or other relevant legal documents related to the action

6847 or prosecution described in Subsection (3)(b).

6848 (4) (a) The department may request concerning a person applying for a third party  
6849 administrator's license:

6850 (i) criminal background information maintained pursuant to Title 53, Chapter 10, Part 2,  
6851 from the Bureau of Criminal Identification; and

6852 (ii) complete Federal Bureau of Investigation criminal background checks through the  
6853 national criminal history system.

6854 (b) Information obtained by the department from the review of criminal history records  
6855 received under Subsection (4)(a) shall be used by the department for the purposes of:

6856 (i) determining if a person satisfies the character requirements under Section 31A-25-204  
6857 for issuance or renewal of a license;

6858 (ii) determining if a person has failed to maintain the character requirements under Section  
6859 31A-25-204; and

6860 (iii) preventing persons who violate the federal Violent Crime Control and Law  
6861 Enforcement Act of 1994, 18 U.S.C. Secs. 1033 and 1034, from engaging in the business of  
6862 insurance in the state.

6863 (c) If the department requests the criminal background information, the department shall:

6864 (i) pay to the Department of Public Safety the costs incurred by the Department of Public  
6865 Safety in providing the department criminal background information under Subsection (4)(a)(i);

6866 (ii) pay to the Federal Bureau of Investigation the costs incurred by the Federal Bureau of  
6867 Investigation in providing the department criminal background information under Subsection  
6868 (4)(a)(ii); and

6869 (iii) charge the person applying for a license or for renewal of a license a fee equal to the  
6870 aggregate of Subsections (4)(c)(i) and (ii).

6871 Section 162. Section **31A-25-205** is amended to read:

6872 **31A-25-205. Financial responsibility.**

6873 (1) Every person licensed under this chapter shall, while licensed and for one year after  
6874 that date, maintain an insurance policy or surety bond, issued by an authorized insurer, in an  
6875 amount specified under Subsection (2), on a policy or contract form which is acceptable under  
6876 Subsection (3).

6877 (2) (a) Insurance policies or surety bonds satisfying the requirement of Subsection (1) shall  
6878 be in a face amount equal to at least 10% of the total funds handled by the administrator.

6879 However, no policy or bond under this ~~[subsection]~~ Subsection (2)(a) may be in a face amount of  
6880 less than \$5,000 nor more than \$500,000.

6881 (b) In fixing the policy or bond face amount under Subsection (2)(a), the total funds  
6882 handled is:

6883 (i) the greater of:

6884 (A) the premiums received during the previous calendar year; or

6885 (B) claims paid through the administrator during the previous calendar year~~[-];~~ or~~[-]~~

6886 (ii) if no funds were handled during the preceding year, the total funds reasonably  
6887 anticipated to be handled by the administrator during the current calendar year.

6888 (c) This section does not prohibit any person dealing with the administrator from requiring,  
6889 by contract, insurance coverage in amounts greater than required under this section.

6890 (3) Insurance policies or surety bonds issued to satisfy Subsection (1) shall be on forms  
6891 approved by the commissioner. The policies or bonds shall require the insurer to pay, up to the  
6892 policy or bond face amount, any judgment obtained by participants in or beneficiaries of plans  
6893 administered by the insured licensee which arise from the negligence or culpable acts of the  
6894 licensee or any employee or agent of the licensee in connection with the activities described under  
6895 Subsection 31A-1-301~~(90)~~(111). The commissioner may require that policies or bonds issued  
6896 to satisfy the requirements of this section require the insurer to give the commissioner 20 day prior  
6897 notice of policy cancellation.

6898 (4) The commissioner shall establish annual reporting requirements and forms to monitor  
6899 compliance with this section.

6900 (5) This section may not be construed as limiting any cause of action an insured would  
6901 otherwise have against the insurer.

6902 Section 163. Section **31A-25-206** is amended to read:

6903 **31A-25-206. Nonresident jurisdictional agreement.**

6904 (1) (a) [~~Nonresident applicants for licenses under this chapter~~] If a nonresident license  
6905 applicant has a valid license from the nonresident license applicant's home state and the conditions  
6906 of Subsection (1)(b) are met, the commissioner shall:

6907 (i) waive any license requirement for a license under this chapter; and

6908 (ii) issue the nonresident license applicant a nonresident third party administrator license.

6909 (b) Subsection (1)(a) applies if:

6910 (i) the nonresident license applicant:

6911 (A) is licensed as a resident in the nonresident license applicant's home state at the time  
6912 the nonresident license applicant applies for a nonresident third party administrator license;

6913 (B) has submitted the proper request for licensure;

6914 (C) has submitted to the commissioner:

6915 (I) the application for licensure that the nonresident license applicant submitted to the  
6916 applicant's home state; or

6917 (II) a completed uniform application; and

6918 (D) has paid the applicable fees under Section 31A-3-103;

6919 (ii) the nonresident license applicant's license in the applicant's home state is in good  
6920 standing; and

6921 (iii) the nonresident license applicant's home state awards nonresident third party  
6922 administrator licenses to residents of this state on the same basis as this state awards licenses to  
6923 residents of that home state.

6924 (2) A nonresident applicant shall execute in a form acceptable to the commissioner an  
6925 agreement to be subject to the jurisdiction of the Utah commissioner and courts on any matter  
6926 related to [his] the applicant's insurance activities in Utah, on the basis of:

6927 (a) service of process under Sections 31A-2-309 and 31A-2-310; or

6928 (b) other service authorized in the Utah Rules of Civil Procedure.

6929 (3) The commissioner may verify the third party administrator's licensing status through  
6930 the database maintained by:

6931 (a) the National Association of Insurance Commissioners; or

6932 (b) an affiliate or subsidiary of the National Association of Insurance Commissioners.

6933 (4) The commissioner may not assess a greater fee for an insurance license or related  
6934 service to a person not residing in this state based solely on the fact that the person does not reside  
6935 in this state.

6936 Section 164. Section **31A-25-207** is amended to read:

6937 **31A-25-207. Form and contents of license.**

6938 (1) Licenses issued under this chapter shall be in the form the commissioner prescribes and  
6939 shall set forth:

6940 [~~(1)~~] (a) the name, address, and telephone number of the licensee;

6941 [~~(2)~~] (b) the date of license issuance; and

6942 [~~(3)~~] (c) any other information the commissioner considers advisable.

6943 (2) A third party administrator doing business under any other name than the  
6944 administrator's legal name shall notify the commissioner prior to using the assumed name in this  
6945 state.

6946 (3) (a) An organization shall be licensed as an agency if the organization acts as a third  
6947 party administrator.

6948 (b) An agency license issued under Subsection (3)(a) shall set forth the names of all natural  
6949 persons licensed under this chapter who are authorized to act in those capacities for the  
6950 organization in this state.

6951 Section 165. Section **31A-25-208** is amended to read:

6952 **31A-25-208. Termination of license.**

6953 (1) A license issued under this chapter remains in force until:

6954 (a) revoked, suspended, or limited under Subsection (2);

6955 (b) lapsed under Subsection (3);

6956 (c) surrendered to and accepted by the commissioner; or

6957 (d) the licensee dies or is adjudicated incompetent as defined under Title 75, Chapter 5,  
6958 Part 3 or 4.

6959 (2) After [~~a hearing~~] an adjudicative proceeding under Title 63, Chapter 46b,  
6960 Administrative Procedures Act, the commissioner may revoke, suspend for a specified period of  
6961 [~~less than~~] 12 months or less, or limit in whole or in part the license of any administrator, found  
6962 to:

6963 (a) be unqualified for a license under Section 31A-25-203;

6964 (b) have violated an insurance statute, valid rule under Subsection 31A-2-201(3), or a valid  
6965 order under Subsection 31A-2-201(4);

6966 (c) be insolvent, or the subject of receivership, conservatorship, rehabilitation, or other  
6967 delinquency proceedings in any state;

6968 (d) have failed to pay any final judgment rendered against it in this state within 60 days  
6969 after the judgment became final;

6970 (e) have failed to meet the same good faith obligations in claims settlement as that required  
6971 of admitted insurers;

6972 (f) be affiliated with and under the same general management or interlocking directorate  
6973 or ownership as another administrator which transacts business in this state without a license; [or]

6974 (g) have refused to be examined or to produce its accounts, records, and files for  
6975 examination, or have officers who have refused to give information with respect to the  
6976 administrator's affairs or to perform any other legal obligation as to an examination; [or]

6977 (h) have provided incorrect, misleading, incomplete, or materially untrue information in  
6978 the license application;

6979 (i) have violated an insurance law, valid rule, or valid order of another state's insurance  
6980 department;

6981 (j) have obtained or attempted to obtain a license through misrepresentation or fraud;

6982 (k) have improperly withheld, misappropriated, or converted any monies or properties  
6983 received in the course of doing insurance business;

6984 (l) have intentionally misrepresented the terms of an actual or proposed insurance contract  
6985 or application for insurance;

6986 (m) have been convicted of a felony;

6987 (n) have admitted or been found to have committed any insurance unfair trade practice or  
6988 fraud;

6989 (o) have used fraudulent, coercive, or dishonest practices in this state or elsewhere;

6990 (p) have demonstrated incompetence, untrustworthiness, or financial irresponsibility in the  
6991 conduct of business in this state or elsewhere;

6992 (q) have had an insurance license or its equivalent, denied, suspended, or revoked in any  
6993 other state, province, district, or territory;

6994 (r) have forged another's name to:

6995 (i) an application for insurance; or

6996 (ii) a document related to an insurance transaction;

6997 (s) have improperly used notes or any other reference material to complete an examination  
6998 for an insurance license;

6999 (t) have knowingly accepted insurance business from an individual who is not licensed;

7000 (u) have failed to comply with an administrative or court order imposing a child support  
7001 obligation;

7002 (v) have failed to:

7003           (i) pay state income tax; or

7004           (ii) comply with any administrative or court order directing payment of state income tax;

7005           (w) have violated or permitted others to violate the federal Violent Crime Control and Law

7006 Enforcement Act of 1994, 18 U.S.C. Secs. 1033 and 1034; or

7007           ~~[(h)]~~ (x) have engaged in methods and practices in the conduct of business [which] that

7008 endanger the legitimate interests of customers and the public.

7009           (3) (a) Any license issued under this chapter lapses if the licensee fails to:

7010           (i) pay the fee due under Section 31A-3-103[;]; or [if the licensee fails to]

7011           (ii) produce, when due, evidence of compliance with the financial responsibility

7012 requirement under Section 31A-25-205. [A]

7013           (b) Subject to Subsection (3)(c) a license [which] that has lapsed under this Subsection (3)

7014 may be reinstated if the licensee[~~, within 90 days after license lapse;~~] cures the deficiency or

7015 deficiencies [which] that brought about the license lapse within 90 days after the date the license

7016 lapsed.

7017           (c) The licensee shall pay twice the applicable license renewal fee if the cause of the

7018 license lapse was failure to pay the usual renewal fee.

7019           (4) Notwithstanding Subsection (3), a licensee whose license lapses due to military service

7020 or some other extenuating circumstance such as a long-term medical disability may request:

7021           (a) reinstatement; and

7022           (b) a waiver of any of the following imposed for failure to comply with renewal

7023 procedures:

7024           (i) an examination requirement;

7025           (ii) a fine; or

7026           (iii) other sanction.

7027           (5) The commissioner shall by rule prescribe the license renewal and reinstatement

7028 procedures, in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

7029           ~~[(4)]~~ (6) A licensee under this chapter whose license is suspended, revoked, or lapsed, but

7030 who continues to act as a licensee, is subject to the penalties for acting as an administrator without

7031 a license.

7032           ~~[(5)]~~ (7) An order revoking a license under Subsection (2) may specify a time, not to

7033 exceed five years, within which the former licensee may not apply for a new license. If no time

7034 is specified, the former licensee may not apply for five years without the express approval of the  
7035 commissioner.

7036 ~~[(6)]~~ (8) Any person whose license is suspended or revoked under Subsection (2) shall,  
7037 when the suspension ends or a new license is issued, pay all the fees that would have been payable  
7038 if the license had not been suspended or revoked, unless the commissioner by order waives the  
7039 payment of the interim fees. If a new license is issued more than three years after the revocation  
7040 of a similar license, this subsection applies only to the fees that would have accrued during the  
7041 three years immediately following the revocation.

7042 (9) If ordered by a court, the commissioner shall promptly withhold, suspend, restrict, or  
7043 reinstate the use of a license issued under this part.

7044 Section 166. Section **31A-26-101** is amended to read:

7045 **31A-26-101. Purposes.**

7046 The purposes of this chapter are:

- 7047 (1) to promote the professional competence of those engaged in claims adjusting;  
7048 (2) to encourage fair and rapid settlement of claims;  
7049 (3) to protect claimants under insurance policies from unfair claims adjustment practices;

7050 [and]

7051 (4) to prevent compensation arrangements for insurance adjusters that endanger the  
7052 fairness of claim settlements[-]; and

7053 (5) to govern the qualifications and procedures for the licensing of insurance adjusters.

7054 Section 167. Section **31A-26-202** is amended to read:

7055 **31A-26-202. Application for license.**

7056 (1) (a) The application for a license as an independent adjuster or public adjuster shall be:

7057 (i) made to the commissioner on forms and in a manner [he] the commissioner

7058 prescribes[-]; and

7059 (ii) accompanied by the applicable fee, which is not refunded if the application is denied.

7060 (b) The application shall provide:

7061 (i) information about the identity[-];

7062 (ii) the applicant's:

7063 (A) social security number[-]; or

7064 (B) federal employer identification number;

7065 (iii) the applicant's personal history, experience, education, and business record[, and];  
7066 (iv) if the applicant is a natural person, whether the applicant is 18 years of age or older;  
7067 (v) whether the applicant has committed an act that is a ground for denial, suspension, or  
7068 revocation as set forth in Section 31A-25-208; and  
7069 (vi) any other information as the commissioner reasonably requires.  
7070 (2) The commissioner may require documents reasonably necessary to verify the  
7071 information contained in the application.  
7072 ~~[(b)]~~ (3) [An applicant's social security number is a] The following are private [record]  
7073 records under Subsection 63-2-302(1)(g)[-]:  
7074 ~~[(2) Insurance adjusters' licenses issued under former Title 31 remain in effect until their~~  
7075 ~~expiration date, but they are subject to any requirement or limitation generally imposed under this~~  
7076 ~~title on similar licenses issued after July 1, 1986. Upon timely payment of the license continuation~~  
7077 ~~fee under Section 31A-3-103, the commissioner shall issue to adjusters licensed under the former~~  
7078 ~~title new licenses conforming to the provisions of this title and rules adopted under it.]~~  
7079 (a) the applicant's social security number; and  
7080 (b) the applicant's federal employer identification number.  
7081 Section 168. Section **31A-26-203** is amended to read:  
7082 **31A-26-203. Adjuster's license required.**  
7083 (1) The commissioner shall issue a license to act as an independent adjuster or public  
7084 adjuster to any person who, as to the license classification applied for under Section 31A-26-204,  
7085 has:  
7086 ~~[(1)]~~ (a) satisfied the character requirements under Section 31A-26-205;  
7087 ~~[(2)]~~ (b) satisfied the applicable continuing education requirements under Section  
7088 31A-26-206;  
7089 ~~[(3)]~~ (c) satisfied the applicable examination requirements under Section 31A-26-207;  
7090 ~~[(4)]~~ (d) if a nonresident, complied with Section 31A-26-208; and  
7091 ~~[(5)]~~ (e) paid the applicable fees under Section 31A-3-103.  
7092 (2) (a) This Subsection (2) applies to the following persons:  
7093 (i) an applicant for:  
7094 (A) an independent adjuster's license; or  
7095 (B) a public adjuster's license;

- 7096 (ii) a licensed independent adjuster; or  
7097 (iii) a licensed public adjuster.  
7098 (b) A person described in Subsection (2)(a) shall report to the commissioner:  
7099 (i) any administrative action taken against the person:  
7100 (A) in another jurisdiction; or  
7101 (B) by another regulatory agency in this state; and  
7102 (ii) any criminal prosecution taken against the person in any jurisdiction.  
7103 (c) The report required by Subsection (2)(b) shall:  
7104 (i) be filed:  
7105 (A) at the time the person applies for a third party administrator's license; or  
7106 (B) within 30 days of the initiation of an action or prosecution described in Subsection  
7107 (2)(b); and  
7108 (ii) include a copy of the complaint or other relevant legal documents related to the action  
7109 or prosecution described in Subsection (2)(b).  
7110 (3) (a) The department may request concerning a person applying for an independent or  
7111 public adjuster's license:  
7112 (i) criminal background information maintained pursuant to Title 53, Chapter 10, Part 2,  
7113 from the Bureau of Criminal Identification; and  
7114 (ii) complete Federal Bureau of Investigation criminal background checks through the  
7115 national criminal history system.  
7116 (b) Information obtained by the department from the review of criminal history records  
7117 received under Subsection (3)(a) shall be used by the department for the purposes of:  
7118 (i) determining if a person satisfies the character requirements under Section 31A-26-205  
7119 for issuance or renewal of a license;  
7120 (ii) determining if a person has failed to maintain the character requirements under Section  
7121 31A-25-204; and  
7122 (iii) preventing persons who violate the federal Violent Crime Control and Law  
7123 Enforcement Act of 1994, 18 U.S.C. Secs. 1033 and 1034, from engaging in the business of  
7124 insurance in the state.  
7125 (c) If the department requests the criminal background information, the department shall:  
7126 (i) pay to the Department of Public Safety the costs incurred by the Department of Public

7127 Safety in providing the department criminal background information under Subsection (3)(a)(i);  
7128 (ii) pay to the Federal Bureau of Investigation the costs incurred by the Federal Bureau of  
7129 Investigation in providing the department criminal background information under Subsection  
7130 (3)(a)(ii); and  
7131 (iii) charge the person applying for a license or for renewal of a license a fee equal to the  
7132 aggregate of Subsections (3)(c)(i) and (ii).

7133 Section 169. Section **31A-26-204** is amended to read:

7134 **31A-26-204. License classifications.**

7135 [Licenses] A resident or nonresident license issued under this chapter shall be issued under  
7136 the classifications described under Subsections (1), (2), and (3). These classifications are intended  
7137 to describe the matters to be considered under any prerequisite education and examination required  
7138 of license applicants under Sections 31A-26-206 and 31A-26-207.

7139 (1) Independent adjuster license classifications include:

7140 (a) [~~disability~~] accident and health insurance, including related service insurance under  
7141 Chapter 7 or 8;

7142 (b) property and liability insurance, which includes:

7143 (i) property insurance;

7144 (ii) liability insurance;

7145 (iii) surety bonds; and

7146 (iv) policies containing combinations or variations of these coverages;

7147 (c) service insurance;

7148 (d) title insurance;

7149 (e) credit insurance; and

7150 (f) workers' compensation insurance.

7151 (2) Public adjuster license classifications include:

7152 (a) [~~disability~~] accident and health insurance, including related service insurance under  
7153 Chapter 7 or 8;

7154 (b) property and liability insurance, which includes:

7155 (i) property insurance;

7156 (ii) liability insurance;

7157 (iii) surety bonds; and

7158 (iv) policies containing combinations or variations of these coverages;

7159 (c) service insurance;

7160 (d) title insurance;

7161 (e) credit insurance; and

7162 (f) workers' compensation insurance.

7163 (3) The commissioner may by rule recognize other independent adjuster or public adjuster

7164 license classifications as to other kinds of insurance not listed under Subsection (1). The

7165 commissioner may also by rule create license classifications which grant only part of the authority

7166 arising under another license class.

7167 Section 170. Section **31A-26-206** is amended to read:

7168 **31A-26-206. Continuing education requirements.**

7169 (1) The commissioner shall by rule prescribe continuing education requirements for each

7170 class of license under Section 31A-26-204.

7171 (2) (a) The commissioner shall impose continuing education requirements in accordance

7172 with a two-year licensing period in which the licensee meets the requirements of this Subsection

7173 (2).

7174 (b) Except as provided in Subsection (2)(c), for a two-year licensing period described in

7175 Subsection (2)(a) the commissioner shall require that the licensee for each line of authority held

7176 by the licensee:

7177 (i) receive six hours of continuing education; or

7178 (ii) pass a line of authority continuing education examination.

7179 (c) Notwithstanding Subsection (2)(b):

7180 (i) the commissioner may not require continuing education for more than four lines of

7181 authority held by the licensee;

7182 (ii) the commissioner shall require:

7183 (A) a minimum of:

7184 (I) 12 hours of continuing education;

7185 (II) passage of two line of authority continuing education examinations; or

7186 (III) a combination of Subsection (2)(c)(ii)(A)(I) and (II);

7187 (B) that the minimum continuing education requirement of Subsection (2)(c)(ii)(A)

7188 include:

7189 (I) at least six hours or one line of authority continuing education examination for each line  
7190 of authority held by the licensee not to exceed four lines of authority held by the licensee; and

7191 (II) three hours of ethics training, which may be taken in place of three hours of the hours  
7192 required for a line of authority.

7193 (d) (i) If a licensee completes the licensee's continuing education requirement without  
7194 taking a line of authority continuing education examination, the licensee shall complete at least  $\frac{1}{2}$   
7195 of the required hours through classroom hours of insurance-related instruction.

7196 (ii) The hours not completed through classroom hours in accordance with Subsection  
7197 (2)(d)(i) may be obtained through:

7198 (A) home study;

7199 (B) video tape;

7200 (C) experience credit; or

7201 (D) other method provided by rule.

7202 (e) (i) A licensee may obtain continuing education hours at any time during the two-year  
7203 licensing period.

7204 (ii) The licensee may not take a line of authority continuing education examination more  
7205 than 90 calendar days before the date on which the licensee's license is renewed.

7206 (f) The commissioner shall make rules for the content and procedures for line of authority  
7207 continuing education examinations.

7208 (g) (i) Beginning May 3, 1999, a licensee is exempt from the continuing education  
7209 requirements of this section if:

7210 (A) as of April 1, 1990, the licensee has completed 20 years of licensure in good standing;

7211 (B) the licensee requests an exemption from the department; and

7212 (C) the department approves the exemption.

7213 (ii) If the department approves the exemption under Subsection (2)(g)(i), the licensee is  
7214 not required to apply again for the exemption.

7215 (h) A licensee with a variable annuity line of authority is exempt from the requirement for  
7216 continuing education for that line of authority so long as:

7217 (i) the National Association of Securities Dealers requires continuing education for  
7218 licensees having a securities license; and

7219 (ii) the licensee complies with the National Association of Securities Dealers' continuing

7220 education requirements for securities licensees.

7221 (i) The commissioner shall by rule:

7222 (i) publish a list of insurance professional designations whose continuing education  
7223 requirements can be used to meet the requirements for continuing education under Subsection

7224 (2)(c); and

7225 (ii) authorize professional adjuster associations to:

7226 (A) offer qualified programs for all classes of licenses on a geographically accessible basis;

7227 and

7228 (B) collect reasonable fees for funding and administration of the continuing education  
7229 programs, subject to the review and approval of the commissioner.

7230 (j) (i) The fees permitted under Subsection (2)(i) that are charged to fund and administer  
7231 a program shall reasonably relate to the costs of administering the program.

7232 (ii) Nothing in this section shall prohibit a provider of continuing education programs or  
7233 courses from charging fees for attendance at courses offered for continuing education credit.

7234 (iii) The fees permitted under Subsection (2)(i)(ii) that are charged for attendance at an  
7235 association program may be less for an association member, based on the member's affiliation  
7236 expense, but shall preserve the right of a nonmember to attend without affiliation.

7237 (3) The requirements of this section apply only to licensees who are natural persons.

7238 (4) The requirements of this section do not apply to members of the Utah State Bar.

7239 (5) The commissioner shall designate courses that satisfy the requirements of this section,  
7240 including those presented by insurers.

7241 (6) A nonresident adjuster is considered to have satisfied this state's continuing education  
7242 requirements if:

7243 (a) the nonresident adjuster satisfies the nonresident producer's home state's continuing  
7244 education requirements for a licensed insurance adjuster; and

7245 (b) on the same basis the nonresident adjuster's home state considers satisfaction of Utah's  
7246 continuing education requirements for a producer as satisfying the continuing education  
7247 requirements of the home state.

7248 Section 171. Section **31A-26-207** is amended to read:

7249 **31A-26-207. Examination requirements.**

7250 (1) The commissioner may require applicants for any particular class of license under

7251 Section 31A-26-204 to pass an examination as a requirement to receiving a license. The  
7252 examination shall reasonably relate to the specific license class for which it is prescribed. The  
7253 examinations may be administered by the commissioner or as specified by rule.

7254 (2) The commissioner ~~[may]~~ shall waive the requirement of an examination for a  
7255 nonresident applicant who ~~[has held a similar license in his home state for the two years~~  
7256 ~~immediately preceding application in this state, but only if the applicant's state of residence has~~  
7257 ~~imposed upon the applicant examination requirements which are substantially as rigorous as those~~  
7258 ~~of this state.];~~

7259 (a) applies for an insurance adjuster license in this state;

7260 (b) has been licensed for the same line of authority in another state; and

7261 (c) (i) is licensed in the state described in Subsection (2)(b) at the time the applicant  
7262 applies for an insurance producer license in this state; or

7263 (ii) if the application is received within 90 days of the cancellation of the applicant's  
7264 previous license:

7265 (A) the prior state certifies that at the time of cancellation, the applicant was in good  
7266 standing in that state; or

7267 (B) the state's producer database records maintained by the National Association of  
7268 Insurance Commissioners or the National Association of Insurance Commissioner's affiliates or  
7269 subsidiaries, indicates that the producer is or was licensed in good standing for the line of authority  
7270 requested.

7271 (3) (a) To become a resident licensee in accordance with Sections 31A-26-202 and  
7272 31A-26-203, a person licensed as an insurance producer in another state who moves to this state  
7273 shall make application within 90 days of establishing legal residence in this state.

7274 (b) A person who becomes a resident licensee under Subsection (3)(a) may not be required  
7275 to meet prelicensing education or examination requirements to obtain any line of authority  
7276 previously held in the prior state unless:

7277 (i) the prior state would require a prior resident of this state to meet the prior state's  
7278 prelicensing education or examination requirements to become a resident licensee; or

7279 (ii) the commissioner imposes the requirements by rule.

7280 ~~[(3)]~~ (4) The requirements of this section only apply to applicants who are natural persons.

7281 ~~[(4)]~~ (5) The requirements of this section do not apply to members of the Utah State Bar.

7282 Section 172. Section **31A-26-208** is amended to read:

7283 **31A-26-208. Nonresident jurisdictional agreement.**

7284 (1) (a) [~~Nonresident applicants for licenses under this chapter~~] If a nonresident license  
7285 applicant has a valid license from the nonresident license applicant's home state and the conditions  
7286 of Subsection (1)(b) are met, the commissioner shall:

7287 (i) waive any license requirement for a license under this chapter; and

7288 (ii) issue the nonresident license applicant a nonresident adjuster's license.

7289 (b) Subsection (1)(a) applies if:

7290 (i) the nonresident license applicant:

7291 (A) is licensed as a resident in the nonresident license applicant's home state at the time  
7292 the nonresident license applicant applies for a nonresident adjuster license;

7293 (B) has submitted the proper request for licensure;

7294 (C) has submitted to the commissioner:

7295 (I) the application for licensure that the nonresident license applicant submitted to the  
7296 applicant's home state; or

7297 (II) a completed uniform application; and

7298 (D) has paid the applicable fees under Section 31A-3-103;

7299 (ii) the nonresident license applicant's license in the applicant's home state is in good  
7300 standing; and

7301 (iii) the nonresident license applicant's home state awards nonresident adjuster licenses to  
7302 residents of this state on the same basis as this state awards licenses to residents of that home state.

7303 (2) A nonresident applicant shall execute in a form acceptable to the commissioner an  
7304 agreement to be subject to the jurisdiction of the commissioner and courts of this state on any  
7305 matter related to [his] the adjuster's insurance activities in this state, on the basis of:

7306 (a) service of process under Sections 31A-2-309 and 31A-2-310; or

7307 (b) other service authorized under the Utah Rules of Civil Procedure or Section 78-27-25.

7308 (3) The commissioner may verify the third party administrator's licensing status through  
7309 the database maintained by:

7310 (a) the National Association of Insurance Commissioners; or

7311 (b) an affiliate or subsidiary of the National Association of Insurance Commissioners.

7312 (4) The commissioner may not assess a greater fee for an insurance license or related

7313 service to a person not residing in this state based solely on the fact that the person does not reside  
7314 in this state.

7315 Section 173. Section **31A-26-209** is amended to read:

7316 **31A-26-209. Form and contents of license.**

7317 (1) Licenses issued under this chapter shall be in the form the commissioner prescribes and  
7318 shall set forth:

7319 (a) the name, address, and telephone number of the licensee;

7320 (b) the license classifications under Section 31A-26-204;

7321 (c) the date of license issuance; and

7322 (d) any other information the commissioner considers advisable.

7323 (2) An adjuster doing business under any other name than the adjuster's legal name shall  
7324 notify the commissioner prior to using the assumed name in this state.

7325 ~~[(2)]~~ (3) (a) An organization [~~acting~~] shall be licensed as an agency if the organization acts  
7326 as:

7327 (i) an independent adjuster [~~shall be licensed under this chapter as an organization.~~]; or

7328 (ii) a public adjuster.

7329 (b) The [~~organization~~] agency license issued under Subsection (3)(a) shall set forth the  
7330 names of all natural persons licensed under this chapter who are authorized to act in those  
7331 capacities for the organization in this state.

7332 (3) (a) So far as is practicable, the commissioner shall issue a single license to each  
7333 licensed adjuster for a single fee.

7334 (b) For fee purposes, the less expensive license is [~~subsumed~~] included within the most  
7335 expensive license.

7336 Section 174. Section **31A-26-213** is amended to read:

7337 **31A-26-213. Termination of license.**

7338 (1) A license issued under this chapter remains in force until:

7339 (a) revoked, suspended, or limited under Subsection (2);

7340 (b) lapsed under Subsection (3);

7341 (c) surrendered to and accepted by the commissioner; or

7342 (d) the licensee dies or is adjudicated incompetent as defined under Title 75, Chapter 5,

7343 Part 3 or 4.

7344 ~~[(2) After a hearing, the commissioner may revoke, suspend, or limit in whole or in part~~  
7345 ~~the license of any person licensed under this chapter whom the commissioner finds is unqualified~~  
7346 ~~for his license or who has violated an insurance statute, valid rule under Subsection 31A-2-201(3),~~  
7347 ~~or a valid order under Subsection 31A-2-201(4), or if the licensee's methods and practices in the~~  
7348 ~~conduct of business endanger the legitimate interests of customers and the public. Every order~~  
7349 ~~suspending a license issued under this chapter shall specify the period for which the suspension~~  
7350 ~~is to be effective, but in no event may the period exceed 12 months.]~~

7351 (2) After an adjudicative proceeding under Title 63, Chapter 46b, Administrative  
7352 Procedures Act, the commissioner may revoke, suspend for a specified period of 12 months or less,  
7353 or limit in whole or in part the license of any adjuster, found to:

7354 (a) be unqualified for a license under Section 31A-26-203;

7355 (b) have violated:

7356 (i) an insurance statute;

7357 (ii) a valid rule under Subsection 31A-2-201(3); or

7358 (iii) a valid order under Subsection 31A-2-201(4);

7359 (c) be insolvent, or the subject of receivership, conservatorship, rehabilitation, or other  
7360 delinquency proceedings in any state;

7361 (d) fail to pay any final judgment rendered against it in this state within 60 days after the  
7362 judgment became final;

7363 (e) fail to meet the same good faith obligations in claims settlement as that required of  
7364 admitted insurers;

7365 (f) be affiliated with and under the same general management or interlocking directorate  
7366 or ownership as another adjuster which transacts business in this state without a license;

7367 (g) refuse to be examined or to produce its accounts, records, and files for examination;

7368 (h) have an officer who:

7369 (i) refuses to give information with respect to the administrator's affairs; or

7370 (ii) to perform any other legal obligation as to an examination;

7371 (i) have provided incorrect, misleading, incomplete, or materially untrue information in  
7372 the license application;

7373 (j) have violated any insurance law, valid rule, or valid order of another state's insurance  
7374 department;

7375 (k) have obtained or attempted to obtain a license through misrepresentation or fraud;

7376 (l) have improperly withheld, misappropriated, or converted any monies or properties

7377 received in the course of doing insurance business;

7378 (m) have intentionally misrepresented the terms of an actual or proposed insurance

7379 contract or application for insurance;

7380 (n) have been convicted of a felony;

7381 (o) have admitted or been found to have committed any insurance unfair trade practice or

7382 fraud;

7383 (p) have used fraudulent, coercive, or dishonest practices in the conduct of business in this

7384 state or elsewhere;

7385 (q) have demonstrated incompetence, untrustworthiness, or financial irresponsibility in the

7386 conduct of business in this state or elsewhere;

7387 (r) have had an insurance license, or its equivalent, denied, suspended, or revoked in any

7388 other state, province, district, or territory;

7389 (s) have forged another's name to:

7390 (i) an application for insurance; or

7391 (ii) any document related to an insurance transaction;

7392 (t) have improperly used notes or any other reference material to complete an examination

7393 for an insurance license;

7394 (u) have knowingly accepted insurance business from an individual who is not licensed;

7395 (v) have failed to comply with an administrative or court order imposing a child support

7396 obligation;

7397 (w) have failed to:

7398 (i) pay state income tax; or

7399 (ii) comply with any administrative or court order directing payment of state income tax;

7400 (x) have violated or permitted others to violate the federal Violent Crime Control and Law

7401 Enforcement Act of 1994, 18 U.S.C. Secs. 1033 and 1034; or

7402 (y) have engaged in methods and practices in the conduct of business which endanger the

7403 legitimate interests of customers and the public.

7404 (3) (a) Any license issued under this chapter lapses if the licensee fails to pay when due

7405 any fee under Section 31A-3-103.

7406 (b) A licensee whose license lapses due to military service or some other extenuating  
7407 circumstance such as a long-term medical disability may request:

7408 (i) reinstatement; and

7409 (ii) a waiver of any of the following imposed for failure to comply with renewal  
7410 procedures:

7411 (A) an examination requirement;

7412 (B) a fine; or

7413 (C) other sanction.

7414 (c) The commissioner shall by rule prescribe the license renewal and reinstatement  
7415 procedures, in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

7416 (4) A licensee under this chapter whose license is suspended, revoked, or lapsed, but who  
7417 continues to act as a licensee, is subject to the penalties for conducting an insurance business  
7418 without a license.

7419 (5) An order revoking a license under Subsection (2) may specify a time not to exceed five  
7420 years within which the former licensee may not apply for a new license. If no time is specified,  
7421 the former licensee may not apply for a new license for five years without the express approval of  
7422 the commissioner.

7423 (6) Any person whose license is suspended or revoked under Subsection (2) shall, when  
7424 the suspension ends or a new license is issued, pay all fees that would have been payable if the  
7425 license had not been suspended or revoked, unless the commissioner by order waives the payment  
7426 of the interim fees. If a new license is issued more than three years after the revocation of a similar  
7427 license, this subsection applies only to the fees that would have accrued during the three years  
7428 immediately following the revocation.

7429 (7) The division shall promptly withhold, suspend, restrict, or reinstate the use of a license  
7430 issued under this part if so ordered by a court.

7431 Section 175. Section **31A-26-215** is enacted to read:

7432 **31A-26-215. Temporary license -- Appointment of trustee for terminated licensee's**  
7433 **business.**

7434 (1) (a) The commissioner may issue a temporary insurance adjuster license:

7435 (i) to a person listed in Subsection (1)(b):

7436 (A) if the commissioner considers that the temporary license is necessary:

- 7437 (I) for the servicing of an insurance business in the public interest; and  
7438 (II) to provide continued service to the insureds who are being serviced in a circumstance  
7439 described in Subsection (1)(b);  
7440 (B) for a period not to exceed 180 days; and  
7441 (C) without requiring an examination; or  
7442 (ii) in any other circumstance:  
7443 (A) if the commissioner considers the public interest will best be served by issuing the  
7444 temporary license;  
7445 (B) for a period not to exceed 180 days; and  
7446 (C) without requiring an examination.  
7447 (b) The commissioner may issue a temporary insurance producer license in accordance  
7448 with Subsection (1)(a) to:  
7449 (i) the surviving spouse or court-appointed personal representative of a licensed insurance  
7450 adjuster who dies or becomes mentally or physically disabled to allow adequate time for:  
7451 (A) the sale of the insurance business owned by the adjuster;  
7452 (B) recovery or return of the adjuster to the business; or  
7453 (C) the training and licensing of new personnel to operate the adjuster's business;  
7454 (ii) to a member or employee of a business entity licensed as an insurance adjuster upon  
7455 the death or disability of an individual designated in:  
7456 (A) the business entity application; or  
7457 (B) the license; or  
7458 (iii) the designee of a licensed insurance adjuster entering active service in the armed  
7459 forces of the United States of America.  
7460 (2) If a person's license is terminated under Section 31A-26-213, the commissioner may  
7461 appoint a trustee to provide in the public interest continuing service to the insureds who procured  
7462 insurance through the person whose license is terminated:  
7463 (a) at the request of the person whose license is terminated; or  
7464 (b) upon the commissioner's own initiative.  
7465 (3) This section does not apply if the deceased or disabled adjuster has not owned or does  
7466 not own an ownership interest in the accounts and associated expiration lists that were previously  
7467 serviced by the adjuster.

7468 (4) (a) A person issued a temporary license under Subsection (1) receives the license and  
7469 shall perform the duties under the license subject to the commissioner's authority to:

7470 (i) require a temporary licensee to have a suitable sponsor who:

7471 (A) is a licensed producer; and

7472 (B) assumes responsibility for all acts of the temporary licensee; or

7473 (ii) impose other requirements that are:

7474 (A) designed to protect the insureds and the public; and

7475 (B) similar to the condition described in Subsection (4)(a)(i).

7476 (b) A trustee appointed under Subsection (2) shall receive the trustee's appointment and  
7477 perform the trustee's duties subject to the conditions listed in Subsections (4)(b)(i) through (xv).

7478 (i) A trustee appointed under this section shall be licensed under this chapter to perform  
7479 the services required by the trustor's clients.

7480 (ii) When possible, the commissioner shall appoint a trustee who is no longer actively  
7481 engaged on the trustee's own behalf in business as an adjuster.

7482 (iii) The commissioner shall only select a person to act as trustee who is trustworthy and  
7483 competent to perform the necessary services.

7484 (iv) If the deceased, disabled, or unlicensed person for whom the trustee is acting is an  
7485 associated adjuster, the insurers through or with which the former adjuster's business was  
7486 associated shall cooperate with the trustee in allowing the trustee to service the claims associated  
7487 with or through the insurer.

7488 (v) The trustee shall abide by the terms of any agreement between the former adjuster and  
7489 the associated insurer, except that terms in those agreements terminating the agreement upon the  
7490 death, disability, or license termination of the former agent do not bar the trustee from continuing  
7491 to act under the agreement.

7492 (vi) The commissioner shall set the trustee's compensation which:

7493 (A) may be stated in terms of a percentage of commissions;

7494 (B) shall be equitable; and

7495 (C) paid exclusively from:

7496 (I) the commissions generated by the former adjuster's accounts serviced by the trustee;

7497 and

7498 (II) other funds the former adjuster or the former adjuster's successor in interest agree to

- 7499 pay.
- 7500 (vii) The trustee has no special priority to commissions over the former adjuster's creditors.
- 7501 (viii) The following may not be held liable for errors or omissions of the former adjuster
- 7502 or the trustee:
- 7503 (A) the commissioner; or
- 7504 (B) the state.
- 7505 (ix) The trustee may not be held liable for errors and omissions that were caused in any
- 7506 material way by the negligence of the former adjuster.
- 7507 (x) The trustee may be held liable for errors and omissions that arise solely from the
- 7508 trustee's negligence.
- 7509 (xi) The trustee's compensation level shall be sufficient to allow the trustee to purchase
- 7510 errors and omissions coverage, if that coverage is not provided to the trustee by:
- 7511 (A) the former adjuster; or
- 7512 (B) the former adjuster's successor in interest.
- 7513 (xii) It is a breach of the trustee's fiduciary duty to capture the accounts of trustor's clients,
- 7514 either directly or indirectly.
- 7515 (xiii) The trustee may not purchase the accounts or expiration lists of the former adjuster,
- 7516 unless the commissioner expressly ratifies the terms of the sale.
- 7517 (xiv) The commissioner may adopt rules that:
- 7518 (A) further define the trustee's fiduciary duties; and
- 7519 (B) explain how the trustee is to carry out the trustee's responsibilities.
- 7520 (xv) The trust may be terminated by:
- 7521 (A) the commissioner; or
- 7522 (B) the person that requested the trust be established.
- 7523 (c) A person described in Subsection (4)(b)(vi)(B) shall terminate the trust by sending
- 7524 written notice to:
- 7525 (i) the trustee; and
- 7526 (ii) the commissioner.
- 7527 (5) (a) The commissioner may by order limit the authority of any temporary licensee or
- 7528 trustee in any way considered necessary to protect:
- 7529 (i) persons being serviced; and

7530 (ii) the public.

7531 (b) The commissioner may by order revoke a temporary license or trustee's appointment  
7532 if the interest of persons being serviced or the public are endangered.

7533 (c) A temporary license or trustee's appointment may not continue after the owner or  
7534 personal representative disposes of the business.

7535 Section 176. Section **31A-26-302** is amended to read:

7536 **31A-26-302. Settlement of claims in credit life and accident and health insurance.**

7537 (1) The creditor shall promptly report all claims to the insurer or its designated claim  
7538 representative. The insurer shall maintain adequate claims files. All claims shall be settled as  
7539 soon as possible in accordance with the terms of the insurance contract.

7540 (2) The insurer shall pay all claims either by draft drawn upon the insurer or by check of  
7541 the insurer to the order of the claimant to whom payment of the claim is due pursuant to the policy  
7542 provisions, or upon direction of that claimant to another.

7543 (3) ~~[No]~~ A person other than the insurer or its designated claim representative may not  
7544 settle or adjust claims. The creditor may not be designated as a claims representative.

7545 Section 177. Section **31A-27-311.5** is repealed and reenacted to read:

7546 **31A-27-311.5. Continuance of coverage -- Health maintenance organizations.**

7547 (1) As used in this section:

7548 (a) "basic health care services" is as defined in Section 31A-8-101;

7549 (b) "enrollee" is as defined in Section 31A-8-101;

7550 (c) "health care" is as defined in Section 31A-1-301;

7551 (d) "health maintenance organization" is as defined in Section 31A-8-101;

7552 (e) "limited health plan" is as defined in Section 31A-8-101;

7553 (f) (i) "managed care organization" means any entity licensed by, or holding a certificate  
7554 of authority from, the department to furnish health care services or health insurance;

7555 (ii) "managed care organization" includes:

7556 (A) a limited health plan;

7557 (B) a health maintenance organization;

7558 (C) a preferred provider organization;

7559 (D) a fraternal benefit society; or

7560 (E) any entity similar to an entity described in Subsections (1)(f)(ii)(A) through (D);

- 7561 (iii) "managed care organization" does not include:  
7562 (A) an insurer or other person that is eligible for membership in a guaranty association  
7563 under Chapter 28;  
7564 (B) a mandatory state pooling plan;  
7565 (C) a mutual assessment company or any entity that operates on an assessment basis; or  
7566 (D) any entity similar to an entity described in Subsections (1)(f)(iii)(A) through (C);  
7567 (g) "participating provider" means a provider who, under an express or implied contract  
7568 with the managed care organization, has agreed to provide health care services to enrollees with  
7569 an expectation of receiving payment, directly or indirectly, from the managed care organization,  
7570 other than copayment;  
7571 (h) "participating provider contract" means the agreement between a participating provider  
7572 and a managed care organization authorized under Section 31A-8-407;  
7573 (i) "preferred provider" means a provider who agrees to provide health care services under  
7574 an agreement authorized under Subsection 31A-22-617(1);  
7575 (j) "preferred provider contract" means the agreement between a preferred provider and  
7576 a managed care organization authorized under Subsection 31A-22-617(1);  
7577 (k) "preferred provider organization" means any person, other than an insurer licensed  
7578 under Chapter 7 or an individual who contracts to render professional or personal services that the  
7579 individual performs himself, that:  
7580 (i) furnishes at a minimum, through preferred providers, basic health care services to an  
7581 enrollee in return for prepaid periodic payments in an amount agreed to prior to the time during  
7582 which the health care may be furnished;  
7583 (ii) is obligated to the enrollee to arrange for the services described in Subsection (1)(k)(i);  
7584 and  
7585 (iii) permits the enrollee to obtain health care services from providers who are not  
7586 preferred providers;  
7587 (l) "provider" is as defined in Section 31A-8-101; and  
7588 (m) "uncovered expenditure" means the costs of health care services that are covered by  
7589 an organization for which an enrollee is liable in the event of the managed care organization's  
7590 insolvency.  
7591 (2) The rehabilitator or liquidator may take one or more of the actions described in

7592 Subsections (2)(a) through (f) to assure continuation of health care coverage for enrollees of an  
7593 insolvent managed care organization.

7594 (a) (i) Subject to Subsection (2)(a)(ii), a rehabilitator or liquidator may require a  
7595 participating provider and preferred provider of health care services to continue to provide the  
7596 health care services the provider is required to provide under the respective participating provider  
7597 contract or preferred provider contract until the later of:

7598 (A) 90 days from the date of the filing of a petition for rehabilitation or the petition for  
7599 liquidation; or

7600 (B) the date the term of the contract ends.

7601 (ii) A requirement by the rehabilitator or liquidator under Subsection (2)(a)(i) that a  
7602 participating provider or preferred provider continue to provide health care services under a  
7603 provider's participating provider contract or preferred providers contract expires when health care  
7604 coverage for all enrollees of the insolvent managed care organization is obtained from another  
7605 managed care organization or insurer.

7606 (b) (i) Subject to Subsection (2)(b)(ii), a rehabilitator or liquidator may reduce the fees a  
7607 participating provider or preferred provider is otherwise entitled to receive from the managed care  
7608 organization under its participating provider contract or preferred provider contract during the time  
7609 period in Subsection (2)(a)(i).

7610 (ii) Notwithstanding Subsection (2)(b)(i):

7611 (A) a rehabilitator or liquidator may not reduce a fee to less than 75% of the regular fee  
7612 set forth in the respective participating provider contract or preferred provider contract; and

7613 (B) the enrollee shall continue to pay the same copayments, deductibles, and other  
7614 payments for services received from the participating provider or preferred provider that the  
7615 enrollee was required to pay before the date of filing of:

7616 (I) the petition for rehabilitation; or

7617 (II) the petition for liquidation.

7618 (c) If the conditions of Subsection (2)(b) are met, a participating provider or preferred  
7619 provider shall:

7620 (i) accept the reduced payment as payment in full; and

7621 (ii) relinquish the right to collect additional amounts from the insolvent managed care  
7622 organization's enrollee.

7623 (d) If the managed care organization is a health maintenance organization, Subsections  
7624 (2)(d)(i) through (v) apply.

7625 (i) Subject to Subsections (2)(d)(ii) and (iv), upon notification from and subject to the  
7626 direction of the rehabilitator or liquidator of a health maintenance organization licensed under  
7627 Chapter 8, a solvent health maintenance organization licensed under Chapter 8 and operating  
7628 within a portion of the insolvent health maintenance organization's service area shall extend to the  
7629 enrollees all rights, privileges, and obligations of being an enrollee in the accepting health  
7630 maintenance organization, except that the accepting health maintenance organization shall give  
7631 credit to an enrollee for any waiting period already satisfied under the provisions of the enrollee's  
7632 contract with the insolvent health maintenance organization.

7633 (ii) A health maintenance organization accepting an enrollee of an insolvent health  
7634 maintenance organization under Subsection (2)(d)(i) shall charge the enrollee the premiums  
7635 applicable to the existing business of the accepting health maintenance organization.

7636 (iii) A health maintenance organization's obligation to accept an enrollee under Subsection  
7637 (2)(d)(i) is limited in number to its pro rata share of all health maintenance organization enrollees  
7638 in this state, as determined after excluding the enrollees of the insolvent insurer.

7639 (iv) The rehabilitator or liquidator of an insolvent health maintenance organization shall  
7640 take those measures that are possible to ensure that no health maintenance organization is required  
7641 to accept more than its pro rata share of the adverse risk represented by the enrollees of the  
7642 insolvent health maintenance organization. As long as the methodology used by the rehabilitator  
7643 or liquidator to assign an enrollee is one which can be expected to produce a reasonably equitable  
7644 distribution of adverse risk, that methodology and its results are acceptable under this Subsection  
7645 (2)(d)(iv).

7646 (v) (A) Notwithstanding Section 31A-27-311, the rehabilitator or liquidator may require  
7647 all solvent health maintenance organizations to pay for the covered claims incurred by the enrollees  
7648 of the insolvent health maintenance organization.

7649 (B) As determined by the rehabilitator or liquidator, payments required under this  
7650 Subsection (2)(d)(v) may:

7651 (I) begin as of the filing of the petition for reorganization or the petition for liquidation;  
7652 and

7653 (II) continue for a maximum period through the time all enrollees are assigned pursuant

7654 to this section.

7655 (C) If the rehabilitator or liquidator makes an assessment under this Subsection (2)(d)(v),  
7656 the rehabilitator or liquidator shall assess each solvent health maintenance organization its pro rata  
7657 share of the total assessment based upon its premiums from the previous calendar year.

7658 (e) A rehabilitator or liquidator may transfer, through sale, or otherwise, the group and  
7659 individual health care obligations of the insolvent managed care organization to other managed  
7660 care organizations or other insurers, if those other managed care organizations and other insurers  
7661 are licensed or have a certificate of authority to provide the same health care services in this state  
7662 that the insolvent managed care organization has.

7663 (i) The rehabilitator or liquidator may combine group and individual health care  
7664 obligations of the insolvent managed care organization in any manner the rehabilitator or liquidator  
7665 considers best to provide for continuous health care coverage for the maximum number of  
7666 enrollees of the insolvent managed care organization.

7667 (ii) If the terms of a proposed transfer of the same combination of group and individual  
7668 policy obligations to more than one other managed care organization or insurer are otherwise  
7669 equal, the rehabilitator or liquidator shall give preference to the transfer of the group and individual  
7670 policy obligations of an insolvent managed care organization as follows:

7671 (A) from one category of managed care organization to another managed care organization  
7672 of the same category, as follows:

7673 (I) from a limited health plan to a limited health plan;

7674 (II) from a health maintenance organization to a health maintenance organization;

7675 (III) from a preferred provider organization to a preferred provider organization;

7676 (IV) from a fraternal benefit society to a fraternal benefit society; and

7677 (V) from any entity similar to any of the above to a category that is similar;

7678 (B) from one category of managed care organization to another managed care organization,  
7679 regardless of the category of the transferee managed care organization; and

7680 (C) from a managed care organization to a nonmanaged care provider of health care  
7681 coverage, including insurers.

7682 (f) A rehabilitator or liquidator may use the insolvent managed care organization's required  
7683 capital or permanent surplus, and compulsory surplus, to continue to provide coverage for the  
7684 insolvent managed care organization's enrollees, including paying uncovered expenditures.

7685 Section 178. Section **31A-28-102** is amended to read:

7686 **31A-28-102. Purpose.**

7687 (1) The purpose of this part is to protect, subject to certain limitations, the persons  
7688 specified in Subsection 31A-28-103(1) against failure in the performance of contractual  
7689 obligations, under the life and [~~disability~~] accident and health insurance policies and annuity  
7690 contracts specified in Subsection 31A-28-103(2), because of the impairment or insolvency of the  
7691 member insurer that issued the policies or contracts.

7692 (2) To provide the protection described in Subsection (1), the Utah Life and Disability  
7693 Insurance Guaranty Association, which currently exists, is continued in order to pay benefits and  
7694 to continue coverages as limited in this part, and members of the association are subject to  
7695 assessment to provide funds to carry out the purpose of this part.

7696 Section 179. Section **31A-28-103** is amended to read:

7697 **31A-28-103. Coverage and limitations.**

7698 (1) This part provides coverage for the policies and contracts specified in Subsection (2)  
7699 to persons who are:

7700 (a) beneficiaries, assignees, or payees of the persons covered under Subsection (1)(b),  
7701 regardless of where they reside, except for nonresident certificate holders under group policies or  
7702 contracts;

7703 (b) owners of or certificate holders under such policies or contracts; or, in the case of  
7704 unallocated annuity contracts, to the persons who are the contract holders, and who are:

7705 (i) residents of Utah; or

7706 (ii) not residents of Utah, but only under the following conditions:

7707 (A) the insurers which issued the policies or contracts are domiciled in this state;

7708 (B) the insurers never held a license or certificate of authority in the states in which the  
7709 persons reside;

7710 (C) the states have associations similar to the association created by this chapter; and

7711 (D) the persons are not eligible for coverage by the associations described in Subsection  
7712 (1)(b)(ii)(C).

7713 (2) (a) Except as otherwise limited by this part, this part provides coverage to the persons  
7714 specified in Subsection (1) for direct, nongroup life, [~~disability~~] accident and health, annuity and  
7715 supplemental policies or contracts, for certificates under direct group policies and contracts, and

7716 for unallocated annuity contracts issued by member insurers. Annuity contracts and certificates  
7717 under group annuity contracts include guaranteed investment contracts, deposit administration  
7718 contracts, unallocated funding agreements, structured settlement agreements, lottery contracts, and  
7719 any immediate or deferred annuity contracts.

7720 (b) This part does not provide coverage for:

7721 (i) any portion of a policy or contract not guaranteed by the insurer, or under which the risk  
7722 is borne by the policy or contract holder;

7723 (ii) any policy or contract of reinsurance, unless assumption certificates have been issued;

7724 (iii) any portion of a policy or contract to the extent that the rate of interest on which it is  
7725 based:

7726 (A) averaged over the period of four years prior to the date on which the association  
7727 becomes obligated with respect to the policy or contract, exceeds a rate of interest determined by  
7728 subtracting two percentage points from Moody's Corporate Bond Yield Average averaged for that  
7729 same four-year period or for the corresponding lesser period if the policy or contract was issued  
7730 less than four years before the association became obligated; and

7731 (B) on or after the date on which the association becomes obligated with respect to the  
7732 policy or contract, exceeds the rate of interest determined by subtracting three percentage points  
7733 from Moody's Corporate Bond Yield Average as most recently available;

7734 (iv) any plan or program of an employer, association, or similar entity to provide life,  
7735 ~~disability~~ accident and health, or annuity benefits to its employees or members to the extent that  
7736 the plan or program is self-funded or uninsured, including benefits payable by an employer,  
7737 association, or similar entity under:

7738 (A) a multiple employer welfare arrangement as defined in Section 514 of the Employee  
7739 Retirement Income Security Act of 1974, as amended;

7740 (B) a minimum premium group insurance plan;

7741 (C) a stop-loss group insurance plan; or

7742 (D) an administrative services only contract;

7743 (v) any portion of a policy or contract to the extent that it provides dividends or experience  
7744 rating credits, or provides that any fees or allowances be paid to any person, including the policy  
7745 or contract holder, in connection with the service to or administration of the policy or contract;

7746 (vi) any policy or contract issued in this state by a member insurer at a time when it was

7747 not licensed or did not have a certificate of authority to issue the policy or contract in this state;

7748 (vii) any unallocated annuity contract issued to an employee benefit plan protected under  
7749 the federal Pension Benefit Guaranty Corporation; and

7750 (viii) any portion of any unallocated annuity contract which is not issued to or in  
7751 connection with a specific employee, union, or association of natural persons benefit plan or a  
7752 government lottery.

7753 (c) The benefits for which the association may become liable shall in no event exceed the  
7754 lesser of:

7755 (i) the contractual obligations for which the insurer is liable or would have been liable if  
7756 it were not an impaired or insolvent insurer; or

7757 (ii) (A) with respect to any one life, regardless of the number of policies or contracts:

7758 (I) \$300,000 in life insurance death benefits, but not more than \$100,000 in net cash  
7759 surrender and net cash withdrawal values for life insurance;

7760 (II) \$100,000 in [~~disability~~] accident and health insurance benefits, including any net cash  
7761 surrender and net cash withdrawal values;

7762 (III) \$100,000 in the present value of annuity benefits, including net cash surrender and  
7763 net cash withdrawal values;

7764 (B) with respect to each individual participating in a governmental retirement plan  
7765 established under Section 401(k), 403(b), or 457 of the Internal Revenue Code covered by an  
7766 unallocated annuity contract or the beneficiaries of each such individual if deceased, in the  
7767 aggregate, \$100,000 in present value of annuity benefits, including net cash surrender and net cash  
7768 withdrawal values;

7769 (C) however, in no event shall the association be liable to expend more than \$300,000 in  
7770 the aggregate with respect to any one individual under Subsections (2)(c)(ii)(A) and (ii)(B);

7771 (iii) with respect to any one contract holder covered by any unallocated annuity contract  
7772 not included in Subsection (2)(c)(ii)(B), \$5,000,000 in benefits, irrespective of the number of  
7773 contracts held by that contract holder.

7774 Section 180. Section **31A-28-106** is amended to read:

7775 **31A-28-106. Continuation of the association.**

7776 (1) There is continued under this chapter the nonprofit legal entity known as the Utah Life  
7777 and Disability Insurance Guaranty Association created under former provisions of this title. All

7778 member insurers shall be and remain members of the association as a condition of their authority  
7779 to transact business in this state. The association shall perform its functions under the plan of  
7780 operation established and approved under Section 31A-28-110 and shall exercise its powers  
7781 through a board of directors under the provisions of Section 31A-28-107. For purposes of  
7782 administration and assessment the association shall maintain two accounts:

7783 (a) the life and annuity account, which includes the following subaccounts:

7784 (i) Life Insurance Account;

7785 (ii) Annuity Account; and

7786 (iii) Unallocated Annuity Account, which includes contracts qualified under Sections  
7787 401(k), 403(b), or 457 of the Internal Revenue Code; and

7788 (b) the ~~[disability]~~ accident and health insurance account.

7789 (2) The association shall come under the immediate supervision of the commissioner and  
7790 shall be subject to the applicable provisions of the insurance laws of this state. Meetings or records  
7791 of the association may be opened to the public upon majority vote of the board of directors of the  
7792 association.

7793 Section 181. Section **31A-28-108** is amended to read:

7794 **31A-28-108. Powers and duties of the association.**

7795 (1) If a member insurer is an impaired domestic insurer, the association in its discretion  
7796 and subject to any conditions imposed by the association that do not impair the contractual  
7797 obligations of the impaired insurer that are approved by the commissioner, and also by the  
7798 impaired insurer, except in cases of court-ordered conservation or rehabilitation, may:

7799 (a) guarantee, assume, or reinsure, or cause to be guaranteed, assumed, or reinsured, any  
7800 or all of the policies or contracts of the impaired insurer;

7801 (b) provide the necessary monies, pledges, notes, guarantees or other means to effectuate  
7802 Subsection (1)(a) and assure payment of the contractual obligations of the impaired insurer  
7803 pending action under Subsection (1)(a); or

7804 (c) loan money to the impaired insurer.

7805 (2) (a) If a member insurer is an impaired insurer, whether domestic, foreign, or alien, and  
7806 the insurer is not paying claims timely, the association shall in its discretion and subject to the  
7807 preconditions specified in Subsection (2)(b), either:

7808 (i) take any of the actions specified in Subsection (1), subject to the conditions specified

7809 in Subsection (1); or

7810 (ii) provide substitute benefits in lieu of the contractual obligations of the impaired insurer  
7811 solely for [~~disability~~] accident and health claims, periodic annuity benefit payments, death benefits,  
7812 supplemental benefits, and cash withdrawals for policy or contract owners who petition for such  
7813 benefits under claims of emergency or hardship in accordance with the standards proposed by the  
7814 association and approved by the commissioner.

7815 (b) The association is subject to the requirements of Subsection (2)(a) only if:

7816 (i) the laws of the impaired insurer's state of domicile provide that until all payments of,  
7817 or an account of, the impaired insurer's contractual obligations by all guaranty associations, along  
7818 with all expenses of the obligation and interest on all such payments and expenses, have been  
7819 repaid to the guaranty associations or a plan of repayment by the impaired insurer has been  
7820 approved by the guaranty associations:

7821 (A) the delinquency proceeding shall not be dismissed;

7822 (B) neither the impaired insurer nor its assets shall be returned to the control of its  
7823 shareholders or private management;

7824 (C) it shall not be permitted to solicit or accept new business or have any suspended or  
7825 revoked license restored; and

7826 (ii) (A) if the impaired insurer is a domestic insurer, it has been placed under an order of  
7827 rehabilitation by a court of competent jurisdiction in this state; or

7828 (B) if the impaired insurer is a foreign or alien insurer:

7829 (I) it has been prohibited from soliciting or accepting new business in this state;

7830 (II) its certificate of authority has been suspended or revoked in this state; and

7831 (III) a petition for rehabilitation or liquidation has been filed in a court of competent  
7832 jurisdiction in its state of domicile by the commissioner of the state.

7833 (3) If a member insurer is an insolvent insurer, the association in its discretion shall either:

7834 (a) (i) guaranty, assume, or reinsure, or cause to be guaranteed, assumed, or reinsured, the  
7835 policies or contracts of the insolvent insurer; or

7836 (ii) assure payment of the contractual obligations of the insolvent insurer; and

7837 (iii) provide such monies, pledges, guarantees, or other means as are reasonably necessary  
7838 to discharge such duties; or

7839 (b) with respect only to [~~disability~~] accident and health insurance policies, provide benefits

7840 and coverages in accordance with Subsection (4).

7841 (4) When proceeding under Subsections (2)(a)(ii) or (3)(b), with respect only to [disability]  
7842 accident and health insurance policies, the association shall:

7843 (a) assure payment of benefits for premiums identical to the premiums and benefits, except  
7844 for terms of conversion and renewability, that would have been payable under the policies of the  
7845 insolvent insurer, for claims incurred:

7846 (i) with respect to group policies, not later than the earlier of the next renewal date under  
7847 the policies or contracts or 45 days, but in no event less than 30 days, after the date on which the  
7848 association becomes obligated with respect to the policies;

7849 (ii) with respect to individual policies, not later than the earlier of the next renewal date,  
7850 if any, under the policies or one year, but in no event less than 30 days, from the date on which the  
7851 association becomes obligated with respect to the policies;

7852 (b) make diligent efforts to provide 30 days' notice of the termination of the benefits  
7853 provided to all known insureds, or group policyholders with respect to group policies;

7854 (c) make available substitute coverage on an individual basis, in accordance with the  
7855 provisions of Subsection (4)(d), to each known insured or owner under an individual policy, and  
7856 to each individual formerly insured under a group policy who is not eligible for replacement group  
7857 coverage, if the insured had a right under law or the terminated policy to convert coverage to  
7858 individual coverage or to continue an individual policy in force until a specified age or for a  
7859 specified time during which the insurer had no right unilaterally to make changes in any provision  
7860 of the policy or had a right only to make changes in premium by class.

7861 (d) (i) In providing the substitute coverage required under Subsection (4)(c), the  
7862 association may offer either to reissue the terminated coverage or to issue an alternative policy.

7863 (ii) Alternate or reissued policies shall be offered without requiring evidence of  
7864 insurability, and shall not provide for any waiting period or exclusion that would not have applied  
7865 under the terminated policy.

7866 (iii) The association may reinsure any alternative or reissued policy.

7867 (e) (i) Alternative policies adopted by the association shall be subject to the approval of  
7868 the commissioner. The association may adopt alternative policies of various types for future  
7869 issuance without regard to any particular impairment or insolvency.

7870 (ii) Alternative policies shall contain at least the minimum statutory provisions required

7871 in this state and provide benefits that are not unreasonable in relation to the premium charged. The  
7872 association shall set the premium in accordance with its table of adopted rates. The premium shall  
7873 reflect the amount of insurance to be provided and the age and class of risk of each insured. For  
7874 alternative policies issued to insureds under individual policies of the impaired or insolvent  
7875 insurer, age shall be determined in accordance with the original policy provisions and class of risk  
7876 shall be the class of risk under the original policy. For alternative policies issued to individuals  
7877 insured under a group policy, age and class of risk shall be determined by the association in  
7878 accordance with the alternative policy provisions and risk classification standards approved by the  
7879 commissioner. However, the premium may not reflect any changes in the health of the insured  
7880 after the original policy was last underwritten.

7881 (iii) Any alternative policy issued by the association shall provide coverage of a type  
7882 similar to that of the policy issued by the impaired or insolvent insurer, as determined by the  
7883 association.

7884 (f) If the association elects to reissue terminated coverage at a premium rate different from  
7885 that charged under the terminated policy, the premium shall be set by the association in accordance  
7886 with the amount of insurance provided and the age and class of risk, subject to the approval of the  
7887 commissioner or by a court of competent jurisdiction.

7888 (g) The association's obligations with respect to coverage under any policy of the impaired  
7889 or insolvent insurer or under any reissued or alternative policy shall cease on the date the coverage  
7890 or policy is replaced by another similar policy by the policyholder, the insured, or the association.

7891 (h) With respect to claims unpaid as of the date of insolvency and claims incurred during  
7892 the period defined in Subsection (4)(a), a provider of health care services, by accepting a payment  
7893 from the association upon a claim of the provider against an insured whose health care insurer is  
7894 an insolvent member insurer, agrees to forgive the insured of 20% of the debt which otherwise  
7895 would be paid by the insurer had it not been insolvent, subject to a maximum of \$4,000 being  
7896 required to be forgiven by any one provider as to each claimant. The obligations of solvent  
7897 insurers to pay all or part of the covered claim are not diminished by the forgiveness provided for  
7898 in this section.

7899 (5) When proceeding under Subsection (2)(a)(ii) or (3) with respect to any policy or  
7900 contract carrying guaranteed minimum interest rates, the association shall assure the payment or  
7901 crediting of a rate of interest consistent with Subsection 31A-28-103(2)(b)(iii).

7902 (6) Nonpayment of premiums within 31 days after the date required under the terms of any  
7903 guaranteed, assumed, alternative, or reissued policy or contract or substitute coverage shall  
7904 terminate the association's obligations under the policy or coverage under this chapter with respect  
7905 to the policy or coverage, except with respect to any claims incurred or any net cash surrender  
7906 value which may be due in accordance with the provisions of this chapter.

7907 (7) Premiums due for coverage after entry of an order of liquidation of an insolvent insurer  
7908 shall belong to and be payable at the direction of the association, and the association shall be liable  
7909 for unearned premiums due to policy or contract owners of the insurer after the entry of the order.

7910 (8) The protection provided by this chapter does not apply if any guaranty protection is  
7911 provided to residents of this state by laws of the domiciliary state or jurisdiction of the impaired  
7912 or insolvent insurer other than this state.

7913 (9) In carrying out its duties under this subsection and Subsections (2) and (3), and subject  
7914 to approval by the court, the association may:

7915 (a) impose permanent policy or contract liens in connection with any guarantee,  
7916 assumption, or reinsurance agreement, if the association finds that the amounts which can be  
7917 assessed under this chapter are less than the amounts needed to assure full and prompt performance  
7918 of the association's duties under this chapter, or that the economic or financial conditions as they  
7919 affect member insurers are sufficiently adverse to render the imposition of the permanent policy  
7920 or contract liens to be in the public interest;

7921 (b) impose temporary moratoriums or liens on payments of cash values and policy loans,  
7922 or any other right to withdraw funds held in conjunction with policies or contracts, in addition to  
7923 any contractual provisions for deferral of cash or policy loan value.

7924 (10) If the association fails to act within a reasonable period of time as provided in  
7925 Subsections (2)(a)(ii), (3), and (4), the commissioner shall have the powers and duties of the  
7926 association under this chapter with respect to impaired or insolvent insurers.

7927 (11) The association may render assistance and advice to the commissioner, upon his  
7928 request, concerning rehabilitation, payment of claims, continuance of coverage, or the performance  
7929 of other contractual obligations of any impaired or insolvent insurer.

7930 (12) The association has standing to appear before any court in this state with jurisdiction  
7931 over an impaired or insolvent insurer concerning which the association is or may become obligated  
7932 under this chapter. Standing extends to all matters germane to the powers and duties of the

7933 association, including proposals for reinsuring, modifying, or guaranteeing the policies or contracts  
7934 of the impaired or insolvent insurer and the determination of the policies or contracts and  
7935 contractual obligations. The association also has the right to appear or intervene before a court in  
7936 another state with jurisdiction over an impaired or insolvent insurer for which the association is  
7937 or may become obligated or with jurisdiction over a third party against whom the association may  
7938 have rights through subrogation of the insurer's policyholders.

7939 (13) (a) Any person receiving benefits under this chapter shall be considered to have  
7940 assigned the rights under, and any causes of action relating to the covered policy or contract to the  
7941 association to the extent of the benefits received because of this chapter, whether the benefits are  
7942 payments of, or on account of, contractual obligations, continuation of coverage, or provision of  
7943 substitute or alternative coverages. The association may require an assignment to it of these rights  
7944 and causes of action by any payee, policy or contract owner, beneficiary, insured, or annuitant as  
7945 a condition precedent to the receipt of any right or benefits conferred by this chapter upon that  
7946 person.

7947 (b) The subrogation rights obtained by the association under this subsection become third  
7948 class claims under Section 31A-27-335.

7949 (c) In addition to Subsections (13)(a) and (b), the association has all common law rights  
7950 of subrogation and any other equitable or legal remedy which would have been available to the  
7951 impaired or insolvent insurer or holder of a policy or contract with respect to the policy or contract.

7952 (14) The association may:

7953 (a) enter into contracts which are necessary or proper to carry out the provisions and  
7954 purposes of this chapter;

7955 (b) sue or be sued, including taking any legal actions necessary or proper to recover any  
7956 unpaid assessments under Section 31A-28-109 and to settle claims or potential claims against it;

7957 (c) borrow money to effect the purposes of this chapter, and any notes or other evidence  
7958 of indebtedness of the association not in default shall be legal investments for domestic insurers  
7959 and may be carried as admitted assets;

7960 (d) employ or retain necessary staff members to handle the financial transactions of the  
7961 association, and to perform other functions as become necessary or proper under this chapter;

7962 (e) take necessary legal action to avoid payment of improper claims;

7963 (f) exercise, for the purposes of this chapter and to the extent approved by the

7964 commissioner, the powers of a domestic life or health insurer, but in no case may the association  
7965 issue insurance policies or annuity contracts other than those issued to perform its obligation under  
7966 this chapter; or

7967 (g) act as a special deputy liquidator if appointed by the commissioner.

7968 (15) The association may join an organization of one or more other state associations of  
7969 similar purposes to further the purposes and administer the powers and duties of the association.

7970 Section 182. Section **31A-28-109** is amended to read:

7971 **31A-28-109. Assessments.**

7972 (1) For the purpose of providing the funds necessary to carry out the powers and duties of  
7973 the association, the board of directors shall assess the member insurers, separately for each  
7974 account, at the time and for the amounts that the board finds necessary. Assessments are due not  
7975 less than 30 days after prior written notice to the member insurers. Class B assessments, described  
7976 in Subsection (2)(b), shall accrue interest at 10% per annum on and after the due date.

7977 (2) There are two classes of assessment:

7978 (a) Class A assessments shall be made for the purpose of meeting administrative and legal  
7979 costs and other expenses and examinations conducted under the authority of Subsection  
7980 31A-28-112(5). Class A assessments may be made whether or not related to a particular impaired  
7981 or insolvent insurer.

7982 (b) Class B assessments shall be made to the extent necessary to carry out the powers and  
7983 duties of the association under Section 31A-28-108 with regard to an impaired or an insolvent  
7984 insurer.

7985 (3) (a) The amount of any Class A assessment shall be determined by the board and may  
7986 be made on a pro rata or non-pro rata basis. If the assessment is pro rata, the board may credit the  
7987 assessment against future Class B assessments. A non-pro rata assessment may not exceed \$150  
7988 per member insurer in any one calendar year.

7989 (b) The amount of any Class B assessment shall be allocated for assessment purposes  
7990 among the accounts pursuant to an allocation formula which may be based on the premiums or  
7991 reserves of the impaired or insolvent insurer or based on any other standard determined by the  
7992 board in its sole discretion to be fair and reasonable under the circumstances.

7993 (c) (i) Class B assessments against member insurers for each account and subaccount shall  
7994 be in the proportion that the premiums received on business in this state by each assessed member

7995 insurer bears to the premiums received on business in this state for the same calendar years by all  
7996 assessed member insurers.

7997 (ii) "Premiums received" is based on policies or contracts covered by each account for the  
7998 three most recent calendar years for which information is available, which precede the year in  
7999 which the insurer became impaired or insolvent.

8000 (d) Assessments for funds to meet the requirements of the association with respect to an  
8001 impaired or insolvent insurer may not be made until necessary to implement the purposes of this  
8002 chapter. Classification of assessments under Subsection (3)(b) and computation of assessments  
8003 under this Subsection (3) shall be made with a reasonable degree of accuracy, recognizing that  
8004 exact determinations may not always be possible.

8005 (4) The association may abate or defer, in whole or in part, the assessment of a member  
8006 insurer if, in the opinion of the board, payment of the assessment would endanger the ability of the  
8007 member insurer to fulfill its contractual obligations. In the event an assessment against a member  
8008 insurer is abated or deferred in whole or in part, the amount by which the assessment is abated or  
8009 deferred may be assessed against the other member insurers in a manner consistent with the basis  
8010 for assessments set forth in this section.

8011 (5) (a) The total of all assessments upon a member insurer for the life and annuity account,  
8012 and for each subaccount, may not in any one calendar year exceed 2% and the [~~disability~~] accident  
8013 and health account may not in any one calendar year exceed 2% of the insurer's yearly average  
8014 premiums received in this state on the policies and contracts covered by the account during the  
8015 three calendar years preceding the year in which the insurer became an impaired or insolvent  
8016 insurer. If the maximum assessment, together with the other assets of the association in any  
8017 account, does not provide in any one year in either account an amount sufficient to carry out the  
8018 responsibilities of the association, the necessary additional funds shall be assessed as soon as  
8019 permitted by this chapter.

8020 (b) The board may provide in the plan of operation a method of allocating funds among  
8021 claims, whether relating to one or more impaired or insolvent insurers, when the maximum  
8022 assessment will be insufficient to cover anticipated claims.

8023 (c) If a 1% assessment for any subaccount of the life and annuity account in any one year  
8024 does not provide an amount sufficient to carry out the responsibilities of the association, the board  
8025 shall assess all subaccounts of the life and annuity account for the necessary additional amount

8026 pursuant to Subsection (3)(b), subject to the maximum stated in Subsection (5)(a).

8027 (6) The board may, by an equitable method established in the plan of operation, refund to  
8028 member insurers in proportion to the contribution of each insurer to that account the amount by  
8029 which the assets of the account exceed the amount the board finds is necessary to carry out during  
8030 the coming year the obligations of the association with regard to that account, including assets  
8031 accruing from assignment, subrogation, net realized gains, and income from investments. A  
8032 reasonable amount may be retained in any account to provide funds for the continuing expenses  
8033 of the association and for future losses.

8034 (7) It shall be proper for any member insurer, in determining its premium rates and  
8035 policyowner dividends as to any kind of insurance within the scope of this chapter, to consider the  
8036 amount reasonably necessary to meet its assessment obligations under this chapter.

8037 (8) The association shall issue to each insurer paying an assessment under this chapter,  
8038 other than a Class A assessment, a certificate of contribution, in a form approved by the  
8039 commissioner, for the amount of the assessment so paid. All outstanding certificates shall be of  
8040 equal dignity and priority without reference to amounts or dates of issue. A certificate of  
8041 contribution may be shown by the insurer in its financial statement as an asset in such form and  
8042 for such amount, if any, and period of time as the commissioner may approve.

8043 Section 183. Section **31A-28-202** is amended to read:

8044 **31A-28-202. Scope.**

8045 This part applies to protect resident policyowners and insureds under all types of direct  
8046 insurance, except:

8047 (1) life[;];

8048 (2) title[;];

8049 (3) surety[, ~~disability,~~];

8050 (4) accident and health;

8051 (5) credit, [({}including mortgage guarantee[;]);

8052 (6) ocean marine insurance[;];

8053 (7) insurance of warranties or service contracts[;];

8054 (8) financial guarantee[;]; and

8055 (9) all insurance coverages guaranteed by the United States Government.

8056 Section 184. Section **31A-29-103** is amended to read:

8057 **31A-29-103. Definitions.**

8058 As used in this chapter:

8059 (1) "Board" means the board of directors of the pool created in Section 31A-29-104.

8060 (2) "Health care facility" means any entity providing health care services which is licensed

8061 under Title 26, Chapter 21.

8062 (3) "Health care provider" has the same meaning as provided in Section 78-14-3.

8063 (4) "Health care services" means any service or product used in furnishing to any

8064 individual medical care or hospitalization, or incidental to furnishing medical care or

8065 hospitalization, and any other service or product furnished for the purpose of preventing,

8066 alleviating, curing, or healing human illness or injury.

8067 (5) (a) "Health insurance" means any:

8068 (i) hospital and medical expense-incurred policy;

8069 (ii) nonprofit health care service plan contract; and

8070 (iii) health maintenance organization subscriber contract.

8071 (b) "Health insurance" does not include any insurance arising out of the Workers'

8072 Compensation Act or similar law, automobile medical payment insurance, or insurance under

8073 which benefits are payable with or without regard to fault and which is required by law to be

8074 contained in any liability insurance policy[?].

8075 (6) "Health maintenance organization" has the same meaning as provided in Section

8076 31A-8-101.

8077 (7) "Health plan" means any arrangement by which a person, including a dependent or

8078 spouse, covered or making application to be covered under the pool has access to hospital and

8079 medical benefits or reimbursement including group or individual insurance or subscriber contract;

8080 coverage through a health maintenance organization, preferred provider prepayment, group

8081 practice, or individual practice plan; coverage under an uninsured arrangement of group or

8082 group-type contracts including employer self-insured, cost-plus, or other benefits methodologies

8083 not involving insurance; coverage under a group type contract which is not available to the general

8084 public and can be obtained only because of connection with a particular organization or group; and

8085 coverage by medicare or other governmental benefit. The term includes coverage through health

8086 insurance.

8087 (8) "Insured" means an individual resident of this state who is eligible to receive benefits

8088 from any insurer, health maintenance organization, or other health plan.

8089 (9) "Insurer" means an insurance company authorized to transact [~~disability~~] accident and  
8090 health insurance business in this state, health maintenance organization, and a self-insurer not  
8091 subject to federal preemption.

8092 (10) "Medicaid" means coverage under Title XIX of the Social Security Act, 42 U.S.C.  
8093 Sec. 1396 et seq., as amended.

8094 (11) "Medicare" means coverage under both Part A and B of Title XVIII of the Social  
8095 Security Act, 42 U.S.C. 1395 et seq., as amended.

8096 (12) "Plan of operation" means the plan developed by the board in accordance with Section  
8097 31A-29-105 and includes the articles, bylaws, and operating rules adopted by the board under  
8098 Section 31A-29-106.

8099 (13) "Pool" means the Utah Comprehensive Health Insurance Pool created in Section  
8100 31A-29-104.

8101 (14) "Pool Fund" means the Comprehensive Health Insurance Pool Enterprise Fund  
8102 created in Section 31A-29-120.

8103 (15) "Pool policy" means an insurance policy issued under this chapter.

8104 (16) "Third-party administrator" has the same meaning as provided in Section 31A-1-301.  
8105 Section 185. Section **31A-29-117** is amended to read:

8106 **31A-29-117. Premium rates.**

8107 (1) (a) Premium charges for coverage under the pool may not be unreasonable in relation  
8108 to:

- 8109 (i) the benefits provided;
- 8110 (ii) the risk experience; and
- 8111 (iii) the reasonable expenses provided in the coverage.

8112 (b) Separate schedules of premium rates based on age and other appropriate demographic  
8113 characteristics may apply for individual risks.

8114 (2) A small employer carrier shall annually inform the commissioner by April 1 of the  
8115 carrier's:

8116 (a) small employer index premium rates as of March 1 of the current and preceding year[-];

8117 and

8118 (b) average percentage change in the index premium rate as of March 1, of the current and

8119 preceding year.

8120 (3) (a) Premium rates in effect as of January 1, 1997, shall be adjusted on July 1, 1997, and  
8121 each following July 1 may be adjusted by the board.

8122 (b) In adjusting premium rates, the board shall:

8123 (i) consider the average increase in small employer index rates for the five largest small  
8124 employer carriers submitted under Subsection (2); and

8125 (ii) be subject to Subsection (1).

8126 (4) The board may establish a premium scale based on income. The highest rate may not  
8127 exceed the expected claims and expenses for the individual.

8128 (5) If a person is an eligible individual as defined in the Health Insurance Portability and  
8129 Accountability Act, P.L. 104-191, 110 Stat. 1979, Sec. 2741(b), the maximum premium rate for  
8130 that person may not exceed the amount permitted under P.L. 104-191, 110 Stat. 1986, Sec.  
8131 2744(c)(2)(B).

8132 (6) All rates and rate schedules shall be submitted by the board to the commissioner for  
8133 approval.

8134 Section 186. Section **31A-30-103** is amended to read:

8135 **31A-30-103. Definitions.**

8136 As used in this part:

8137 (1) "Actuarial certification" means a written statement by a member of the American  
8138 Academy of Actuaries or other individual approved by the commissioner that a covered carrier is  
8139 in compliance with the provisions of Section 31A-30-106, based upon the examination of the  
8140 covered carrier, including review of the appropriate records and of the actuarial assumptions and  
8141 methods utilized by the covered carrier in establishing premium rates for applicable health benefit  
8142 plans.

8143 (2) "Affiliate" or "affiliated" means any entity or person who directly or indirectly through  
8144 one or more intermediaries, controls or is controlled by, or is under common control with, a  
8145 specified entity or person.

8146 (3) "Base premium rate" means, for each class of business as to a rating period, the lowest  
8147 premium rate charged or that could have been charged under a rating system for that class of  
8148 business by the covered carrier to covered insureds with similar case characteristics for health  
8149 benefit plans with the same or similar coverage.

8150 (4) "Basic coverage" means the coverage provided in the Basic Health Care Plan  
8151 established by the Health Benefit Plan Committee under Subsection 31A-22-613.5~~(8)~~ (6).

8152 (5) "Carrier" means any person or entity that provides health insurance in this state  
8153 including an insurance company, a prepaid hospital or medical care plan, a health maintenance  
8154 organization, a multiple employer welfare arrangement, and any other person or entity providing  
8155 a health insurance plan under this title.

8156 (6) "Case characteristics" means demographic or other objective characteristics of a  
8157 covered insured that are considered by the carrier in determining premium rates for the covered  
8158 insured. However, duration of coverage since the policy was issued, claim experience, and health  
8159 status, are not case characteristics for the purposes of this chapter.

8160 (7) "Class of business" means all or a separate grouping of covered insureds established  
8161 under Section 31A-30-105.

8162 (8) "Conversion policy" means a policy providing coverage under the conversion  
8163 provisions required in Title 31A, Chapter 22, Part VII, Group ~~[Disability]~~ Accident and Health  
8164 Insurance.

8165 (9) "Covered carrier" means any individual carrier or small employer carrier subject to this  
8166 act.

8167 (10) "Covered individual" means any individual who is covered under a health benefit plan  
8168 subject to this act.

8169 (11) "Covered insureds" means small employers and individuals who are issued a health  
8170 benefit plan that is subject to this act.

8171 (12) "Dependent" means individuals to the extent they are defined to be a dependent by:

8172 (a) the health benefit plan covering the covered individual; and

8173 (b) the provisions of Chapter 22, Part VI, Disability Insurance.

8174 (13) (a) "Eligible employee" means:

8175 (i) an employee who works on a full-time basis and has a normal work week of 30 or more  
8176 hours, and includes a sole proprietor, and a partner of a partnership, if the sole proprietor or partner  
8177 is included as an employee under a health benefit plan of a small employer; or

8178 (ii) an independent contractor if the independent contractor is included under a health  
8179 benefit plan of a small employer.

8180 (b) "Eligible employee" does not include:

- 8181 (i) an employee who works on a part-time, temporary, or substitute basis; or  
8182 (ii) the spouse or dependents of the employer.
- 8183 (14) "Established geographic service area" means a geographical area approved by the  
8184 commissioner within which the carrier is authorized to provide coverage.
- 8185 (15) "Health benefit plan" means any certificate under a group health insurance policy, or  
8186 any health insurance policy, except that health benefit plan does not include coverage only for:
- 8187 (a) accident;  
8188 (b) dental;  
8189 (c) vision;  
8190 (d) Medicare supplement;  
8191 (e) long-term care; or  
8192 (f) the following when offered and marketed as supplemental health insurance and not as  
8193 a substitute for hospital or medical expense insurance or major medical expense insurance:
- 8194 (i) specified disease;  
8195 (ii) hospital confinement indemnity; or  
8196 (iii) limited benefit plan.
- 8197 (16) "Index rate" means, for each class of business as to a rating period for covered  
8198 insureds with similar case characteristics, the arithmetic average of the applicable base premium  
8199 rate and the corresponding highest premium rate.
- 8200 (17) "Individual carrier" means a carrier that offers health benefit plans covering insureds  
8201 in this state under individual policies.
- 8202 (18) "Individual conversion policy" means a conversion policy issued by a health benefit  
8203 plan as defined in Subsection (15) to:
- 8204 (a) an individual; or  
8205 (b) an individual with a family.
- 8206 [~~(18)~~] (19) "Individual coverage count" means the number of natural persons covered  
8207 under a carrier's health benefit plans that are individual policies.
- 8208 [~~(19)~~] (20) "Individual enrollment cap" means the percentage set by the commissioner in  
8209 accordance with Section 31A-30-110.
- 8210 [~~(20)~~] (21) "New business premium rate" means, for each class of business as to a rating  
8211 period, the lowest premium rate charged or offered, or that could have been charged or offered, by

8212 the carrier to covered insureds with similar case characteristics for newly issued health benefit  
8213 plans with the same or similar coverage.

8214 [~~(21)~~] (22) "Premium" means all monies paid by covered insureds and covered individuals  
8215 as a condition of receiving coverage from a covered carrier, including any fees or other  
8216 contributions associated with the health benefit plan.

8217 [~~(22)~~] (23) "Rating period" means the calendar period for which premium rates established  
8218 by a covered carrier are assumed to be in effect, as determined by the carrier. However, a covered  
8219 carrier may not have more than one rating period in any calendar month, and no more than 12  
8220 rating periods in any calendar year.

8221 [~~(23)~~] (24) "Resident" means an individual who has resided in this state for at least 12  
8222 consecutive months immediately preceding the date of application.

8223 [~~(24)~~] (25) "Small employer" means any person, firm, corporation, partnership, or  
8224 association actively engaged in business that, on at least 50% of its working days during the  
8225 preceding calendar quarter, employed at least two and no more than 50 eligible employees, the  
8226 majority of whom were employed within this state. In determining the number of eligible  
8227 employees, companies that are affiliated or that are eligible to file a combined tax return for  
8228 purposes of state taxation are considered one employer.

8229 [~~(25)~~] (26) "Small employer carrier" means a carrier that offers health benefit plans  
8230 covering eligible employees of one or more small employers in this state.

8231 [~~(26)~~] (27) "Uninsurable" means an individual who:

8232 (a) is eligible for the Comprehensive Health Insurance Pool coverage under the  
8233 underwriting criteria established in Subsection 31A-29-111(4); or

8234 (b) (i) is issued a certificate for coverage under Subsection 31A-30-108(3); and

8235 (ii) has a condition of health that does not meet consistently applied underwriting criteria  
8236 as established by the commissioner in accordance with Subsections 31A-30-106(1)(k) and (l) for  
8237 which coverage the applicant is applying.

8238 [~~(27)~~] (28) "Uninsurable percentage" for a given calendar year equals UC/CI where, for  
8239 purposes of this formula:

8240 (a) "UC" means the number of uninsurable individuals who were issued an individual  
8241 policy on or after July 1, 1997; and

8242 (b) "CI" means the carrier's individual coverage count as of December 31 of the preceding

8243 year.

8244 Section 187. Section **31A-30-104** is amended to read:

8245 **31A-30-104. Applicability and scope.**

8246 (1) This chapter applies to any:

8247 (a) health benefit plan that provides coverage to:

8248 (i) individuals;

8249 (ii) small employer groups; or

8250 (iii) both Subsections (1)(a)(i) and (ii); or

8251 (b) individual conversion policy for purposes of [~~Section~~] Sections 31A-30-106.5 and  
8252 31A-30-107.

8253 (2) (a) Except as provided in Subsection (2)(b), for the purposes of this chapter, carriers  
8254 that are affiliated companies or that are eligible to file a consolidated tax return shall be treated as  
8255 one carrier and any restrictions or limitations imposed by this chapter shall apply as if all health  
8256 benefit plans delivered or issued for delivery to covered insureds in this state by the affiliated  
8257 carriers were issued by one carrier.

8258 (b) An affiliated carrier that is a health maintenance organization having a certificate of  
8259 authority under this title may be considered to be a separate carrier for the purposes of this chapter.

8260 (c) Unless otherwise authorized by the commissioner, a covered carrier may not enter into  
8261 one or more ceding arrangements with respect to health benefit plans delivered or issued for  
8262 delivery to covered insureds in this state if such arrangements would result in less than 50% of the  
8263 insurance obligation or risk for such health benefit plans being retained by the ceding carrier.

8264 (d) The provisions of Section 31A-22-1201 apply if a covered carrier cedes or assumes all  
8265 of the insurance obligation or risk with respect to one or more health benefit plans delivered or  
8266 issued for delivery to covered insureds in this state.

8267 (3) (a) A Taft Hartley trust created in accordance with Section 302(c)(5) of the Federal  
8268 Labor Management Relations Act, or a carrier with the written authorization of such a trust, may  
8269 make a written request to the commissioner for a waiver from the application of any of the  
8270 provisions of Subsection 31A-30-106(1) with respect to a health benefit plan provided to the trust.

8271 (b) The commissioner may grant such a waiver if the commissioner finds that application  
8272 with respect to the trust would:

8273 (i) have a substantial adverse effect on the participants and beneficiaries of the trust; and

8274 (ii) require significant modifications to one or more collective bargaining arrangements  
8275 under which the trust is established or maintained.

8276 (c) A waiver granted under this Subsection (3) may not apply to an individual if the person  
8277 participates in such a trust as an associate member of any employee organization.

8278 (4) A carrier who offers individual and small employer health benefit plans may use the  
8279 small employer index rates to establish the rate limitations for individual policies, even if some  
8280 individual policies are rated below the small employer base rate.

8281 (5) Sections 31A-30-106, 31A-30-106.5, 31A-30-106.7, 31A-30-107, 31A-30-108, and  
8282 31A-30-111 apply to:

8283 (a) any insurer engaging in the business of insurance related to the risk of a small employer  
8284 for medical, surgical, hospital, or ancillary health care expenses of its employees provided as an  
8285 employee benefit; and

8286 (b) any contract of an insurer, other than a workers' compensation policy, related to the risk  
8287 of a small employer for medical, surgical, hospital, or ancillary health care expenses of its  
8288 employees provided as an employee benefit.

8289 (6) The commissioner may make rules requiring that the marketing practices be consistent  
8290 with this chapter for:

8291 (a) an insurer and its agent;

8292 (b) an insurance broker; and

8293 (c) an insurance consultant.

8294 Section 188. Section **31A-30-106** is amended to read:

8295 **31A-30-106. Premiums -- Rating restrictions -- Disclosure.**

8296 (1) Premium rates for health benefit plans under this chapter are subject to the following  
8297 provisions:

8298 (a) The index rate for a rating period for any class of business shall not exceed the index  
8299 rate for any other class of business by more than 20%.

8300 (b) For a class of business, the premium rates charged during a rating period to covered  
8301 insureds with similar case characteristics for the same or similar coverage, or the rates that could  
8302 be charged to such employers under the rating system for that class of business, may not vary from  
8303 the index rate by more than 30% of the index rate, except as provided in Section 31A-22-625.

8304 (c) The percentage increase in the premium rate charged to a covered insured for a new

8305 rating period, adjusted pro rata for rating periods less than a year, may not exceed the sum of the  
8306 following:

8307 (i) the percentage change in the new business premium rate measured from the first day  
8308 of the prior rating period to the first day of the new rating period. In the case of a health benefit  
8309 plan into which the covered carrier is no longer enrolling new covered insureds, the covered carrier  
8310 shall use the percentage change in the base premium rate, provided that such change does not  
8311 exceed, on a percentage basis, the change in the new business premium rate for the most similar  
8312 health benefit plan into which the covered carrier is actively enrolling new covered insureds;

8313 (ii) any adjustment, not to exceed 15% annually and adjusted pro rata for rating periods  
8314 of less than one year, due to the claim experience, health status, or duration of coverage of the  
8315 covered individuals as determined from the covered carrier's rate manual for the class of business,  
8316 except as provided in Section 31A-22-625; and

8317 (iii) any adjustment due to change in coverage or change in the case characteristics of the  
8318 covered insured as determined from the covered carrier's rate manual for the class of business.

8319 (d) Adjustments in rates for claims experience, health status, and duration from issue may  
8320 not be charged to individual employees or dependents. Any such adjustment shall be applied  
8321 uniformly to the rates charged for all employees and dependents of the small employer.

8322 (e) A covered carrier may utilize industry as a case characteristic in establishing premium  
8323 rates, provided that the highest rate factor associated with any industry classification does not  
8324 exceed the lowest rate factor associated with any industry classification by more than 15%.

8325 (f) In the case of health benefit plans issued prior to July 1, 1994, a premium rate for a  
8326 rating period, adjusted pro rata for rating period of less than a year, may exceed the ranges under  
8327 Subsections (1)(a) and (b) until July 1, 1996. In that case, the percentage increase in the premium  
8328 rate charged to a covered insured for a new rating period may not exceed the sum of the following:

8329 (i) the percentage change in the new business premium rate measured from the first day  
8330 of the prior rating period to the first day of the new rating period. In the case where a covered  
8331 carrier is not issuing any new policies the covered carrier shall use the percentage change in the  
8332 base premium rate, provided that such change does not exceed, on a percentage basis, the change  
8333 in the new business premium rate for the most similar health benefit plan into which the covered  
8334 carrier is actively enrolling new covered insureds; and

8335 (ii) any adjustment due to change in coverage or change in the case characteristics of the

8336 covered insured as determined from the carrier's rate manual for the class of business.

8337 (g) The commissioner may grant a one-year extension of the July 1, 1996, deadline  
8338 specified in Subsection (1)(f) if the commissioner determines that an extension is needed to avoid  
8339 significant disruption of the health insurance market subject to this chapter or to insure the  
8340 financial stability of carriers in the market.

8341 (h) (i) Covered carriers shall apply rating factors, including case characteristics,  
8342 consistently with respect to all covered insureds in a class of business. Rating factors shall produce  
8343 premiums for identical groups which differ only by the amounts attributable to plan design and do  
8344 not reflect differences due to the nature of the groups assumed to select particular health benefit  
8345 plans.

8346 (ii) A covered carrier shall treat all health benefit plans issued or renewed in the same  
8347 calendar month as having the same rating period.

8348 (i) For the purposes of this subsection, a health benefit plan that utilizes a restricted  
8349 network provision shall not be considered similar coverage to a health benefit plan that does not  
8350 utilize such a network, provided that utilization of the restricted network provision results in  
8351 substantial difference in claims costs.

8352 (j) The covered carrier shall not, without prior approval of the commissioner, use case  
8353 characteristics other than age, gender, industry, geographic area, family composition, and group  
8354 size.

8355 (k) The commissioner may establish regulations in accordance with Title 63, Chapter 46a,  
8356 Utah Administrative Rulemaking Act, to implement the provisions of this chapter and to assure  
8357 that rating practices used by covered carriers are consistent with the purposes of this chapter,  
8358 including regulations that:

8359 (i) assure that differences in rates charged for health benefit plans by covered carriers are  
8360 reasonable and reflect objective differences in plan design (not including differences due to the  
8361 nature of the groups assumed to select particular health benefit plans);

8362 (ii) prescribe the manner in which case characteristics may be used by covered carriers;

8363 (iii) require insurers, as a condition of transacting business with regard to health care  
8364 insurance [~~disability~~] policies after January 1, 1995, to reissue a health care insurance [~~disability~~]  
8365 policy to any policyholder whose health care insurance [~~disability~~] policy has, after January 1,  
8366 1994, been terminated by the insurer for reasons other than those listed in Subsections

8367 31A-30-107(1)(a) through (1)(e) or not renewed by the insurer after January 1, 1994. The  
8368 commissioner may prescribe terms for the reissue of coverage that the commissioner determines  
8369 are reasonable and necessary to provide continuity of coverage to insured individuals;

8370 (iv) implement the individual enrollment cap under Section 31A-30-110, including  
8371 specifying the contents for certification, auditing standards, underwriting criteria for uninsurable  
8372 classification, and limitations on high risk enrollees under Section 31A-30-111; and

8373 (v) establish the individual enrollment cap under Subsection 31A-30-110(1).

8374 (l) Before implementing regulations for underwriting criteria for uninsurable classification,  
8375 the commissioner shall contract with an independent consulting organization to develop  
8376 industry-wide underwriting criteria for uninsurability based on an individual's expected claims  
8377 under open enrollment coverage exceeding 200% of that expected for a standard insurable  
8378 individual with the same case characteristics.

8379 (m) The commissioner shall revise rules issued for Sections 31A-22-602 and 31A-22-605  
8380 regarding individual [~~disability~~] accident and health policy rates to allow rating in accordance with  
8381 this section.

8382 (2) A covered carrier shall not transfer a covered insured involuntarily into or out of a class  
8383 of business. A covered carrier shall not offer to transfer a covered insured into or out of a class  
8384 of business unless such offer is made to transfer all covered insureds in the class of business  
8385 without regard to case characteristics, claim experience, health status, or duration of coverage since  
8386 issue.

8387 (3) Upon offering for sale any health benefit plan to a small employer, or individual, the  
8388 covered carrier shall, as part of its solicitation and sales materials, disclose or make available all  
8389 of the following:

8390 (a) the extent to which premium rates for a specified covered insured are established or  
8391 adjusted in part based on the actual or expected variation in claims costs or actual or expected  
8392 variation in health status of covered individuals;

8393 (b) provisions concerning the covered carrier's right to change premium rates and the  
8394 factors other than claim experience which affect changes in premium rates;

8395 (c) provisions relating to renewability of policies and contracts; and

8396 (d) provisions relating to any preexisting condition provision.

8397 (4) (a) Each covered carrier shall maintain at its principal place of business a complete and

8398 detailed description of its rating practices and renewal underwriting practices, including  
8399 information and documentation that demonstrate that its rating methods and practices are based  
8400 upon commonly accepted actuarial assumptions and are in accordance with sound actuarial  
8401 principles.

8402 (b) Each covered carrier shall file with the commissioner, on or before March 15 of each  
8403 year, in a form, manner, and containing such information as prescribed by the commissioner, an  
8404 actuarial certification certifying that the covered carrier is in compliance with this chapter and that  
8405 the rating methods of the covered carrier are actuarially sound. A copy of that certification shall  
8406 be retained by the covered carrier at its principal place of business.

8407 (c) A covered carrier shall make the information and documentation described in this  
8408 subsection available to the commissioner upon request.

8409 (d) Records submitted to the commissioner under the provisions of this section shall be  
8410 maintained by the commissioner as protected records under Title 63, Chapter 2, Government  
8411 Records Access and Management Act.

8412 Section 189. Section **31A-30-106.5** is amended to read:

8413 **31A-30-106.5. Conversion policy -- Premiums -- Rating restrictions.**

8414 (1) All provisions of Section 31A-30-106, except Subsection 31A-30-106(1)(b), apply to  
8415 conversion policies.

8416 (2) Conversion policy premium rates may not exceed by more than 35% the index rate for  
8417 individuals with similar case characteristics for any class of business in which the policy form has  
8418 been approved.

8419 (3) An insurer may not consider pregnancy of a covered insured in determining its  
8420 conversion policy premium rates.

8421 Section 190. Section **31A-30-107** is amended to read:

8422 **31A-30-107. Renewal -- Limitations -- Exclusions.**

8423 (1) A health benefit plan subject to this chapter is renewable with respect to all covered  
8424 individuals at the option of the covered insured except in any of the following cases:

8425 (a) nonpayment of the required premiums;

8426 (b) fraud or misrepresentation of:

8427 (i) the employer; or

8428 (ii) with respect to coverage of individual insureds, the insureds or their representatives;

8429 (c) noncompliance with the covered carrier's minimum participation requirements;

8430 (d) noncompliance with the covered carrier's employer contribution requirements;

8431 (e) repeated misuse of a provider network provision; or

8432 (f) an election by the covered carrier to nonrenew all of its health benefit plans issued to

8433 covered insureds in this state, in which case the covered carrier shall:

8434 (i) provide advanced notice of its decision under this Subsection (1) to the commissioner

8435 in each state in which it is licensed; [~~and~~]

8436 (ii) provide notice of the decision not to renew coverage to all affected covered insureds

8437 and to the commissioner in each state in which an affected insured individual is known to reside[-];

8438 and

8439 (iii) provide a plan of orderly withdrawal as required by Section 31A-4-115.

8440 (2) Notice under Subsection (1) shall be provided:

8441 (a) to affected covered insureds at least 180 days prior to nonrenewal of any health benefit  
8442 plans by the covered carrier; and

8443 (b) to the commissioner at least three working days prior to the notice to the affected  
8444 covered insureds.

8445 (3) A covered carrier that elects not to renew a health benefit plan under Subsection (1)(f)  
8446 is prohibited from writing new business subject to this chapter in this state for a period of five  
8447 years from the date of notice to the commissioner.

8448 (4) When a covered carrier is doing business subject to this chapter in one service area of  
8449 this state, Subsections (1) through (3) apply only to the covered carrier's operations in that service  
8450 area.

8451 (5) Health benefit plans covering covered insureds shall comply with Subsections (5)(a)  
8452 and (b).

8453 (a) (i) A health benefit plan may not deny, exclude, or limit benefits for a covered  
8454 individual for losses incurred more than 12 months, or 18 months in the case of a late enrollee, as  
8455 defined in P.L. 104-191, 110 Stat. 1940, Sec. 101, following the effective date of the individual's  
8456 coverage due to a preexisting condition.

8457 (ii) A health benefit plan may not define a preexisting condition more restrictively than:

8458 (A) a condition for which medical advice, diagnosis, care, or treatment was recommended  
8459 or received during the six months immediately preceding the earlier of:

8460 (I) the enrollment date; or  
8461 (II) the effective date of coverage; or  
8462 (B) for an individual insurance policy, a pregnancy existing on the effective date of  
8463 coverage.  
8464 (iii) An individual insurer shall offer a health benefit plan in compliance with Subsections  
8465 (5)(a)(i) and (ii), and may, when the insurer and the insured mutually agree in writing to a  
8466 condition-specific exclusion rider, offer to issue an individual policy that excludes a specific  
8467 physical condition consistent with Subsections (5)(a)(iv) and (v).  
8468 (iv) The commissioner shall establish, in rule, a list of nonlife threatening [~~and~~  
8469 ~~nondegenerative~~] physical conditions that may be the subject of a condition-specific exclusion  
8470 rider.  
8471 (v) A condition-specific exclusion rider shall be limited to the excluded condition and may  
8472 not extend to any secondary medical condition that may or may not be directly related to the  
8473 excluded condition.  
8474 (b) (i) A covered carrier shall waive any time period applicable to a preexisting condition  
8475 exclusion or limitation period with respect to particular services in a health benefit plan for the  
8476 period of time the individual was previously covered by public or private health insurance or by  
8477 any other health benefit arrangement that provided benefits with respect to such services, provided  
8478 that:  
8479 (A) the previous coverage was continuous to a date not more than 63 full days prior to the  
8480 effective date of the new coverage; and  
8481 (B) the insured provides notification of previous coverage to the covered carrier within 36  
8482 months of the coverage effective date if the insurer has previously requested such notification.  
8483 (ii) The period of continuous coverage under Subsection (5)(b)(i)(A) may not include any  
8484 waiting period for the effective date of the new coverage applied by the employer or the carrier.  
8485 This Subsection (5)(b)(ii) does not preclude application of any waiting period applicable to all new  
8486 enrollees under the plan.  
8487 (iii) Credit for previous coverage as provided under Subsection (5)(b)(i)(A) need not be  
8488 given for any condition which was previously excluded under a condition-specific exclusion rider.  
8489 A new preexisting waiting period may be applied to any condition that was excluded by a rider  
8490 under the terms of previous individual coverage.

8491 Section 191. Section **31A-32a-102** is amended to read:

8492 **31A-32a-102. Definitions.**

8493 As used in this chapter:

8494 (1) "Account administrator" means any of the following:

8495 (a) a depository institution as defined in Section 7-1-103;

8496 (b) a trust company as defined in Section 7-1-103;

8497 (c) an insurance company authorized to do business in this state under this title;

8498 (d) a third party administrator licensed under Section 31A-25-203; and

8499 (e) an employer if the employer has a self-insured health plan under ERISA.

8500 (2) "Account holder" means the resident individual who establishes a medical care savings  
8501 account or for whose benefit a medical care savings account is established.

8502 (3) "Deductible" means the total deductible for an employee and all the dependents of that  
8503 employee for a calendar year.

8504 (4) "Dependent" means the same as "dependent" under Section 31A-30-103.

8505 (5) "Eligible medical expense" means an expense paid by the taxpayer for:

8506 (a) medical care described in Section 213(d), Internal Revenue Code;

8507 (b) the purchase of a health coverage policy, certificate, or contract, including a qualified  
8508 higher deductible health plan; or

8509 (c) premiums on long-term care insurance policies as defined in Section [~~31A-22-1402~~]  
8510 31A-1-301.

8511 (6) "Employee" means the individual for whose benefit or for the benefit of whose  
8512 dependents a medical care savings account is established. Employee includes a self-employed  
8513 individual.

8514 (7) "ERISA" means the Employee Retirement Income Security Act of 1974, Public Law  
8515 93-406, 88 Stat. 829.

8516 (8) "Higher deductible" means a deductible of not less than \$1,000.

8517 (9) "Medical care savings account" or "account" means a trust account established at a  
8518 depository institution in this state pursuant to a medical care savings account program to pay the  
8519 eligible medical expenses of:

8520 (a) an employee or account holder; and

8521 (b) the dependents of the employee or account holder.

- 8522 (10) "Medical care savings account program" or "program" means one of the following  
8523 programs:
- 8524 (a) a program established by an employer in which the employer:
- 8525 (i) purchases a qualified higher deductible health plan for the benefit of an employee and  
8526 the employee's dependents; and
- 8527 (ii) contributes on behalf of an employee into a medical care savings account; or
- 8528 (b) a program established by an account holder in which the account holder:
- 8529 (i) purchases a qualified higher deductible health plan for the benefit of the account holder  
8530 and the account holder's dependents; and
- 8531 (ii) contributes an amount to the medical care savings account.
- 8532 (11) "Qualified higher deductible health plan" means a health coverage policy, certificate,  
8533 or contract that:
- 8534 (a) provides for payments for covered benefits that exceed the higher deductible; and
- 8535 (b) is purchased by:
- 8536 (i) an employer for the benefit of an employee for whom the employer makes deposits into  
8537 a medical care savings account; or
- 8538 (ii) an account holder.
- 8539 Section 192. Section **31A-33-103.5** is amended to read:
- 8540 **31A-33-103.5. Powers of Fund -- Limitations.**
- 8541 (1) The fund may form or acquire subsidiaries or enter into a joint enterprise:
- 8542 (a) in accordance with Section 31A-33-107; and
- 8543 (b) except as limited by this section and applicable insurance rules and statutes.
- 8544 (2) Subject to applicable insurance rules and statutes, the fund may only offer:
- 8545 (a) workers' compensation insurance in Utah;
- 8546 (b) workers' compensation insurance in a state other than Utah to the extent necessary to:
- 8547 (i) accomplish its purpose under Subsection 31A-33-102(1)(b); and
- 8548 (ii) provide workers' compensation or occupational disease insurance coverage to Utah  
8549 employers and their employees engaged in interstate commerce; and
- 8550 (c) workers' compensation products and services in Utah or other states.
- 8551 (3) Subject to applicable insurance rules and statutes, a subsidiary of the fund may:
- 8552 (a) offer workers' compensation insurance coverage only:

8553 (i) in a state other than Utah; and

8554 (ii) (A) to insure the following against liability for compensation based on job-related  
8555 accidental injuries and occupational diseases[;]:

8556 (I) an employer, as defined in Section 34A-2-103, that has a majority of its employees, as  
8557 defined in Section 34A-2-104, hired or regularly employed in Utah;

8558 (II) an employer, as defined in Section 34A-2-103, whose principal administrative office  
8559 is located in Utah; or

8560 (III) a subsidiary or affiliate of an employer described in Subsection (3)(a)(ii)(A)(I) or (II);

8561 or

8562 (B) for a state fund organization that is not an admitted insurer in the other state:

8563 (I) on a fee for service basis; and

8564 (II) without bearing any insurance risk; and

8565 (b) offer workers' compensation products and services in Utah and other states.

8566 (4) The fund shall write workers' compensation insurance in accordance with Section  
8567 31A-22-1001.

8568 (5) (a) The fund may enter into a joint enterprise that offers workers' compensation  
8569 insurance and other coverage only in the state, provided:

8570 (i) the joint enterprise offers only property or liability insurance in addition to workers'  
8571 compensation insurance;

8572 (ii) the fund may not bear any insurance risk associated with the insurance coverage other  
8573 than risk associated with workers' compensation insurance; and

8574 (iii) the offer of other insurance shall be part of an insurance program that includes  
8575 workers' compensation insurance coverage that is provided by the fund.

8576 (b) The fund or a subsidiary of the fund may not offer, or enter into a joint enterprise that  
8577 offers, or otherwise participate in the offering of accident and health [~~or disability~~] insurance.

8578 Section 193. Section **34A-2-103** is amended to read:

8579 **34A-2-103. Employers enumerated and defined -- Regularly employed -- Statutory**  
8580 **employers.**

8581 (1) (a) The state, and each county, city, town, and school district in the state are considered  
8582 employers under this chapter and Chapter 3, Utah Occupational Disease Act.

8583 (b) For the purposes of the exclusive remedy in this chapter and Chapter 3, Utah

8584 Occupational Disease Act prescribed in Sections 34A-2-105 and 34A-3-102, the state is considered  
8585 to be a single employer and includes any office, department, agency, authority, commission, board,  
8586 institution, hospital, college, university, or other instrumentality of the state.

8587 (2) Except as provided in Subsection (4), each person, including each public utility and  
8588 each independent contractor, who regularly employs one or more workers or operatives in the same  
8589 business, or in or about the same establishment, under any contract of hire, express or implied, oral  
8590 or written, is considered an employer under this chapter and Chapter 3, Utah Occupational Disease  
8591 Act. As used in this Subsection (2):

8592 (a) "Independent contractor" means any person engaged in the performance of any work  
8593 for another who, while so engaged, is:

8594 (i) independent of the employer in all that pertains to the execution of the work;

8595 (ii) not subject to the routine rule or control of the employer;

8596 (iii) engaged only in the performance of a definite job or piece of work; and

8597 (iv) subordinate to the employer only in effecting a result in accordance with the  
8598 employer's design.

8599 (b) "Regularly" includes all employments in the usual course of the trade, business,  
8600 profession, or occupation of the employer, whether continuous throughout the year or for only a  
8601 portion of the year.

8602 (3) (a) The client company in an employee leasing arrangement under Title 58, Chapter  
8603 59, Professional Employer Organization Licensing Act, is considered the employer of leased  
8604 employees and shall secure workers' compensation benefits for them by complying with  
8605 Subsection 34A-2-201(1) or (2) and commission rules.

8606 (b) Insurance carriers may underwrite workers' compensation secured in accordance with  
8607 Subsection (3)(a) showing the leasing company as the named insured and each client company as  
8608 an additional insured by means of individual endorsements.

8609 (c) Endorsements shall be filed with the division as directed by commission rule.

8610 (d) The division shall promptly inform the Division of Occupation and Professional  
8611 Licensing within the Department of Commerce if the division has reason to believe that an  
8612 employee leasing company is not in compliance with Subsection 34A-2-201(1) or (2) and  
8613 commission rules.

8614 (4) A domestic employer who does not employ one employee or more than one employee

8615 at least 40 hours per week is not considered an employer under this chapter and Chapter 3, Utah  
8616 Occupational Disease Act.

8617 (5) (a) As used in this Subsection (5):

8618 (i) (A) "agricultural employer" means a person who employs agricultural labor as defined  
8619 in Subsections 35A-4-206(1) and (2) and does not include employment as provided in Subsection  
8620 35A-4-206(3); and

8621 (B) notwithstanding Subsection (5)(a)(i)(A), only for purposes of determining who is a  
8622 member of the employer's immediate family under Subsection (5)(a)(ii), if the agricultural  
8623 employer is a corporation, partnership, or other business entity, "agricultural employer" means an  
8624 officer, director, or partner of the business entity;

8625 (ii) "employer's immediate family" means:

8626 (A) an agricultural employer's:

8627 (I) spouse;

8628 (II) grandparent;

8629 (III) parent;

8630 (IV) sibling;

8631 (V) child;

8632 (VI) grandchild;

8633 (VII) nephew; or

8634 (VIII) niece;

8635 (B) a spouse of any person provided in Subsection [~~(4)~~] (5)(a)(ii)(A)(II) through (VIII);

8636 or

8637 (C) an individual who is similar to those listed in Subsections [~~(4)~~] (5)(a)(ii)(A) or (B) as  
8638 defined by rules of the commission; and

8639 (iii) "non-immediate family" means a person who is not a member of the employer's  
8640 immediate family.

8641 (b) For purposes of this chapter and Chapter 3, Utah Occupational Disease Act, an  
8642 agricultural employer is not considered an employer of a member of the employer's immediate  
8643 family.

8644 (c) For purposes of this chapter and Chapter 3, Utah Occupational Disease Act, an  
8645 agricultural employer is not considered an employer of a non-immediate family employee if:

- 8646 (i) for the previous calendar year the agricultural employer's total annual payroll for all  
8647 non-immediate family employees was less than \$8,000; or
- 8648 (ii) (A) for the previous calendar year the agricultural employer's total annual payroll for  
8649 all non-immediate family employees was equal to or greater than \$8,000 but less than \$50,000; and
- 8650 (B) the agricultural employer maintains insurance that covers job-related injuries of the  
8651 employer's non-immediate family employees in at least the following amounts:
- 8652 (I) \$300,000 liability insurance, as defined in Section 31A-1-301; and
- 8653 (II) \$5,000 for ~~[medical, hospital, and surgical]~~ health care benefits similar to benefits  
8654 under health care insurance as ~~[described]~~ defined in ~~[Subsection]~~ Section 31A-1-301~~[(50)(a)(ii)]~~.
- 8655 (d) For purposes of this chapter and Chapter 3, Utah Occupational Disease Act, an  
8656 agricultural employer is considered an employer of a non-immediate family employee if:
- 8657 (i) for the previous calendar year the agricultural employer's total annual payroll for all  
8658 non-immediate family employees is equal to or greater than \$50,000; or
- 8659 (ii) (A) for the previous year the agricultural employer's total payroll for non-immediate  
8660 family employees was equal to or exceeds \$8,000 but is less than \$50,000; and
- 8661 (B) the agricultural employer fails to maintain the insurance required under Subsection  
8662 (5)(c)(ii).
- 8663 (6) An employer of agricultural laborers or domestic servants who is not considered an  
8664 employer under this chapter and Chapter 3, Utah Occupational Disease Act, may come under this  
8665 chapter and Chapter 3, Utah Occupational Disease Act, by complying with:
- 8666 (a) this chapter and Chapter 3, Utah Occupational Disease Act; and
- 8667 (b) the rules of the commission.
- 8668 (7) (a) If any person who is an employer procures any work to be done wholly or in part  
8669 for the employer by a contractor over whose work the employer retains supervision or control, and  
8670 this work is a part or process in the trade or business of the employer, the contractor, all persons  
8671 employed by the contractor, all subcontractors under the contractor, and all persons employed by  
8672 any of these subcontractors, are considered employees of the original employer for the purposes  
8673 of this chapter and Chapter 3, Utah Occupational Disease Act.
- 8674 (b) Any person who is engaged in constructing, improving, repairing, or remodelling a  
8675 residence that the person owns or is in the process of acquiring as the person's personal residence  
8676 may not be considered an employee or employer solely by operation of Subsection (7)(a).

8677 (c) A partner in a partnership or an owner of a sole proprietorship may not be considered  
8678 an employee under Subsection (7)(a) if the employer who procures work to be done by the  
8679 partnership or sole proprietorship obtains and relies on either:

8680 (i) a valid certification of the partnership's or sole proprietorship's compliance with Section  
8681 34A-2-201 indicating that the partnership or sole proprietorship secured the payment of workers'  
8682 compensation benefits pursuant to Section 34A-2-201; or

8683 (ii) if a partnership or sole proprietorship with no employees other than a partner of the  
8684 partnership or owner of the sole proprietorship, a workers' compensation policy issued by an  
8685 insurer pursuant to Subsection 31A-21-104(8) stating that:

8686 (A) the partnership or sole proprietorship is customarily engaged in an independently  
8687 established trade, occupation, profession, or business; and

8688 (B) the partner or owner personally waives the partner's or owner's entitlement to the  
8689 benefits of this chapter and Chapter 3, Utah Occupational Disease Act, in the operation of the  
8690 partnership or sole proprietorship.

8691 (d) A director or officer of a corporation may not be considered an employee under  
8692 Subsection (7)(a) if the director or officer is excluded from coverage under Subsection  
8693 34A-2-104(4).

8694 (e) A contractor or subcontractor is not an employee of the employer under Subsection  
8695 (7)(a), if the employer who procures work to be done by the contractor or subcontractor obtains  
8696 and relies on either:

8697 (i) a valid certification of the contractor's or subcontractor's compliance with Section  
8698 34A-2-201; or

8699 (ii) if a partnership, corporation, or sole proprietorship with no employees other than a  
8700 partner of the partnership, officer of the corporation, or owner of the sole proprietorship, a workers'  
8701 compensation policy issued by an insurer pursuant to Subsection 31A-21-104(8) stating that:

8702 (A) the partnership, corporation, or sole proprietorship is customarily engaged in an  
8703 independently established trade, occupation, profession, or business; and

8704 (B) the partner, corporate officer, or owner personally waives the partner's, corporate  
8705 officer's, or owner's entitlement to the benefits of this chapter and Chapter 3, Utah Occupational  
8706 Disease Act, in the operation of the partnership's, corporation's, or sole proprietorship's enterprise  
8707 under a contract of hire for services.

8708 Section 194. Section **58-67-501** is amended to read:

8709 **58-67-501. Unlawful conduct.**

8710 (1) "Unlawful conduct" includes, in addition to the definition in Section 58-1-501:

8711 (a) buying, selling, or fraudulently obtaining, any medical diploma, license, certificate, or  
8712 registration;

8713 (b) aiding or abetting the buying, selling, or fraudulently obtaining of any medical diploma,  
8714 license, certificate, or registration;

8715 (c) substantially interfering with a licensee's lawful and competent practice of medicine  
8716 in accordance with this chapter by:

8717 (i) any person or entity that manages, owns, operates, or conducts a business having a  
8718 direct or indirect financial interest in the licensee's professional practice; or

8719 (ii) anyone other than another physician licensed under this title, who is engaged in direct  
8720 clinical care or consultation with the licensee in accordance with the standards and ethics of the  
8721 profession of medicine; or

8722 (d) entering into a contract that limits a licensee's ability to advise the licensee's patients  
8723 fully about treatment options or other issues that affect the health care of the licensee's patients.

8724 (2) "Unlawful conduct" does not include:

8725 (a) establishing, administering, or enforcing the provisions of a policy of [~~disability~~]  
8726 accident and health insurance by an insurer doing business in this state in accordance with Title  
8727 31A, Insurance Code;

8728 (b) adopting, implementing, or enforcing utilization management standards related to  
8729 payment for a licensee's services, provided that:

8730 (i) utilization management standards adopted, implemented, and enforced by the payer  
8731 have been approved by a physician or by a committee that contains one or more physicians; and

8732 (ii) the utilization management standards does not preclude a licensee from exercising  
8733 independent professional judgment on behalf of the licensee's patients in a manner that is  
8734 independent of payment considerations;

8735 (c) developing and implementing clinical practice standards that are intended to reduce  
8736 morbidity and mortality or developing and implementing other medical or surgical practice  
8737 standards related to the standardization of effective health care practices, provided that:

8738 (i) the practice standards and recommendations have been approved by a physician or by

8739 a committee that contains one or more physicians; and

8740 (ii) the practice standards do not preclude a licensee from exercising independent  
8741 professional judgment on behalf of the licensee's patients in a manner that is independent of  
8742 payment considerations;

8743 (d) requesting or recommending that a patient obtain a second opinion from a licensee;

8744 (e) conducting peer review, quality evaluation, quality improvement, risk management,  
8745 or similar activities designed to identify and address practice deficiencies with health care  
8746 providers, health care facilities, or the delivery of health care;

8747 (f) providing employment supervision or adopting employment requirements that do not  
8748 interfere with the licensee's ability to exercise independent professional judgment on behalf of the  
8749 licensee's patients, provided that employment requirements that may not be considered to interfere  
8750 with an employed licensee's exercise of independent professional judgment include:

8751 (i) an employment requirement that restricts the licensee's access to patients with whom  
8752 the licensee's employer does not have a contractual relationship, either directly or through contracts  
8753 with one or more third-party payers; or

8754 (ii) providing compensation incentives that are not related to the treatment of any  
8755 particular patient;

8756 (g) providing benefit coverage information, giving advice, or expressing opinions to a  
8757 patient or to a family member of a patient to assist the patient or family member in making a  
8758 decision about health care that has been recommended by a licensee; or

8759 (h) any otherwise lawful conduct that does not substantially interfere with the licensee's  
8760 ability to exercise independent professional judgment on behalf of the licensee's patients and that  
8761 does not constitute the practice of medicine as defined in this chapter.

8762 Section 195. Section **58-68-501** is amended to read:

8763 **58-68-501. Unlawful conduct.**

8764 (1) "Unlawful conduct" includes, in addition to the definition in Section 58-1-501:

8765 (a) buying, selling, or fraudulently obtaining any osteopathic medical diploma, license,  
8766 certificate, or registration; and

8767 (b) aiding or abetting the buying, selling, or fraudulently obtaining of any osteopathic  
8768 medical diploma, license, certificate, or registration;

8769 (c) substantially interfering with a licensee's lawful and competent practice of medicine

8770 in accordance with this chapter by:

8771 (i) any person or entity that manages, owns, operates, or conducts a business having a  
8772 direct or indirect financial interest in the licensee's professional practice; or

8773 (ii) anyone other than another physician licensed under this title, who is engaged in direct  
8774 clinical care or consultation with the licensee in accordance with the standards and ethics of the  
8775 profession of medicine; or

8776 (d) entering into a contract that limits a licensee's ability to advise the licensee's patients  
8777 fully about treatment options or other issues that affect the health care of the licensee's patients.

8778 (2) "Unlawful conduct" does not include:

8779 (a) establishing, administering, or enforcing the provisions of a policy of [~~disability~~]  
8780 accident and health insurance by an insurer doing business in this state in accordance with Title  
8781 31A, Insurance Code;

8782 (b) adopting, implementing, or enforcing utilization management standards related to  
8783 payment for a licensee's services, provided that:

8784 (i) utilization management standards adopted, implemented, and enforced by the payer  
8785 have been approved by a physician or by a committee that contains one or more physicians; and

8786 (ii) the utilization management standards does not preclude a licensee from exercising  
8787 independent professional judgment on behalf of the licensee's patients in a manner that is  
8788 independent of payment considerations;

8789 (c) developing and implementing clinical practice standards that are intended to reduce  
8790 morbidity and mortality or developing and implementing other medical or surgical practice  
8791 standards related to the standardization of effective health care practices, provided that:

8792 (i) the practice standards and recommendations have been approved by a physician or by  
8793 a committee that contains one or more physicians; and

8794 (ii) the practice standards do not preclude a licensee from exercising independent  
8795 professional judgment on behalf of the licensee's patients in a manner that is independent of  
8796 payment considerations;

8797 (d) requesting or recommending that a patient obtain a second opinion from a licensee;

8798 (e) conducting peer review, quality evaluation, quality improvement, risk management,  
8799 or similar activities designed to identify and address practice deficiencies with health care  
8800 providers, health care facilities, or the delivery of health care;

8801 (f) providing employment supervision or adopting employment requirements that do not  
8802 interfere with the licensee's ability to exercise independent professional judgment on behalf of the  
8803 licensee's patients, provided that employment requirements that may not be considered to interfere  
8804 with an employed licensee's exercise of independent professional judgment include:

8805 (i) an employment requirement that restricts the licensee's access to patients with whom  
8806 the licensee's employer does not have a contractual relationship, either directly or through contracts  
8807 with one or more third-party payers; or

8808 (ii) providing compensation incentives that are not related to the treatment of any  
8809 particular patient;

8810 (g) providing benefit coverage information, giving advice, or expressing opinions to a  
8811 patient or to a family member of a patient to assist the patient or family member in making a  
8812 decision about health care that has been recommended by a licensee; or

8813 (h) any otherwise lawful conduct that does not substantially interfere with the licensee's  
8814 ability to exercise independent professional judgment on behalf of the licensee's patients and that  
8815 does not constitute the practice of medicine as defined in this chapter.

8816 Section 196. Section **59-10-114** is amended to read:

8817 **59-10-114. Additions to and subtractions from federal taxable income of an**  
8818 **individual.**

8819 (1) There shall be added to federal taxable income of a resident or nonresident individual:

8820 (a) the amount of any income tax imposed by this or any predecessor Utah individual  
8821 income tax law and the amount of any income tax imposed by the laws of another state, the District  
8822 of Columbia, or a possession of the United States, to the extent deducted from federal adjusted  
8823 gross income, as defined by Section 62, Internal Revenue Code, in determining federal taxable  
8824 income;

8825 (b) a lump sum distribution allowable as a deduction under Section 402(d)(3), Internal  
8826 Revenue Code, to the extent deductible under Section 62(a)(8), Internal Revenue Code, in  
8827 determining federal adjusted gross income;

8828 (c) 25% of the personal exemptions, as defined and calculated in the Internal Revenue  
8829 Code;

8830 (d) a withdrawal from a medical care savings account and any penalty imposed in the  
8831 taxable year if:

- 8832 (i) the taxpayer did not deduct or include the amounts on his federal tax return pursuant  
8833 to Section 220, Internal Revenue Code; and
- 8834 (ii) the withdrawal is subject to Subsections 31A-32a-105(1) and (2); and
- 8835 (e) the amount refunded to a participant under Title 53B, Chapter 8a, Higher Education  
8836 Savings Incentive Program, in the year in which the amount is refunded.
- 8837 (2) There shall be subtracted from federal taxable income of a resident or nonresident  
8838 individual:
- 8839 (a) the interest or dividends on obligations or securities of the United States and its  
8840 possessions or of any authority, commission, or instrumentality of the United States, to the extent  
8841 includable in gross income for federal income tax purposes but exempt from state income taxes  
8842 under the laws of the United States, but the amount subtracted under this subsection shall be  
8843 reduced by any interest on indebtedness incurred or continued to purchase or carry the obligations  
8844 or securities described in this subsection, and by any expenses incurred in the production of  
8845 interest or dividend income described in this subsection to the extent that such expenses, including  
8846 amortizable bond premiums, are deductible in determining federal taxable income;
- 8847 (b)  $\frac{1}{2}$  of the net amount of any income tax paid or payable to the United States after all  
8848 allowable credits, as reported on the United States individual income tax return of the taxpayer for  
8849 the same taxable year;
- 8850 (c) the amount of adoption expenses which, for purposes of this subsection, means any  
8851 actual medical and hospital expenses of the mother of the adopted child which are incident to the  
8852 child's birth and any welfare agency, child placement service, legal, and other fees or costs relating  
8853 to the adoption;
- 8854 (d) amounts received by taxpayers under age 65 as retirement income which, for purposes  
8855 of this section, means pensions and annuities, paid from an annuity contract purchased by an  
8856 employer under a plan which meets the requirements of Section 404(a)(2), Internal Revenue Code,  
8857 or purchased by an employee under a plan which meets the requirements of Section 408, Internal  
8858 Revenue Code, or paid by the United States, a state, or political subdivision thereof, or the District  
8859 of Columbia, to the employee involved or the surviving spouse;
- 8860 (e) for each taxpayer age 65 or over before the close of the taxable year, a \$7,500 personal  
8861 retirement exemption;
- 8862 (f) 75% of the amount of the personal exemption, as defined and calculated in the Internal

8863 Revenue Code, for each dependent child with a disability and adult with a disability who is  
8864 claimed as a dependent on a taxpayer's return;

8865 (g) any amount included in federal taxable income that was received pursuant to any  
8866 federal law enacted in 1988 to provide reparation payments, as damages for human suffering, to  
8867 United States citizens and resident aliens of Japanese ancestry who were interned during World  
8868 War II;

8869 (h) subject to the limitations of Subsection (3)(e), amounts a taxpayer pays during the  
8870 taxable year for health care insurance, as defined in Title 31A, Chapter 1, General Provisions:

8871 (i) for:

8872 (A) the taxpayer;

8873 (B) the taxpayer's spouse; and

8874 (C) the taxpayer's dependents; and

8875 (ii) to the extent the taxpayer does not deduct the amounts under Section 125, 162, or 213,  
8876 Internal Revenue Code, in determining federal taxable income for the taxable year;

8877 (i) except as otherwise provided in this subsection, the amount of a contribution made in  
8878 the tax year on behalf of the taxpayer to a medical care savings account and interest earned on a  
8879 contribution to a medical care savings account established pursuant to Title 31A, Chapter 32a,  
8880 Medical Care Savings Account Act, to the extent the contribution is accepted by the account  
8881 administrator as provided in the Medical Care Savings Account Act, and if the taxpayer did not  
8882 deduct or include amounts on his federal tax return pursuant to Section 220, Internal Revenue  
8883 Code. A contribution deductible under this subsection may not exceed either of the following:

8884 (i) the maximum contribution allowed under the Medical Care Savings Account Act for  
8885 the tax year multiplied by two for taxpayers who file a joint return, if neither spouse is covered by  
8886 health care insurance as defined in Section 31A-1-301 or self-funded plan that covers the other  
8887 spouse, and each spouse has a medical care savings account; or

8888 (ii) the maximum contribution allowed under the Medical Care Savings Account Act for  
8889 the tax year for taxpayers:

8890 (A) who do not file a joint return; or

8891 (B) who file a joint return, but do not qualify under Subsection (2)(i)(i); and

8892 (j) the amount included in federal taxable income that was derived from money paid by  
8893 the taxpayer to the program fund under Title 53B, Chapter 8a, Higher Education Savings Incentive

8894 Program, not to exceed amounts determined under Subsection 53B-8a-106(1)(d) and investment  
8895 income earned on participation agreements under Subsection 53B-8a-106(1) when used for higher  
8896 education costs of the beneficiary;

8897 (k) for tax years beginning on or after January 1, 2000, any amounts paid for premiums  
8898 on long-term care insurance policies as defined in Section [~~31A-22-1402~~] 31A-1-301 to the extent  
8899 the amounts paid for long-term care insurance were not deducted under Section 213, Internal  
8900 Revenue Code, in determining federal taxable income; and

8901 (l) for taxable years beginning on or after January 1, 2000, if the conditions of Subsection  
8902 (4)(a) are met, the amount of income derived by a Ute tribal member:

8903 (i) during a time period that the Ute tribal member resides on homesteaded land  
8904 diminished from the Uintah and Ouray Reservation; and

8905 (ii) from a source within the Uintah and Ouray Reservation.

8906 (3) (a) For purposes of Subsection (2)(d), the amount of retirement income subtracted for  
8907 taxpayers under 65 shall be the lesser of the amount included in federal taxable income, or \$4,800,  
8908 except that:

8909 (i) for married taxpayers filing joint returns, for each \$1 of adjusted gross income earned  
8910 over \$32,000, the amount of the retirement income exemption that may be subtracted shall be  
8911 reduced by 50 cents;

8912 (ii) for married taxpayers filing separate returns, for each \$1 of adjusted gross income  
8913 earned over \$16,000, the amount of the retirement income exemption that may be subtracted shall  
8914 be reduced by 50 cents; and

8915 (iii) for individual taxpayers, for each \$1 of adjusted gross income earned over \$25,000,  
8916 the amount of the retirement income exemption that may be subtracted shall be reduced by 50  
8917 cents.

8918 (b) For purposes of Subsection (2)(e), the amount of the personal retirement exemption  
8919 shall be further reduced according to the following schedule:

8920 (i) for married taxpayers filing joint returns, for each \$1 of adjusted gross income earned  
8921 over \$32,000, the amount of the personal retirement exemption shall be reduced by 50 cents;

8922 (ii) for married taxpayers filing separate returns, for each \$1 of adjusted gross income  
8923 earned over \$16,000, the amount of the personal retirement exemption shall be reduced by 50  
8924 cents; and

8925 (iii) for individual taxpayers, for each \$1 of adjusted gross income earned over \$25,000,  
8926 the amount of the personal retirement exemption shall be reduced by 50 cents.

8927 (c) For purposes of Subsections (3)(a) and (b), adjusted gross income shall be calculated  
8928 by adding to federal adjusted gross income any interest income not otherwise included in federal  
8929 adjusted gross income.

8930 (d) For purposes of determining ownership of items of retirement income common law  
8931 doctrine will be applied in all cases even though some items may have originated from service or  
8932 investments in a community property state. Amounts received by the spouse of a living retiree  
8933 because of the retiree's having been employed in a community property state are not deductible as  
8934 retirement income of such spouse.

8935 (e) For purposes of Subsection (2)(h), a subtraction for an amount paid for health care  
8936 insurance as defined in Title 31A, Chapter 1, General Provisions, is not allowed:

8937 (i) for an amount that is reimbursed or funded in whole or in part by the federal  
8938 government, the state, or an agency or instrumentality of the federal government or the state; and

8939 (ii) for a taxpayer who is eligible to participate in a health plan maintained and funded in  
8940 whole or in part by the taxpayer's employer or the taxpayer's spouse's employer.

8941 (4) (a) A subtraction for an amount described in Subsection (2)(l) is allowed only if:

8942 (i) the taxpayer is a Ute tribal member; and

8943 (ii) the governor and the Ute tribe execute and maintain an agreement meeting the  
8944 requirements of this Subsection (4).

8945 (b) The agreement described in Subsection (4)(a):

8946 (i) may not:

8947 (A) authorize the state to impose a tax in addition to a tax imposed under this chapter;

8948 (B) provide a subtraction under this section greater than or different from the subtraction  
8949 described in Subsection (2)(l); or

8950 (C) affect the power of the state to establish rates of taxation; and

8951 (ii) shall:

8952 (A) provide for the implementation of the subtraction described in Subsection (2)(l);

8953 (B) be in writing;

8954 (C) be signed by:

8955 (I) the governor; and

- 8956 (II) the chair of the Business Committee of the Ute tribe;
- 8957 (D) be conditioned on obtaining any approval required by federal law; and
- 8958 (E) state the effective date of the agreement.
- 8959 (c) (i) The governor shall report to the commission by no later than February 1 of each year
- 8960 regarding whether or not an agreement meeting the requirements of this Subsection (4) is in effect.
- 8961 (ii) If an agreement meeting the requirements of this Subsection (4) is terminated, the
- 8962 subtraction permitted under Subsection (2)(l) is not allowed for taxable years beginning on or after
- 8963 the January 1 following the termination of the agreement.
- 8964 (d) For purposes of Subsection (2)(l) and in accordance with Title 63, Chapter 46a, Utah
- 8965 Administrative Rulemaking Act, the commission may make rules:
- 8966 (i) for determining whether income is derived from a source within the Uintah and Ouray
- 8967 Reservation; and
- 8968 (ii) that are substantially similar to how federal adjusted gross income derived from Utah
- 8969 sources is determined under Section 59-10-117.
- 8970 Section 197. Section **62A-11-326.1** is amended to read:
- 8971 **62A-11-326.1. Enrollment of child in accident and health insurance plan -- Order**
- 8972 **-- Notice.**
- 8973 (1) The office may issue a notice to existing and future employers or unions to enroll a
- 8974 dependent child in [~~a disability~~] an accident and health insurance plan that is available through
- 8975 [~~his~~] the dependent child's parent or legal guardian's employer or union, when the following
- 8976 conditions are satisfied:
- 8977 (a) the parent or legal guardian is already required to obtain insurance coverage for the
- 8978 child by a prior court or administrative order; and
- 8979 (b) the parent or legal guardian has failed to provide written proof to the office that:
- 8980 (i) the child has been enrolled in [~~a disability~~] an accident and health insurance plan in
- 8981 accordance with the court or administrative order; or
- 8982 (ii) the coverage required by the order was not available at group rates through the
- 8983 employer or union 30 or more days prior to the date of the mailing of the notice to enroll.
- 8984 (2) The office shall provide concurrent notice to the parent or legal guardian in accordance
- 8985 with Section 62A-11-304.4 of:
- 8986 (a) the notice to enroll sent to the employer or union; and

8987 (b) the opportunity to contest the enrollment due to a mistake of fact by filing a written  
8988 request for an adjudicative proceeding with the office within 15 days of the notice being sent.

8989 (3) A notice to enroll shall result in the enrollment of the child in the parent's [~~disability~~]  
8990 accident and health insurance plan, unless the parent successfully contests the notice based on a  
8991 mistake of fact.

8992 (4) A notice to enroll issued under this section may be considered a "qualified medical  
8993 support order" for the purposes of enrolling a dependent child in a group [~~disability~~] accident and  
8994 health insurance plan as defined in Section 609(a), Federal Employee Retirement Income Security  
8995 Act of 1974.

8996 Section 198. Section **62A-11-326.2** is amended to read:

8997 **62A-11-326.2. Compliance with order -- Enrollment of dependent child for**  
8998 **insurance.**

8999 (1) An employer or union shall comply with a notice to enroll issued by the office under  
9000 Section 62A-11-326.1 by enrolling the dependent child that is the subject of the notice in the:

9001 (a) [~~disability~~] accident and health insurance plan in which the parent or legal guardian is  
9002 enrolled, if the plan satisfies the prior court or administrative order; or

9003 (b) least expensive plan, assuming equivalent benefits, offered by the employer or union  
9004 that complies with the prior court or administrative order which provides coverage [~~which~~] that  
9005 is reasonably accessible to the dependent child.

9006 (2) The employer, union, or insurer may not refuse to enroll a dependent child pursuant  
9007 to a notice to enroll because a parent or legal guardian has not signed an enrollment application.

9008 (3) Upon enrollment of the dependent child, the employer shall deduct the appropriate  
9009 premiums from the parent or legal guardian's wages and remit them directly to the insurer.

9010 (4) The insurer shall provide proof of insurance to the office upon request.

9011 (5) The signature of the custodial parent of the insured dependent is a valid authorization  
9012 to the insurer for purposes of processing any insurance reimbursement claim.

9013 Section 199. Section **63-25a-413** is amended to read:

9014 **63-25a-413. Collateral sources.**

9015 (1) Collateral source shall include any source of benefits or advantages for economic loss  
9016 otherwise reparable under this chapter which the victim or claimant has received, or which is  
9017 readily available to the victim from:

- 9018 (a) the offender;
- 9019 (b) the insurance of the offender;
- 9020 (c) the United States government or any of its agencies, a state or any of its political  
9021 subdivisions, or an instrumentality of two or more states, except in the case on nonobligatory  
9022 state-funded programs;
- 9023 (d) social security, Medicare, and Medicaid;
- 9024 (e) state-required temporary nonoccupational income replacement insurance or disability  
9025 income insurance;
- 9026 (f) workers' compensation;
- 9027 (g) wage continuation programs of any employer;
- 9028 (h) proceeds of a contract of insurance payable to the victim for the loss he sustained  
9029 because of the criminally injurious conduct;
- 9030 (i) a contract providing prepaid hospital and other health care services or benefits for  
9031 disability; or
- 9032 (j) veteran's benefits, including veteran's hospitalization benefits.
- 9033 (2) (a) An order of restitution shall not be considered readily available as a collateral  
9034 source.
- 9035 (b) Receipt of an award of reparations under this chapter shall be considered an assignment  
9036 of the victim's rights to restitution from the offender.
- 9037 (3) The victim shall not discharge a claim against a person or entity without the state's  
9038 written permission and shall fully cooperate with the state in pursuing its right of reimbursement,  
9039 including providing the state with any evidence in his possession.
- 9040 (4) The state's right of reimbursement applies regardless of whether the victim has been  
9041 fully compensated for his losses.
- 9042 (5) Notwithstanding the collateral source provisions in [~~Subsections~~] Subsection (1) and  
9043 Subsection 63-25a-412(1)(a) [and 63-25a-413(1)], a victim of a sexual offense who requests  
9044 testing of himself may be reimbursed for the costs of the HIV test only as provided in Subsection  
9045 76-5-503(4).
- 9046 Section 200. Section **63-55-231** is amended to read:
- 9047 **63-55-231. Repeal dates, Title 31A.**
- 9048 (1) Section 31A-2-208.5, Comparison tables, is repealed July 1, 2005.



9080 (ii) the option of participating in a state retirement system established by Title 49, Chapter  
 9081 2, Public Employees' Retirement Act, or Chapter 3, Public Employees' Noncontributory  
 9082 Retirement Act, or in a deferred compensation plan administered by the State Retirement Office,  
 9083 in accordance with the Internal Revenue Code and its accompanying rules and regulations;

9084 (iii) health insurance;

9085 (iv) dental insurance;

9086 (v) basic life insurance;

9087 (vi) workers' compensation;

9088 (vii) required employer contribution to social security;

9089 (viii) long-term disability income insurance; and

9090 (ix) the same additional state paid life insurance available to other noncareer service  
 9091 employees.

9092 (c) Each constitutional office shall pay the cost of the additional state-paid life insurance  
 9093 for its constitutional officer from its existing budget.

9094 Section 202. Section **67-22-2** is amended to read:

9095 **67-22-2. Compensation -- Other state officers.**

9096 (1) The governor shall establish salaries for the following state officers within the  
 9097 following salary ranges fixed by the Legislature:

9098 State Officer	Salary Range
9099 Director, Health Policy Commission	\$57,900 - \$78,400
9100 Commissioner of Agriculture and Food	\$62,100 - \$84,100
9101 Commissioner of Insurance	\$62,100 - \$84,100
9102 Commissioner of the Labor Commission	\$62,100 - \$84,100
9103 Director, Alcoholic Beverage Control	
9104 Commission	\$62,100 - \$84,100
9105 Commissioner, Department of	
9106 Financial Institutions	\$62,100 - \$84,100
9107 Members, Board of Pardons and Parole	\$62,100 - \$84,100
9108 Executive Director, Department	
9109 of Commerce	\$62,100 - \$84,100
9110 Executive Director, Commission on	

9111	Criminal and Juvenile Justice	\$62,100 - \$84,100
9112	Adjutant General	\$62,100 - \$84,100
9113	Chair, Tax Commission	\$67,200 - \$90,700
9114	Commissioners, Tax Commission	\$67,200 - \$90,700
9115	Executive Director, Department of	
9116	Community and Economic	
9117	Development	\$67,200 - \$90,700
9118	Executive Director, Tax Commission	\$67,200 - \$90,700
9119	Chair, Public Service Commission	\$67,200 - \$90,700
9120	Commissioner, Public Service Commission	\$67,200 - \$90,700
9121	Executive Director, Department	
9122	of Corrections	\$73,100 - \$98,700
9123	Commissioner, Department of Public Safety	\$73,100 - \$98,700
9124	Executive Director, Department of	
9125	Natural Resources	\$73,100 - \$98,700
9126	Director, Office of Planning	
9127	and Budget	\$73,100 - \$98,700
9128	Executive Director, Department of	
9129	Administrative Services	\$73,100 - \$98,700
9130	Executive Director, Department of	
9131	Human Resource Management	\$73,100 - \$98,700
9132	Executive Director, Department of	
9133	Environmental Quality	\$73,100 - \$98,700
9134	State Olympic Officer	\$79,600 - \$107,500
9135	Executive Director, Department of	\$79,600 - \$107,500
9136	Workforce Services	
9137	Executive Director, Department of	
9138	Health	\$79,600 - \$107,500
9139	Executive Director, Department	
9140	of Human Services	\$79,600 - \$107,500
9141	Executive Director, Department	

9142 of Transportation \$79,600 - \$107,500

9143 Chief Information Officer \$79,600 - \$107,500

9144 (2) (a) The Legislature fixes benefits for the state offices outlined in Subsection (1) as  
9145 follows:

9146 (i) the option of participating in a state retirement system established by Title 49, Utah  
9147 State Retirement Act, or in a deferred compensation plan administered by the State Retirement  
9148 Office in accordance with the Internal Revenue Code and its accompanying rules and regulations;

9149 (ii) health insurance;

9150 (iii) dental insurance;

9151 (iv) basic life insurance;

9152 (v) unemployment compensation;

9153 (vi) workers' compensation;

9154 (vii) required employer contribution to Social Security;

9155 (viii) long-term disability income insurance;

9156 (ix) the same additional state-paid life insurance available to other noncareer service  
9157 employees;

9158 (x) the same severance pay available to other noncareer service employees;

9159 (xi) the same sick leave, converted sick leave, educational allowances, and holidays  
9160 granted to Schedule B state employees, and the same annual leave granted to Schedule B state  
9161 employees with more than ten years of state service;

9162 (xii) the option to convert accumulated sick leave to cash or insurance benefits as provided  
9163 by law or rule upon resignation or retirement according to the same criteria and procedures applied  
9164 to Schedule B state employees;

9165 (xiii) the option to purchase additional life insurance at group insurance rates according  
9166 to the same criteria and procedures applied to Schedule B state employees; and

9167 (xiv) professional memberships if being a member of the professional organization is a  
9168 requirement of the position.

9169 (b) Each department shall pay the cost of additional state-paid life insurance for its  
9170 executive director from its existing budget.

9171 (3) The Legislature fixes the following additional benefits:

9172 (a) for the executive director of the State Tax Commission a vehicle for official and

9173 personal use;

9174 (b) for the executive director of the Department of Transportation a vehicle for official and  
9175 personal use;

9176 (c) for the executive director of the Department of Natural Resources a vehicle for  
9177 commute and official use;

9178 (d) for the Commissioner of Public Safety:

9179 (i) an accidental death insurance policy if POST certified; and

9180 (ii) a public safety vehicle for official and personal use;

9181 (e) for the executive director of the Department of Corrections:

9182 (i) an accidental death insurance policy if POST certified; and

9183 (ii) a public safety vehicle for official and personal use;

9184 (f) for the Adjutant General a vehicle for official and personal use; and

9185 (g) for each member of the Board of Pardons and Parole a vehicle for commute and official  
9186 use.

9187 (4) (a) The governor has the discretion to establish a specific salary for each office listed  
9188 in Subsection (1), and, within that discretion, may provide salary increases within the range fixed  
9189 by the Legislature.

9190 (b) The governor shall apply the same overtime regulations applicable to other FLSA  
9191 exempt positions.

9192 (c) The governor may develop standards and criteria for reviewing the performance of the  
9193 state officers listed in Subsection (1).

9194 (5) Salaries for other Schedule A employees, as defined in Section 67-19-15, which are  
9195 not provided for in this chapter, or in Title 67, Chapter 8, Utah Executive and Judicial Salary Act,  
9196 shall be established as provided in Section 67-19-15.

9197 Section 203. Section **78-14-4.5** is amended to read:

9198 **78-14-4.5. Amount of award reduced by amounts of collateral sources available to**  
9199 **plaintiff -- No reduction where subrogation right exists -- Collateral sources defined --**  
9200 **Procedure to preserve subrogation rights -- Evidence admissible -- Exceptions.**

9201 (1) In all malpractice actions against health care providers as defined in Section 78-14-3  
9202 in which damages are awarded to compensate the plaintiff for losses sustained, the court shall  
9203 reduce the amount of such award by the total of all amounts paid to the plaintiff from all collateral

9204 sources which are available to him; however, there shall be no reduction for collateral sources for  
9205 which a subrogation right exists as provided in this section nor shall there be a reduction for any  
9206 collateral payment not included in the award of damages. Upon a finding of liability and an  
9207 awarding of damages by the trier of fact, the court shall receive evidence concerning the total  
9208 amounts of collateral sources which have been paid to or for the benefit of the plaintiff or are  
9209 otherwise available to him. The court shall also take testimony of any amount which has been  
9210 paid, contributed, or forfeited by, or on behalf of the plaintiff or members of his immediate family  
9211 to secure his right to any collateral source benefit which he is receiving as a result of his injury,  
9212 and shall offset any reduction in the award by such amounts. No evidence shall be received and  
9213 no reduction made with respect to future collateral source benefits except as specified in  
9214 Subsection (4).

9215 (2) For purposes of this section "collateral source" means payments made to or for the  
9216 benefit of the plaintiff for:

9217 (a) medical expenses and disability payments payable under the United States Social  
9218 Security Act, any federal, state, or local income disability act, or any other public program, except  
9219 the federal programs which are required by law to seek subrogation;

9220 (b) any health, sickness, or income [~~disability~~] replacement insurance, automobile accident  
9221 insurance that provides health benefits or income [~~disability~~] replacement coverage, and any other  
9222 similar insurance benefits, except life insurance benefits available to the plaintiff, whether  
9223 purchased by the plaintiff or provided by others;

9224 (c) any contract or agreement of any person, group, organization, partnership, or  
9225 corporation to provide, pay for, or reimburse the costs of hospital, medical, dental, or other health  
9226 care services, except benefits received as gifts, contributions, or assistance made gratuitously; and

9227 (d) any contractual or voluntary wage continuation plan provided by employers or any  
9228 other system intended to provide wages during a period of disability.

9229 (3) To preserve subrogation rights for amounts paid or received prior to settlement or  
9230 judgment, a provider of collateral sources shall serve at least 30 days before settlement or trial of  
9231 the action a written notice upon each health care provider against whom the malpractice action has  
9232 been asserted. The written notice shall state the name and address of the provider of collateral  
9233 sources, the amount of collateral sources paid, the names and addresses of all persons who received  
9234 payment, and the items and purposes for which payment has been made.

9235 (4) Evidence is admissible of government programs that provide payments or benefits  
9236 available in the future to or for the benefit of the plaintiff to the extent available irrespective of the  
9237 recipient's ability to pay. Evidence of the likelihood or unlikelihood that such programs, payments,  
9238 or benefits will be available in the future is also admissible. The trier of fact may consider such  
9239 evidence in determining the amount of damages awarded to a plaintiff for future expenses.

9240 (5) ~~No~~ A provider of collateral sources is not entitled to recover the amounts of such  
9241 benefits from a health care provider, the plaintiff, or any other person or entity as reimbursement  
9242 for collateral source payments made prior to settlement or judgment, including any payments made  
9243 under Title 26, Chapter 19, Medical Benefits Recovery Act, except to the extent that subrogation  
9244 rights to amounts paid prior to settlement or judgment are preserved as provided in this section.  
9245 All policies of insurance providing benefits affected by this section are construed in accordance  
9246 with this section.

9247 Section 204. Section **78-45-7.5** is amended to read:

9248 **78-45-7.5. Determination of gross income -- Imputed income.**

9249 (1) As used in the guidelines, "gross income" includes:

9250 (a) prospective income from any source, including nonearned sources, except under  
9251 Subsection (3); and

9252 (b) income from salaries, wages, commissions, royalties, bonuses, rents, gifts from anyone,  
9253 prizes, dividends, severance pay, pensions, interest, trust income, alimony from previous  
9254 marriages, annuities, capital gains, social security benefits, workers' compensation benefits,  
9255 unemployment compensation, income replacement disability insurance benefits, and payments  
9256 from "nonmeans-tested" government programs.

9257 (2) Income from earned income sources is limited to the equivalent of one full-time  
9258 40-hour job. However, if and only if during the time prior to the original support order, the parent  
9259 normally and consistently worked more than 40 hours at his job, the court may consider this extra  
9260 time as a pattern in calculating the parent's ability to provide child support.

9261 (3) Specifically excluded from gross income are:

9262 (a) cash assistance provided under Title 35A, Chapter 3, Part 3, Family Employment  
9263 Program;

9264 (b) benefits received under a housing subsidy program, the Job Training Partnership Act,  
9265 Supplemental Security Income, Social Security Disability Insurance, Medicaid, Food Stamps, or

9266 General Assistance; and

9267 (c) other similar means-tested welfare benefits received by a parent.

9268 (4) (a) Gross income from self-employment or operation of a business shall be calculated  
9269 by subtracting necessary expenses required for self-employment or business operation from gross  
9270 receipts. The income and expenses from self-employment or operation of a business shall be  
9271 reviewed to determine an appropriate level of gross income available to the parent to satisfy a child  
9272 support award. Only those expenses necessary to allow the business to operate at a reasonable  
9273 level may be deducted from gross receipts.

9274 (b) Gross income determined under this subsection may differ from the amount of business  
9275 income determined for tax purposes.

9276 (5) (a) When possible, gross income should first be computed on an annual basis and then  
9277 recalculated to determine the average gross monthly income.

9278 (b) Each parent shall provide verification of current income. Each parent shall provide  
9279 year-to-date pay stubs or employer statements and complete copies of tax returns from at least the  
9280 most recent year unless the court finds the verification is not reasonably available. Verification  
9281 of income from records maintained by the Department of Workforce Services may be substituted  
9282 for pay stubs, employer statements, and income tax returns.

9283 (c) Historical and current earnings shall be used to determine whether an  
9284 underemployment or overemployment situation exists.

9285 (6) Gross income includes income imputed to the parent under Subsection (7).

9286 (7) (a) Income may not be imputed to a parent unless the parent stipulates to the amount  
9287 imputed, the party defaults, or, in contested cases, a hearing is held and a finding made that the  
9288 parent is voluntarily unemployed or underemployed.

9289 (b) If income is imputed to a parent, the income shall be based upon employment potential  
9290 and probable earnings as derived from work history, occupation qualifications, and prevailing  
9291 earnings for persons of similar backgrounds in the community, or the median earning for persons  
9292 in the same occupation in the same geographical area as found in the statistics maintained by the  
9293 Bureau of Labor Statistics.

9294 (c) If a parent has no recent work history or their occupation is unknown, income shall be  
9295 imputed at least at the federal minimum wage for a 40-hour work week. To impute a greater  
9296 income, the judge in a judicial proceeding or the presiding officer in an administrative proceeding

9297 shall enter specific findings of fact as to the evidentiary basis for the imputation.

9298 (d) Income may not be imputed if any of the following conditions exist:

9299 (i) the reasonable costs of child care for the parents' minor children approach or equal the  
9300 amount of income the custodial parent can earn;

9301 (ii) a parent is physically or mentally disabled to the extent he cannot earn minimum wage;

9302 (iii) a parent is engaged in career or occupational training to establish basic job skills; or

9303 (iv) unusual emotional or physical needs of a child require the custodial parent's presence  
9304 in the home.

9305 (8) (a) Gross income may not include the earnings of a minor child who is the subject of  
9306 a child support award nor benefits to a minor child in the child's own right such as Supplemental  
9307 Security Income.

9308 (b) Social Security benefits received by a child due to the earnings of a parent shall be  
9309 credited as child support to the parent upon whose earning record it is based, by crediting the  
9310 amount against the potential obligation of that parent. Other unearned income of a child may be  
9311 considered as income to a parent depending upon the circumstances of each case.

9312 Section 205. **Repealer.**

9313 This act repeals:

9314 Section **31A-8-210, Solvency standards.**

9315 Section **31A-8-212, Solvency standards transition.**

---

---

**Legislative Review Note**  
**as of 12-13-00 11:34 AM**

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

**Office of Legislative Research and General Counsel**