

**PUBLIC AGENCY INSURANCE MUTUAL  
AMENDMENTS**

2002 GENERAL SESSION

STATE OF UTAH

**Sponsor: John W. Hickman**

**This act modifies the Insurance Code, the Utah Labor Code, and the Revenue and Taxation Code to generally exempt from the scope of the Insurance Code public agency insurance mutuals. The act also addresses taxation of and assessments imposed on public agency insurance mutuals and the ability of public agency insurance mutuals to provide workers' compensation and health insurance. This act makes technical changes. This act takes effect on July 1, 2002. This act provides a coordination clause.**

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

AMENDS:

**31A-1-103**, as last amended by Chapter 116, Laws of Utah 2001

**31A-1-301**, as last amended by Chapter 116, Laws of Utah 2001

**31A-2-214**, as last amended by Chapter 116, Laws of Utah 2001

**31A-5-202**, as last amended by Chapter 12, Laws of Utah 1987, First Special Session

**31A-7-201**, as last amended by Chapter 300, Laws of Utah 2000

**31A-12-107**, as last amended by Chapter 13, Laws of Utah 1998

**31A-20-108**, as last amended by Chapter 5, Laws of Utah 1991

**31A-22-502**, as last amended by Chapter 91, Laws of Utah 1987

**31A-25-205**, as last amended by Chapter 116, Laws of Utah 2001

**34A-2-201.5**, as enacted by Chapter 55, Laws of Utah 1999

**34A-2-202**, as last amended by Chapter 130, Laws of Utah 1999

**34A-2-704**, as last amended by Chapter 183, Laws of Utah 2000

**59-9-101**, as last amended by Chapter 222, Laws of Utah 2000

**59-9-101.3**, as enacted by Chapter 290, Laws of Utah 2001

**59-9-103**, as last amended by Chapter 79, Laws of Utah 1996

REPEALS:

31A-5-214, as last amended by Chapter 344, Laws of Utah 1995

31A-5-215, as last amended by Chapter 12, Laws of Utah 1987, First Special Session

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

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

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

(1) This title does not apply to:

(a) a retainer [~~contracts~~] contract made by [~~attorneys-at-law~~] an attorney-at-law:

(i) with an individual [~~clients with~~] client; and

(ii) under which fees are based on estimates of the nature and amount of services to be provided to the specific client[~~, and similar contracts~~];

(b) a contract similar to a contract described in Subsection (1)(a) made with a group of clients involved in the same or closely related legal matters;

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

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

[~~(d)~~] (e) legal assistance by employee organizations to their members in matters relating to employment.

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

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

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

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

(b) ocean marine insurance;

(c) death and accident and health benefits provided by an organization [~~where~~] if the

organization:

(i) has as its principal purpose [is] to achieve charitable, educational, social, or religious objectives rather than to provide death and accident and health benefits[; if the organization];

(ii) does not incur a legal obligation to pay a specified amount; and

(iii) does not create reasonable expectations of receiving a specified amount on the part of an insured person;

(d) other business specified in rules adopted by the commissioner on a finding that:

(i) the transaction of [~~such~~] the business in this state does not require regulation for the protection of the interests of the residents of this state; or [~~on a finding that~~]

(ii) it would be impracticable to require compliance with this title;

(e) [~~(i) transactions~~] except as provided in Subsection (4), a transaction independently procured through negotiations under Section 31A-15-104;

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

(f) self-insurance;

(g) reinsurance;

(h) subject to Subsection [~~(4)~~] (5), employee and labor union group or blanket insurance covering risks in this state if:

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

(ii) the policyholder;

(A) is not a resident of this state [~~or~~];

(B) is not a domestic corporation; or

(C) does not have its principal office in this state;

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

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

(v) (A) the insurer agrees to pay premium taxes on the Utah portion of its business, as if it were authorized to do business in this state[;]; and [if]

(B) the insurer provides the commissioner with the security the commissioner considers necessary for the payment of premium taxes under Title 59, Chapter 9, Taxation of Admitted Insurers; ~~[or]~~

(i) to the extent provided in Subsection ~~[(5)]~~ (6):

(i) a manufacturer's warranty; and

(ii) a manufacturer's service contract~~[-]; or~~

(j) except to the extent provided in Subsection (7), a public agency insurance mutual.

(4) A transaction described in Subsection (3)(e) is subject to taxation under Section 31A-3-301.

~~[(4)]~~ (5) (a) After a hearing, the commissioner may order an insurer of certain group or blanket contracts to transfer the Utah portion of the business otherwise exempted under Subsection (3)(h) to an authorized insurer if the contracts have been written by an unauthorized insurer.

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

(i) the insurer to be authorized to do business in this state; or

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

~~[(5)]~~ (6) (a) As used in Subsection (3)(i) and this Subsection ~~[(5)]~~ (6):

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

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

(I) on one specific product; or

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

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

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

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

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

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

including, if the manufacturer's warranty designates, providing parts and labor; and

(iii) "service contract" is as defined in Section 31A-6a-101.

(b) A manufacturer's warranty may be designated as:

(i) a warranty;

(ii) a guaranty; or

(iii) a term similar to a term described in Subsection [~~(5)~~] (6)(b)(i) or (ii).

(c) This title does not apply to:

(i) a manufacturer's warranty;

(ii) a manufacturer's service contract paid for with consideration that is in addition to the consideration paid for the product itself; and

(iii) a service contract that is not a manufacturer's warranty or manufacturer's service contract if:

(A) the service contract is paid for with consideration that is in addition to the consideration paid for the product itself; and

(B) the service contract is for the repair or maintenance of goods;

(C) the cost of the product is equal to an amount determined in accordance with Subsection [~~(5)~~] (6)(e); and

(D) the product is not a motor vehicle.

(d) This title does not apply to a manufacturer's warranty or service contract paid for with consideration that is in addition to the consideration paid for for the product itself regardless of whether the manufacturer's warranty or service contract is sold:

(i) at the time of the purchase of the product; or

(ii) at a time other than the time of the purchase of the product.

(e) (i) For fiscal year 2001-02, the amount described in Subsection [~~(5)~~] (6)(c)(iii)(C) shall be equal to \$3,700 or less.

(ii) For each fiscal year after fiscal year 2001-02, the commissioner shall annually determine whether the amount described in Subsection [~~(5)~~] (6)(c)(iii)(C) should be adjusted in accordance with changes in the Consumer Price Index published by the United States Bureau of Labor Statistics

selected by the commissioner by rule, between:

- (A) the Consumer Price Index for the February immediately preceding the adjustment; and
- (B) the Consumer Price Index for February 2001.

(iii) If under Subsection [~~(5)~~] (6)(e)(ii) the commissioner determines that an adjustment should be made, the commissioner shall make the adjustment by rule.

(7) (a) For purposes of this Subsection (7), "public agency insurance mutual" means an entity formed by two or more political subdivisions or public agencies of the state:

- (i) under Title 11, Chapter 13, Interlocal Cooperation Act; and
- (ii) for the purpose of providing for the political subdivisions or public agencies:
  - (A) subject to Subsection (7)(b), insurance coverage; or
  - (B) risk management.

(b) Notwithstanding Subsection (7)(a)(ii)(A), a public agency insurance mutual may not provide health insurance unless the public agency insurance mutual provides the health insurance using:

- (i) a third party administrator licensed under Chapter 25, Third Party Administrators;
- (ii) an admitted insurer; or
- (iii) a group insurance program authorized by Title 49, Chapter 8, Group Insurance Program

Act.

(c) Except for this Subsection (7), a public agency insurance mutual is exempt from this title.

(d) A public agency insurance mutual is considered to be a governmental entity and political subdivision of the state with all of the rights, privileges, and immunities of a governmental entity or political subdivision of the state including all the rights and benefits of Title 63, Chapter 30, Governmental Immunity Act.

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

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

As used in this title, unless otherwise specified:

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

- (i) a medical condition including:
    - (A) medical care expenses; or
    - (B) the risk of disability;
  - (ii) accident; or
  - (iii) sickness.
- (b) "Accident and health insurance":
- (i) includes a contract with disability contingencies including:
    - (A) an income replacement contract;
    - (B) a health care contract;
    - (C) an expense reimbursement contract;
    - (D) a credit accident and health contract;
    - (E) a continuing care contract; and
    - (F) long-term care contracts; and
  - (ii) may provide:
    - (A) hospital coverage;
    - (B) surgical coverage;
    - (C) medical coverage; or
    - (D) loss of income coverage.
- (c) "Accident and health insurance" does not include workers' compensation insurance.
- (2) "Administrator" is defined in Subsection [~~(111)~~] (110).
- (3) "Adult" means a natural person who has attained the age of at least 18 years.
- (4) "Affiliate" means any person who controls, is controlled by, or is under common control with, another person. A corporation is an affiliate of another corporation, regardless of ownership, if substantially the same group of natural persons manages the corporations.
- (5) "Alien insurer" means an insurer domiciled outside the United States.
- (6) "Amendment" means an endorsement to an insurance policy or certificate.
- (7) "Annuity" means an agreement to make periodical payments for a period certain or over the lifetime of one or more natural persons if the making or continuance of all or some of the series

of the payments, or the amount of the payment, is dependent upon the continuance of human life.

(8) "Application" means a document:

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

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

(i) evaluate risk; and

(ii) decide whether to:

(A) insure the risk under:

(I) the coverages as originally offered; or

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

(B) decline to insure the risk.

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

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

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

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

(13) "Business of insurance" is defined in Subsection (64).

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

(a) Section 31A-7-201;

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

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

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



affairs, however designated and includes comparable rules for trusts and other entities that are not corporations.

(16) "Casualty insurance" means liability insurance as defined in Subsection (70).

(17) "Certificate" means evidence of insurance given to:

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

(b) a third party.

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

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

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

(21) (a) "Commissioner" or "commissioner of insurance" means Utah's insurance commissioner.

(b) When appropriate, the terms listed in Subsection (21)(a) apply to the equivalent supervisory official of another jurisdiction.

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

(i) provides board and lodging;

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

(A) personal services;

(B) nursing services;

(C) medical services; or

(D) other health-related services; and

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

(A) for the life of the insured; or

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

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

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

- (i) by contract;
- (ii) by common management;
- (iii) through the ownership of voting securities; or
- (iv) by a means other than those described in Subsections (23)(a)(i) through (iii).

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

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

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

(24) (a) "Corporation" means insurance corporation, except when referring to:

(i) a corporation doing business as an insurance broker, consultant, or adjuster under:

(A) Chapter 23, Insurance Marketing - Licensing Agents, Brokers, Consultants, and Reinsurance Intermediaries; and

(B) Chapter 26, Insurance Adjusters; or

(ii) a noninsurer that is part of a holding company system under Chapter 16, Insurance Holding Companies.

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

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

(25) "Credit accident and health insurance" means insurance on a debtor to provide indemnity for payments coming due on a specific loan or other credit transaction while the debtor is disabled.

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

(27) "Credit life insurance" means insurance on the life of a debtor in connection with a loan or other credit transaction.

(28) "Creditor" means a person, including an insured, having any claim, whether:

- (a) matured;
- (b) unmatured;
- (c) liquidated;
- (d) unliquidated;
- (e) secured;
- (f) unsecured;
- (g) absolute;
- (h) fixed; or
- (i) contingent.

(29) (a) "Customer service representative" means a person that provides insurance services and insurance product information:

- (i) for its agent, broker, or consultant employer; and
- (ii) to its employer's customer, client, or organization.

(b) A customer service representative may only operate within the scope of authority of its agent, broker, or consultant employer.

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

- (a) imposed by:
  - (i) statute;
  - (ii) rule; or
  - (iii) order; and
- (b) by which a required filing or payment must be received by the department.

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

(32) "Degree of relationship" means the number of steps between two persons determined

by counting the generations separating one person from a common ancestor and then counting the generations to the other person.

(33) "Department" means the Insurance Department.

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

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

(a) perform the duties of:

(i) that individual's occupation; or

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

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

(i) eating;

(ii) toileting;

(iii) transferring;

(iv) bathing; or

(v) dressing.

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

(37) "Domiciliary state" means the state in which an insurer:

(a) is incorporated;

(b) is organized; or

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

(38) "Employee benefits" means one or more benefits or services provided employees or their dependents.

(39) (a) "Employee welfare fund" means a fund:

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

(A) one or more employers;

(B) one or more labor organizations; or

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

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

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

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

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

(42) "Expense reimbursement insurance" means insurance:

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

(b) written:

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

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

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

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

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

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

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

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

(B) rule.

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

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

including:

- (a) a policy;
- (b) a rate;
- (c) a form;
- (d) a document;
- (e) a plan;
- (f) a manual;
- (g) an application;
- (h) a report;
- (i) a certificate;
- (j) an endorsement;
- (k) an actuarial certification;
- (l) a licensee annual statement;
- (m) a licensee renewal application; or
- (n) an advertisement.

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

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

(48) (a) "Form" means a policy, certificate, or application prepared for general use.

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

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

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

- (a) professional services;
- (b) personal services;

- (c) facilities;
- (d) equipment;
- (e) devices;
- (f) supplies; or
- (g) medicine.

(51) (a) "Health care insurance" or "health insurance" means insurance providing:

- (i) health care benefits; or
- (ii) payment of incurred health care expenses.

(b) "Health care insurance" or "health insurance" does not include accident and health insurance providing benefits for:

- (i) replacement of income;
- (ii) short-term accident;
- (iii) fixed indemnity;
- (iv) credit accident and health;
- (v) supplements to liability;
- (vi) workers' compensation;
- (vii) automobile medical payment;
- (viii) no-fault automobile;
- (ix) equivalent self-insurance; or
- (x) any type of accident and health insurance coverage that is a part of or attached to another

type of policy.

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

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

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

(55) "Independently procured insurance" means insurance procured under Section 31A-15-104.

(56) "Individual" means a natural person.

(57) "Inland marine insurance" includes insurance covering:

(a) property in transit on or over land;

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

(c) bailee liability;

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

(e) personal and commercial property floaters.

(58) "Insolvency" means that:

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

(b) an insurer's total adjusted capital is less than the insurer's mandatory control level RBC under Subsection 31A-17-601(8)(c); or

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

(59) (a) "Insurance" means:

(i) an arrangement, contract, or plan for the transfer of a risk or risks from one or more persons to one or more other persons; or

(ii) an arrangement, contract, or plan for the distribution of a risk or risks among a group of persons that includes the person seeking to distribute that person's risk.

(b) "Insurance" includes:

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

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

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

(60) "Insurance adjuster" means a person who directs the investigation, negotiation, or settlement of a claim under an insurance policy other than life insurance or an annuity, on behalf of an insurer, policyholder, or a claimant under an insurance policy.



(61) "Interinsurance exchange" is defined in Subsection [~~400~~] (99).

(62) Except as provided in Subsection 31A-23-201.5(1), "insurance agent" or "agent" means a person who represents insurers in soliciting, negotiating, or placing insurance.

(63) Except as provided in Subsection 31A-23-201.5(1), "insurance broker" or "broker" means a person who:

(a) acts in procuring insurance on behalf of an applicant for insurance or an insured; and

(b) does not act on behalf of the insurer except by collecting premiums or performing other ministerial acts.

(64) "Insurance business" or "business of insurance" includes:

(a) providing health care insurance, as defined in Subsection (51), by organizations that are or should be licensed under this title;

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

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

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

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

(d) providing the characteristic services of motor clubs as outlined in Subsection (77);

(e) providing other persons with insurance as defined in Subsection (59);

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

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

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

(65) Except as provided in Subsection 31A-23-201.5(1), "insurance consultant" or "consultant" means a person who:

- (a) advises other persons about insurance needs and coverages;
- (b) is compensated by the person advised on a basis not directly related to the insurance placed; and
- (c) is not compensated directly or indirectly by an insurer, agent, or broker for advice given.

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

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

- (i) policyholders;
- (ii) subscribers;
- (iii) members; and
- (iv) beneficiaries.

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

(68) (a) (i) "Insurer" means any person doing an insurance business as a principal including:

- (A) fraternal benefit societies;
- (B) issuers of gift annuities other than those specified in Subsections 31A-22-1305(2) and (3);
- (C) motor clubs;
- (D) employee welfare plans; and
- (E) any person purporting or intending to do an insurance business as a principal on that person's own account.

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

(b) "Admitted insurer" is defined in Subsection [~~(115)~~] (114)(b).

(c) "Alien insurer" is defined in Subsection (5).

(d) "Authorized insurer" is defined in Subsection [~~(115)~~] (114)(b).

(e) "Domestic insurer" is defined in Subsection (36).

(f) "Foreign insurer" is defined in Subsection (47).

(g) "Nonadmitted insurer" is defined in Subsection [~~(115)~~] (114)(a).

(h) "Unauthorized insurer" is defined in Subsection [~~(115)~~] (114)(a).

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

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

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

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

(A) Subsection (74) for medical malpractice insurance;

(B) Subsection (92) for professional liability insurance; and

(C) Subsection [~~(118)~~] (117) for workers' compensation insurance;

(ii) for medical, hospital, surgical, and funeral benefits to persons other than the insured who are injured, irrespective of legal liability of the insured, when issued with or supplemental to insurance against legal liability for the death, injury, or disability of human beings, exclusive of the coverages under:

(A) Subsection (74) for medical malpractice insurance;

(B) Subsection (92) for professional liability insurance; and

(C) Subsection [~~(118)~~] (117) for workers' compensation insurance;

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

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

(v) for other loss or damage properly the subject of insurance not within any other kind or

kinds of insurance as defined in this chapter, if such insurance is not contrary to law or public policy.

(b) "Liability insurance" includes:

(i) vehicle liability insurance as defined in Subsection [~~(116)~~] (115);

(ii) residential dwelling liability insurance as defined in Subsection [~~(102)~~] (101); and

(iii) making inspection of, and issuing certificates of inspection upon, elevators, boilers, machinery, and apparatus of any kind when done in connection with insurance on them.

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

(72) (a) "Life insurance" means insurance on human lives and insurances pertaining to or connected with human life.

(b) The business of life insurance includes:

(i) granting death benefits;

(ii) granting annuity benefits;

(iii) granting endowment benefits;

(iv) granting additional benefits in the event of death by accident;

(v) granting additional benefits to safeguard the policy against lapse in the event of disability; and

(vi) providing optional methods of settlement of proceeds.

(73) (a) "Long-term care insurance" means an insurance policy or rider advertised, marketed, offered, or designated to provide coverage:

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

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

(A) expenses incurred;

(B) indemnity;

(C) prepayment; or

(D) another method;

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

- (A) diagnostic;
- (B) preventative;
- (C) therapeutic;
- (D) rehabilitative;
- (E) maintenance; or
- (F) personal care; and

(iv) that may be issued by:

- (A) an insurer;
- (B) a fraternal benefit society;
- (C) (I) a nonprofit health hospital; and
- (II) a medical service corporation;
- (D) a prepaid health plan;
- (E) a health maintenance organization; or

(F) an entity similar to the entities described in Subsections (73)(a)(iv)(A) through (E) to the extent that the entity is otherwise authorized to issue life or health care insurance.

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

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

- (A) a group or individual annuity or rider; or
- (B) a life insurance policy or rider;

(ii) a policy or rider that provides for payment of benefits based on:

- (A) cognitive impairment; or
- (B) functional capacity; or

(iii) a qualified long-term care insurance contract.

(c) "Long-term care insurance" does not include:

- (i) a policy that is offered primarily to provide basic Medicare supplement coverage;
- (ii) basic hospital expense coverage;
- (iii) basic medical/surgical expense coverage;
- (iv) hospital confinement indemnity coverage;

- (v) major medical expense coverage;
- (vi) income replacement or related asset-protection coverage;
- (vii) accident only coverage;
- (viii) coverage for a specified:
  - (A) disease; or
  - (B) accident;
- (ix) limited benefit health coverage; or
- (x) a life insurance policy that accelerates the death benefit to provide the option of a lump

sum payment:

- (A) if neither the benefits nor eligibility is conditioned on the receipt of long-term care; and
- (B) the coverage is for one or more the following qualifying events:
  - (I) terminal illness;
  - (II) medical conditions requiring extraordinary medical intervention; or
  - (III) permanent institutional confinement.

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

(75) "Member" means a person having membership rights in an insurance corporation.

(76) "Minimum capital" or "minimum required capital" means the capital that must be constantly maintained by a stock insurance corporation as required by statute.

(77) "Motor club" means a person:

- (a) licensed under:
  - (i) Chapter 5, Domestic Stock and Mutual Insurance Corporations;
  - (ii) Chapter 11, Motor Clubs; or
  - (iii) Chapter 14, Foreign Insurers; and
- (b) that promises for an advance consideration to provide for a stated period of time:
  - (i) legal services under Subsection 31A-11-102(1)(b);
  - (ii) bail services under Subsection 31A-11-102(1)(c); or
  - (iii) trip reimbursement, towing services, emergency road services, stolen automobile

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

(78) "Mutual" means mutual insurance corporation.

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

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

(a) ships or hulls of ships;

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

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

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

(81) "Order" means an order of the commissioner.

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

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

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

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

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

(A) a motor club under Chapter 11, Motor Clubs;

- (B) a service contract provided under Chapter 6a, Service Contracts; and
- (C) a corporation licensed under:
  - (I) Chapter 7, Nonprofit Health Service Insurance Corporations; or
  - (II) Chapter 8, Health Maintenance Organizations and Limited Health Plans.

(iii) "Policy" does not include:

- (A) a certificate under a group insurance contract; or
- (B) a document that does not purport to have legal effect.

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

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

(86) "Policyholder" means the person who controls a policy, binder, or oral contract by ownership, premium payment, or otherwise.

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

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

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

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

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

(91) "Proceedings" includes actions and special statutory proceedings.



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

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

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

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

~~[(95)]~~ (94) "Qualified long-term care insurance contract" or "federally tax qualified long-term care insurance contract" means:

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

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

(i) (A) by rider; or

(B) as a part of the contract; and

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

~~[(96)]~~ (95) (a) "Rate" means:

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

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

(A) a single number; or

(B) a pure premium rate, adjusted before any application of individual risk variations based

on loss or expense considerations to account for the treatment of:

- (I) expenses;
- (II) profit; and
- (III) individual insurer variation in loss experience.

(b) "Rate" does not include a minimum premium.

~~[(97)]~~ (96) (a) Except as provided in Subsection ~~[(97)]~~ (96)(b), "rate service organization"

means any person who assists insurers in rate making or filing by:

- (i) collecting, compiling, and furnishing loss or expense statistics;
- (ii) recommending, making, or filing rates or supplementary rate information; or
- (iii) advising about rate questions, except as an attorney giving legal advice.

(b) "Rate service organization" does not mean:

- (i) an employee of an insurer;
- (ii) a single insurer or group of insurers under common control;
- (iii) a joint underwriting group; or
- (iv) a natural person serving as an actuarial or legal consultant.

~~[(98)]~~ (97) "Rating manual" means any of the following used to determine initial and renewal policy premiums:

- (a) a manual of rates;
- (b) classifications;
- (c) rate-related underwriting rules; and
- (d) rating formulas that describe steps, policies, and procedures for determining initial and

renewal policy premiums.

~~[(99)]~~ (98) "Received by the department" means:

(a) except as provided in Subsection ~~[(99)]~~ (98)(b), the date delivered to and stamped received by the department, whether delivered:

- (i) in person;
- (ii) by a delivery service; or
- (iii) electronically; and

(b) if an item with a department imposed deadline is delivered to the department by a delivery service, the delivery service's postmark date or pick-up date unless otherwise stated in:

- (i) statute;
- (ii) rule; or
- (iii) a specific filing order.

~~[(100)]~~ (99) "Reciprocal" or "interinsurance exchange" means any unincorporated association of persons:

- (a) operating through an attorney-in-fact common to all of them; and
- (b) exchanging insurance contracts with one another that provide insurance coverage on each other.

~~[(101)]~~ (100) "Reinsurance" means an insurance transaction where an insurer, for consideration, transfers any portion of the risk it has assumed to another insurer. In referring to reinsurance transactions, this title sometimes refers to:

- (a) the insurer transferring the risk as the "ceding insurer"; and
- (b) the insurer assuming the risk as the:
  - (i) "assuming insurer"; or
  - (ii) "assuming reinsurer."

~~[(102)]~~ (101) "Residential dwelling liability insurance" means insurance against liability resulting from or incident to the ownership, maintenance, or use of a residential dwelling that is a detached single family residence or multifamily residence up to four units.

~~[(103)]~~ (102) "Retrocession" means reinsurance with another insurer of a liability assumed under a reinsurance contract. A reinsurer "retrocedes" when it reinsures with another insurer part of a liability assumed under a reinsurance contract.

~~[(104)]~~ (103) "Rider" means an endorsement to:

- (a) an insurance policy; or
- (b) an insurance certificate.

~~[(105)]~~ (104) (a) "Security" means any:

- (i) note;

- (ii) stock;
  - (iii) bond;
  - (iv) debenture;
  - (v) evidence of indebtedness;
  - (vi) certificate of interest or participation in any profit-sharing agreement;
  - (vii) collateral-trust certificate;
  - (viii) preorganization certificate or subscription;
  - (ix) transferable share;
  - (x) investment contract;
  - (xi) voting trust certificate;
  - (xii) certificate of deposit for a security;
  - (xiii) certificate of interest of participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease;
  - (xiv) commodity contract or commodity option;
  - (xv) any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase any of the items listed in Subsections [~~(105)~~] (104)(a)(i) through (xiv); or
  - (xvi) any other interest or instrument commonly known as a security.
- (b) "Security" does not include:
- (i) any insurance or endowment policy or annuity contract under which an insurance company promises to pay money in a specific lump sum or periodically for life or some other specified period; or
  - (ii) a burial certificate or burial contract.
- [~~(106)~~] (105) "Self-insurance" means any arrangement under which a person provides for spreading its own risks by a systematic plan.
- (a) Except as provided in this Subsection [~~(106)~~] (105), self-insurance does not include an arrangement under which a number of persons spread their risks among themselves.
  - (b) Self-insurance does include an arrangement by which a governmental entity, as defined

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

(c) Self-insurance does include an arrangement by which a person with a managed program of self-insurance and risk management undertakes to indemnify its affiliates, subsidiaries, directors, officers, or employees for liability or risk which is related to the relationship or employment.

(d) Self-insurance does not include any arrangement with independent contractors.

~~[(107)]~~ (106) "Short-term care insurance" means any insurance policy or rider advertised, marketed, offered, or designed to provide coverage that is similar to long-term care insurance but that provides coverage for less than 12 consecutive months for each covered person.

~~[(108)]~~ (107) (a) "Subsidiary" of a person means an affiliate controlled by that person either directly or indirectly through one or more affiliates or intermediaries.

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

~~[(109)]~~ (108) Subject to Subsection (59)(b), "surety insurance" includes:

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

(b) bail bond insurance; and

(c) fidelity insurance.

~~[(110)]~~ (109) (a) "Surplus" means the excess of assets over the sum of paid-in capital and liabilities.

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

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

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

(c) "Excess surplus" means:

(i) for life or accident and health insurers, health organizations, and property and casualty insurers as defined in Section 31A-17-601, the lesser of:

(A) that amount of an insurer's or health organization's total adjusted capital, as defined in Subsection [~~(113)~~] (112), that exceeds the product of:

(I) 2.5; and

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

(B) that amount of an insurer's or health organization's total adjusted capital, as defined in Subsection [~~(113)~~] (112), that exceeds the product of:

(I) 3.0; and

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

(ii) for monoline mortgage guaranty insurers, financial guaranty insurers, and title insurers, that amount of an insurer's paid-in-capital and surplus that exceeds the product of:

(A) 1.5; and

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

[~~(111)~~] (110) "Third party administrator" or "administrator" means any person who collects charges or premiums from, or who, for consideration, adjusts or settles claims of residents of the state in connection with insurance coverage, annuities, or service insurance coverage, except:

(a) a union on behalf of its members;

(b) a person administering any:

(i) pension plan subject to the federal Employee Retirement Income Security Act of 1974;

(ii) governmental plan as defined in Section 414(d), Internal Revenue Code; or

(iii) nonelecting church plan as described in Section 410(d), Internal Revenue Code;

(c) an employer on behalf of the employer's employees or the employees of one or more of the subsidiary or affiliated corporations of the employer;

(d) an insurer licensed under Chapter 5, 7, 8, 9, or 14, but only for a line of insurance for which the insurer holds a license in this state; or

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

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

~~[(112)]~~ (111) "Title insurance" means the insuring, guaranteeing, or indemnifying of owners of real or personal property or the holders of liens or encumbrances on that property, or others interested in the property against loss or damage suffered by reason of liens or encumbrances upon, defects in, or the unmarketability of the title to the property, or invalidity or unenforceability of any liens or encumbrances on the property.

~~[(113)]~~ (112) "Total adjusted capital" means the sum of an insurer's or health organization's statutory capital and surplus as determined in accordance with:

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

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

~~[(114)]~~ (113) (a) "Trustee" means "director" when referring to the board of directors of a corporation.

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

~~[(115)]~~ (114) (a) "Unauthorized insurer," "unadmitted insurer," or "nonadmitted insurer" means an insurer:

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

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

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

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

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

~~[(116)]~~ (115) "Vehicle liability insurance" means insurance against liability resulting from or incident to ownership, maintenance, or use of any land vehicle or aircraft, exclusive of vehicle comprehensive and vehicle physical damage coverages under Subsection (93).

~~[(H7)]~~ (116) "Voting security" means a security with voting rights, and includes any security convertible into a security with a voting right associated with it.

~~[(H8)]~~ (117) "Workers' compensation insurance" means:

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

(i) compensable accidental injuries; and

(ii) occupational disease disability;

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

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

Section 3. Section **31A-2-214** is amended to read:

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

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

(i) a line of insurance:

(A) is not generally available in the marketplace; or

(B) is priced in such a manner as to severely limit its availability; and

(ii) the public interest requires availability of the line of insurance described in Subsection (1)(a)(i).

(b) Insurers doing business in this state may, at their own instance or at the request of the commissioner, prepare and submit to the commissioner, for the commissioner's approval and adoption, voluntary plans providing any line of insurance coverage for all or any part of this state in which ~~[this]~~:

(i) the line of insurance;

(A) is not generally available in the voluntary market; or



(B) is priced in such a manner as to severely limit its availability; and ~~[in which]~~

(ii) the public interest requires the availability of ~~[this]~~ the coverage described in Subsection (1)(b)(i).

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

(b) The commissioner shall allow any market assistance program formed under Subsection (1)(a) or (b) a minimum of 30 days operation before the commissioner forms a joint underwriting association.

(c) The commissioner may not adopt a rule forming a joint underwriting association under Subsection (2)(a) unless the commissioner finds as a result of the hearing that:

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

(ii) the coverage is:

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

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

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

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

~~[(c)]~~ (d) The commissioner may not adopt a rule forming a joint underwriting association under Subsection (2)(a) on the basis that:

(i) applicants for particular lines of insurance are unable to pay a premium that is commensurate with the risk involved; or ~~[that]~~

(ii) the number of applicants or people affected is too small to justify its creation.

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

~~[(e)]~~ (f) Each association formed under Subsection (2)(a) shall:

(i) give consideration to:

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

(B) alternative methods of improving the market affected;

(C) the preference of the insurers and agents;

(D) the inherent limitations of the insurance mechanism;

(E) the need for reasonable underwriting standards; and

(F) the requirement of reasonable loss prevention measures;

(ii) establish procedures that will create minimum interference with the voluntary market;

(iii) allocate the burden imposed by the association equitably and efficiently among the insurers doing business in this state;

(iv) establish procedures for applicants and participants to have grievances reviewed by an impartial body;

(v) provide for the method of classifying risks and making and filing applicable rates; and

(vi) specify:

(A) the basis of participation of insurers and agents in the association;

(B) the conditions under which risks must be accepted; and

(C) the commission rates to be paid for insurance business placed with the association.

~~[(f)]~~ (g) Any deficit in an association in any year shall be recouped by rate increases for the association, applicable prospectively.

(h) Any surplus in excess of the loss reserves of the association in any year shall be distributed either by rate decreases or by distribution to the members of the association on a pro-rata basis.

(3) Notwithstanding Subsection (2), the commissioner may not create a joint underwriting association under Subsection (2) for:

(a) life insurance;

(b) annuities;

(c) accident and health insurance;

- (d) ocean marine insurance;
- (e) medical malpractice insurance;
- (f) earthquake insurance;
- (g) workers' compensation insurance; or
- ~~[(h) public agency insurance mutuals; or]~~
- ~~[(i)]~~ (h) private passenger automobile liability insurance.

(4) Every insurer and agent participating in a joint underwriting association adopted by the commissioner under Subsection (2) shall provide the services prescribed by the association to any person seeking coverage of the kind available in the plan, including full information about the requirements and procedures for obtaining coverage with the association.

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

- (a) establish branch service offices;
- (b) make special contracts for provision of the service; or
- (c) take other appropriate steps to ensure that service is available.

(6) (a) The association may issue policies for a period of one year.

(b) If, at the end of any one year period, the commissioner determines that the market conditions justify the continued existence of the association, the commissioner may reauthorize its existence.

(c) In reauthorizing the association in accordance with this Subsection (6), the commissioner shall follow the procedure set forth in Subsection (2).

Section 4. Section **31A-5-202** is amended to read:

**31A-5-202. Incorporators.**

~~[(1) As used in this section, "public agency" means any public institution deriving its authority from this state and which is not privately owned. It includes municipalities as defined in Subsection 11-14-1 (1), the state and its departments and agencies, and all public educational institutions.]~~

~~[(2)]~~ (1) One or more adult natural persons may organize and act as incorporators of a

corporation under Section 31A-5-204.

~~[(3)]~~ (2) One to 15 adult natural persons may organize and act as incorporators of a corporation under the accelerated organization procedure of Section 31A-5-213.

~~[(4) (a) Subject to Subsection (4) (b), any number of public agencies, associations of public agencies, or both, may organize a public agency insurance mutual under Section 31A-5-214 to provide insurance and risk management services exclusively for its members.]~~

~~[(b) Governmental agencies of contiguous states may, with the consent of the commissioner, become members of a public agency mutual under this section.]~~

~~[(5)]~~ (3) This section does not apply to stock and mutual insurance corporations already in existence on July 1, 1986.

Section 5. Section **31A-7-201** is amended to read:

**31A-7-201. Organization, incorporation, and licensing.**

Part II of Chapter 5 governs the organization, incorporation, and licensing of nonprofit health service corporations with the following exceptions:

- (1) Section 16-6a-201 applies in place of Section 31A-5-202.
- (2) Sections 16-6a-401 and 31A-1-109 apply in place of Subsection 31A-5-203(2)(a).
- (3) The last sentence of Subsection 31A-5-203(2)(e) does not apply.

~~[(4) Sections 31A-5-214 and 31A-5-215 do not apply to nonprofit health service insurance corporations:]~~

Section 6. Section **31A-12-107** is amended to read:

**31A-12-107. Governmental immunity.**

Notwithstanding any other provision of this title, a governmental entity, as defined in Section 63-30-2, is not an insurer for purposes of this title and is not engaged in the business of insurance to the extent that it is:

(1) covering its own liabilities under Title 63, Chapter 30, ~~[the]~~ Governmental Immunity Act~~[-]~~; or

(2) engaging in other related risk management activities related to the normal course of its activities. ~~[A public agency insurance mutual created or regulated under Section 31A-5-214 is a~~

~~governmental entity entitled to all the rights and benefits of the Governmental Immunity Act.]~~

Section 7. Section **31A-20-108** is amended to read:

**31A-20-108. Single risk limitation.**

(1) This section applies to all lines of insurance, including ocean marine and reinsurance, except:

- (a) title insurance[;];
- (b) workers' compensation insurance[;];
- (c) occupational disease insurance[;]; and
- (d) employers' liability insurance.

(2) (a) Except as provided under Subsections (3)[;] and (4)[, ~~and (6)~~] and under Section 31A-20-109, an insurance company authorized to do an insurance business in Utah may not expose itself to loss on any single risk in an amount exceeding 10% of its capital and surplus.

(b) The commissioner may adopt rules to calculate surplus under this section.

(c) The portion of any risk reinsured by a reinsurance contract worthy of a reserve credit under Section 31A-17-404 may not be included in determining the limitation of risk under this section.

(3) (a) The commissioner may adopt rules, after hearings held with notice provided under Section 31A-2-303, to specify the maximum exposure to which an assessable mutual may subject itself.

(b) The rules described in Subsection (3)(a) may provide for classifications of insurance and insurers to preserve the solidity of insurers.

(4) As used in this section, a "single risk" includes all losses reasonably expected as a result of the same event.

(5) A company transacting fidelity or surety insurance may expose itself to a risk or hazard in excess of the amount prescribed in Subsection (2), if the commissioner, after considering all the facts and circumstances, approves the risk.

~~[(6) (a) Subsection (2) does not apply to limit the percentage of capital and surplus that a public agency insurance mutual may expose to any single risk, if a fellow of the Casualty Actuarial~~

~~Society or other actuary acceptable to the commissioner certifies in an opinion filed with and approved by the commissioner that the single risk diversification exposure of the public agency insurance mutual does not by itself create a hazardous condition nor a condition that is not actuarially sound in light of the public agency insurance mutual's operation.]~~

~~[(b) Current obligations of insured policyholders to pay surplus contributions shall be considered as surplus for the purpose of establishing reasonable single risk diversification standards for public agency insurance mutuals.]~~

Section 8. Section 31A-22-502 is amended to read:

**31A-22-502. Employee groups.**

(1) As used in this section:

(a) "Employees" includes:

(i) for one or more affiliated corporations, proprietorships, or partnerships under common control, their:

(A) officers;

(B) managers;

(C) retired employees; and

(D) individual proprietors or partners; and

(ii) for a trusteeship, if their duties are primarily connected with the trusteeship:

(A) trustees;

(B) employees of trustees; or

(C) both Subsection (1)(a)(ii)(A) and (B).

(b) "Employer" includes a Utah public agency.

(c) (i) "Utah public agency" means a public institution that:

(A) derives its authority from this state; and

(B) is not privately owned.

(ii) "Utah public agency" includes:

(A) a municipality as defined in Subsection 11-14-1(1);

(B) the state;

(C) a department or agency of the state; and

(D) all public educational institutions.

(2) The lives of a group of individuals may be insured under a policy:

(a) issued as policyholder, to:

(i) an employer; or [to]

(ii) the trustees of a fund established by an employer[;];

(b) insuring employees of the employer for the benefit of persons other than the employer[;];

and

(c) subject to the [following] requirements[;] of Subsections (3) through (5).

~~[(1)]~~ (3) (a) All the employer's employees or all of any class of employees of the employer [are] shall be eligible for insurance under the policy described in Subsection (2).

~~[(b) As used in this section:]~~

~~[(i) "Employees" includes the officers and managers, retired employees, and the individual proprietors or partners of one or more affiliated corporations, proprietorships, or partnerships under common control.]~~

~~[(ii) "Employees" includes trustees, their employees, or both if their duties are primarily connected with the trusteeship.]~~

~~[(c)]~~ (b) A policy issued to insure the employees of a public body may include elected or appointed officials.

~~[(2) (a) As used in this section, "employer" includes all Utah public agencies, as defined under Subsection 31A-5-202(1).]~~

~~[(b) These]~~

(4) A Utah public [agencies] agency may pay or authorize the payment out of [its] the Utah public agency's corporate revenue, the premiums required to maintain the group insurance in force.

~~[(3)]~~ (5) (a) The premiums for the policy described in Subsection (2) shall be paid by the policyholders[; either]:

(i) from the employer's funds [or from];

(ii) funds contributed by the insured employees[;]; or

(iii) both the funds described in Subsections (5)(a)(i) and (ii).

(b) Except as provided under Section 31A-22-512, a policy on which no part of the premium is contributed by the insured employees shall insure all eligible employees.

Section 9. Section **31A-25-205** is amended to read:

**31A-25-205. Financial responsibility.**

(1) Every person licensed under this chapter shall, while licensed and for one year after that date, maintain an insurance policy or surety bond, issued by an authorized insurer, in an amount specified under Subsection (2), on a policy or contract form which is acceptable under Subsection (3).

(2) (a) Insurance policies or surety bonds satisfying the requirement of Subsection (1) shall be in a face amount equal to at least 10% of the total funds handled by the administrator. However, no policy or bond under this Subsection (2)(a) may be in a face amount of less than \$5,000 nor more than \$500,000.

(b) In fixing the policy or bond face amount under Subsection (2)(a), the total funds handled is:

(i) the greater of:

(A) the premiums received during the previous calendar year; or

(B) claims paid through the administrator during the previous calendar year; or

(ii) if no funds were handled during the preceding year, the total funds reasonably anticipated to be handled by the administrator during the current calendar year.

(c) This section does not prohibit any person dealing with the administrator from requiring, by contract, insurance coverage in amounts greater than required under this section.

(3) Insurance policies or surety bonds issued to satisfy Subsection (1) shall be on forms approved by the commissioner. The policies or bonds shall require the insurer to pay, up to the policy or bond face amount, any judgment obtained by participants in or beneficiaries of plans administered by the insured licensee which arise from the negligence or culpable acts of the licensee or any employee or agent of the licensee in connection with the activities described under Subsection 31A-1-301[~~(444)~~](110). The commissioner may require that policies or bonds issued to satisfy the



requirements of this section require the insurer to give the commissioner 20 day prior notice of policy cancellation.

(4) The commissioner shall establish annual reporting requirements and forms to monitor compliance with this section.

(5) This section may not be construed as limiting any cause of action an insured would otherwise have against the insurer.

Section 10. Section **34A-2-201.5** is amended to read:

**34A-2-201.5. Self-insured employer -- Acceptable security -- Procedures.**

(1) As used in this section:

(a) "Acceptable security" means one or more of the following:

(i) cash;

(ii) a surety bond issued:

(A) by a person acceptable to the division; and

(B) in a form approved by the division;

(iii) an irrevocable letter of credit issued:

(A) by a depository institution acceptable to the division; and

(B) in a form approved by the division;

(iv) a United States Treasury Bill;

(v) a deposit in a depository institution that:

(A) has an office located in Utah; and

(B) is insured by the Federal Deposit Insurance Corporation; or

(vi) a certificate of deposit in a depository institution that:

(A) has an office located in Utah; and

(B) is insured by the Federal Deposit Insurance Corporation.

(b) "Compensation" is as defined in Section 34A-2-102.

(c) "Depository institution" is as defined in Section 7-1-103.

(d) "Member of a public agency insurance mutual" means a political subdivision or public agency that is included within a public agency insurance mutual.

(e) "Public agency insurance mutual" is as defined in Section 31A-1-103.

~~[(d)]~~ (f) "Self-insured employer" means [an employer] one of the following that is authorized by the division to pay direct workers' compensation benefits under Subsection (2)[-];

(i) an employer; or

(ii) a public agency insurance mutual.

(2) (a) ~~[An]~~ If approved by the division as a self-insured employer in accordance with this section:

(i) an employer may directly pay compensation in the amount, in the manner, and when due as provided for in this chapter and Chapter 3, Utah Occupational Disease Act[-as a self-insured employer if the employer is approved by the division as a self-insured employer in accordance with this section-]; and

(ii) a public agency insurance mutual may directly pay compensation:

(A) on behalf of the members of the public agency insurance mutual; and

(B) in the amount, in the manner, and when due as provided in this chapter and Chapter 3, Utah Occupational Disease Act.

(b) If an employer's or a public agency insurance mutual's application to directly pay compensation as a self-insured employer is approved by the division, the application ~~[of the employer]~~ is considered acceptance ~~[by the employer]~~:

(i) of the conditions, liabilities, and responsibilities imposed by this chapter and Chapter 3, Utah Occupational Disease Act, including the liability imposed pursuant to Subsection 34A-2-704(14)[-];

(ii) by:

(A) the employer; or

(B) (I) the public agency insurance mutual; and

(II) the members of the public agency insurance mutual.

(c) The division's denial under this Subsection (2) of an ~~[employer's]~~ application to directly pay compensation as a self-insured employer becomes a final order of the commission 30 calendar days from the date of the denial unless within that 30 days the employer or the public agency

insurance mutual that filed the application files an application for a hearing in accordance with Part 8, Adjudication.

(3) To qualify as a self-insured employer, [~~the~~] an employer or a public agency insurance mutual shall:

(a) submit a written application requesting to directly pay compensation as a self-insured employer;

(b) annually provide the division proof of the employer's or the public agency insurance mutual's ability to directly pay compensation in the amount, manner, and time provided by this chapter and Chapter 3, Utah Occupational Disease Act; and

(c) if requested by the division, deposit acceptable security in the amounts determined by the division to be sufficient to secure the employer's or the public agency insurance mutual's liabilities under this chapter and Chapter 3, Utah Occupational Disease Act.

(4) (a) Acceptable security deposited by a self-insured employer in accordance with Subsection (3)(c) shall be:

(i) deposited on behalf of the division by the self-insured employer with the state treasurer; and

(ii) withdrawn only upon written order of the division.

(b) The self-insured employer has no right, title, interest in, or control over acceptable security that is deposited in accordance with this section.

(c) If the division determines that the amount of acceptable security deposited in accordance with this section is in excess of that needed to secure payment of the self-insured employer's liability under this chapter and Chapter 3, Utah Occupational Disease Act, the division shall return the amount that is determined to be excess to the self-insured employer.

(5) (a) The division may at any time require a self-insured employer to:

(i) increase or decrease the amount of acceptable security required to be deposited under Subsection (3)(c); or

(ii) modify the type of acceptable security to be deposited under Subsection (3)(c).

(b) (i) If the division requires a self-insured employer to take an action described in

Subsection (5)(a), a perfected security interest is created in favor of the division in the assets of the self-insured employer to the extent necessary to pay any amount owed by the self-insured employer under this chapter and Chapter 3, Utah Occupational Disease Act, that cannot be paid by acceptable security deposited in accordance with this section.

(ii) The perfected security interest created in Subsection (5)(b)(i) ends when the self-insured employer complies with the division's request under Subsection (5)(a) to the satisfaction of the division.

(6) (a) If an employer or a public agency insurance mutual is approved under Subsection (2) to directly pay compensation as a self-insured employer, the division may revoke [its] the employer's or the public agency insurance mutual's approval.

(b) The division's revocation of [its] the employer's or the public agency insurance mutual's approval under Subsection (6)(a) becomes a final order of the commission 30 calendar days from the date of the revocation unless within that 30 days the employer or the public agency insurance mutual files an application for a hearing in accordance with Part 8, Adjudication.

(7) If the division finds that a self-insured employer has failed to pay compensation [it] that the self-insured employer was liable to pay under this chapter or Chapter 3, Utah Occupational Disease Act, the division may use the acceptable security deposited and any interest earned on the acceptable security to pay:

(a) the self-insured employer's liability under this chapter and Chapter 3, Utah Occupational Disease Act; and

(b) any costs, including legal fees, associated with the administration of the compensation incurred by:

- (i) the division;
- (ii) a surety;
- (iii) an adjusting agency; or
- (iv) the Uninsured Employers' Fund.

(8) (a) If the division determines that the acceptable security deposited under Subsection (3)(c) should be available for payment of the self-insured employer's liabilities under Subsection (7),

the division shall:

- (i) determine the method of claims administration, which may include administration by:
  - (A) a surety;
  - (B) an adjusting agency;
  - (C) the Uninsured Employers' Fund; or
  - (D) any combination of Subsections (8)(a)(i)(A) through (C); and
- (ii) audit the self-insured employer's liabilities under this chapter and Chapter 3, Utah

Occupational Disease Act.

(b) The following shall cooperate in the division's audit under Subsection (8)(a)(ii) and provide any relevant information in its possession:

(i) the self-insured employer;

(ii) if the self-insured employer is a public agency insurance mutual, a member of the public agency insurance mutual;

~~[(ii)]~~ (iii) any excess insurer;

~~[(iii)]~~ (iv) any adjusting agency;

~~[(iv)]~~ (v) a surety; ~~[and]~~

~~[(v)]~~ (vi) an employee of a self-insured employer if the employee makes a claim for compensation under this chapter or Chapter 3, Utah Occupational Disease Act[-]; and

(vii) an employee of a member of a public agency insurance mutual that is approved as a self-insured employer under this section, if the employee makes a claim for compensation under this chapter or Chapter 3, Utah Occupational Disease Act.

(9) (a) Payment by a surety is a full release of the surety's liability under the bond to the extent of that payment, and entitles the surety to full reimbursement by the principal or the principal's estate including reimbursement of:

(i) necessary attorney's fees; and

(ii) other costs and expenses.

(b) A payment, settlement, or administration of benefits made in good faith pursuant to this section by a surety, an adjusting agency, the Uninsured Employers' Fund, or this division is valid and

binding as between:

- (i) (A) the surety;
- (B) adjusting agency;
- (C) the Uninsured Employers' Fund; or
- (D) the division; [~~and~~]

(ii) the self-insured employer[-:]; and

(iii) if the self-insured employer is a public agency insurance mutual, the members of the public agency insurance mutual.

(10) (a) The division shall resolve any dispute concerning:

(i) the depositing, renewal, termination, exoneration, or return of all or any portion of acceptable security deposited under this section;

(ii) any liability arising out of the depositing or failure to deposit acceptable security;

(iii) the adequacy of the acceptable security; or

(iv) the reasonableness of administrative costs under Subsection (7)(b), including legal fees.

(b) The division's decision under Subsection (10)(a) becomes a final order of the commission 30 calendar days of the date of the decision, unless within that 30 days the employer or public agency insurance mutual files an application for hearing in accordance with Part 8, Adjudication.

Section 11. Section **34A-2-202** is amended to read:

**34A-2-202. Assessment on self-insured employers including counties, cities, towns, or school districts paying compensation direct.**

(1) (a) [~~Am~~] (i) A self-insured employer, including a county, city, town, or school district, who by authority of the division under [~~Section~~] Sections 34A-2-201 and 34A-2-201.5 is authorized to pay compensation direct shall pay annually, on or before March 31, an assessment in accordance with this section and rules made by the commission under this section.

(ii) For purposes of this section, "self-insured employer" is as defined in Section 34A-2-201.5.

(b) The assessment required by Subsection (1)(a) is to be collected by the State Tax Commission and paid by the State Tax Commission into the state treasury as provided in Subsection

59-9-101(2).

(c) The assessment under Subsection (1)(a) shall be based on a total calculated premium multiplied by the premium assessment rate established pursuant to Subsection 59-9-101(2).

(d) The total calculated premium, for purposes of calculating the assessment under Subsection (1)(a), shall be calculated by:

(i) multiplying the total of the standard premium for each class code calculated in Subsection (1)(e) by the self-insured employer's experience modification factor; and

(ii) multiplying the total under Subsection (1)(d)(i) by a safety factor determined under Subsection (1)(g).

(e) A standard premium shall be calculated by:

(i) multiplying the prospective loss cost for the year being considered, as filed with the insurance department pursuant to Section 31A-19a-406, for each applicable class code by 1.10 to determine the manual rate for each class code; and

(ii) multiplying the manual rate for each class code under Subsection (1)(e)(i) by each \$100 of the self-insured employer's covered payroll for each class code.

(f) (i) Each self-insured employer paying compensation direct shall annually obtain the experience modification factor required in Subsection (1)(d)(i) by using:

(A) the rate service organization designated by the insurance commissioner in Section 31A-19a-404[-]; or

(B) for a self-insured employer that is a public agency insurance mutual, an actuary approved by the commission.

(ii) If ~~an~~ a self-insured employer's experience modification factor under Subsection (1)(f)(i) is less than 0.50, the self-insured employer shall use an experience modification factor of 0.50 in determining the total calculated premium.

(g) To provide incentive for improved safety, the safety factor required in Subsection (1)(d)(ii) shall be determined based on the self-insured employer's experience modification factor as follows:

#### EXPERIENCE

MODIFICATION FACTOR	SAFETY FACTOR
Less than or equal to 0.90	0.56
Greater than 0.90 but less than or equal to 1.00	0.78
Greater than 1.00 but less than or equal to 1.10	1.00
Greater than 1.10 but less than or equal to 1.20	1.22
Greater than 1.20	1.44

(h) (i) A premium or premium assessment modification other than a premium or premium assessment modification under this section may not be allowed.

(ii) If ~~[an]~~ a self-insured employer paying compensation direct fails to obtain an experience modification factor as required in Subsection (1)(f)(i) within the reasonable time period established by rule by the State Tax Commission, the State Tax Commission shall use an experience modification factor of 2.00 and a safety factor of 2.00 to calculate the total calculated premium for purposes of determining the assessment.

(iii) Prior to calculating the total calculated premium under Subsection (1)(h)(ii), the State Tax Commission shall provide the self-insured employer with written notice that failure to obtain an experience modification factor within a reasonable time period, as established by rule by the State Tax Commission:

(A) shall result in the State Tax Commission using an experience modification factor of 2.00 and a safety factor of 2.00 in calculating the total calculated premium for purposes of determining the assessment; and

(B) may result in the division revoking the self-insured employer's right to pay compensation direct.

(i) The division may immediately revoke ~~[an]~~ a self-insured employer's certificate issued under ~~[Section]~~ Sections 34A-2-201 and 34A-2-201.5 that permits the self-insured employer to pay compensation direct if the State Tax Commission assigns an experience modification factor and a safety factor under Subsection (1)(h) because the self-insured employer failed to obtain an experience modification factor.

(2) Notwithstanding the annual payment requirement in Subsection (1)(a), ~~[an]~~ a self-insured



employer whose total assessment obligation under Subsection (1)(a) for the preceding year was \$10,000 or more shall pay the assessment in quarterly installments in the same manner provided in Section 59-9-104 and subject to the same penalty provided in Section 59-9-104 for not paying or underpaying an installment.

(3) (a) The State Tax Commission shall have access to all the records of the division for the purpose of auditing and collecting any amounts described in this section.

(b) Time periods for the State Tax Commission to allow a refund or make an assessment shall be determined in accordance with Section 59-9-106.

(4) (a) A review of appropriate use of job class assignment and calculation methodology may be conducted as directed by the division at any reasonable time as a condition of the self-insured employer's certification of paying compensation direct.

(b) The State Tax Commission shall make any records necessary for the review available to the commission.

(c) The commission shall make the results of any review available to the State Tax Commission.

Section 12. Section **34A-2-704** is amended to read:

**34A-2-704. Uninsured Employers' Fund.**

(1) (a) There is created an Uninsured Employers' Fund. The Uninsured Employers' Fund has the purpose of assisting in the payment of workers' compensation benefits to any person entitled to the benefits, if:

(i) that person's employer:

(A) is individually, jointly, or severally liable to pay the benefits; and

(B) (I) becomes or is insolvent;

(II) appoints or has appointed a receiver; or

(III) otherwise does not have sufficient funds, insurance, sureties, or other security to cover workers' compensation liabilities; and

(ii) the employment relationship between that person and the person's employer is localized within the state as provided in Subsection (20).

(b) The Uninsured Employers' Fund succeeds to all monies previously held in the Default Indemnity Fund.

(c) If it becomes necessary to pay benefits, the Uninsured Employers' Fund is liable for all obligations of the employer as set forth in this chapter and Chapter 3, Utah Occupational Disease Act, with the exception of penalties on those obligations.

(2) (a) Monies for the Uninsured Employers' Fund shall be deposited into the Uninsured Employers' Fund in accordance with Section 34A-2-202 and Subsection 59-9-101(2).

(b) The commissioner shall appoint an administrator of the Uninsured Employers' Fund.

(c) The state treasurer is the custodian of the Uninsured Employers' Fund, and the administrator shall make provisions for and direct its distribution.

(3) Reasonable costs of administering the Uninsured Employers' Fund or other fees required to be paid by the Uninsured Employers' Fund may be paid from the Uninsured Employers' Fund.

(4) The state treasurer shall:

(a) receive workers' compensation premium assessments from the State Tax Commission;  
and

(b) invest the Uninsured Employers' Fund to ensure maximum investment return for both long and short term investments in accordance with Section 51-7-12.5.

(5) (a) The administrator may employ, retain, or appoint counsel to represent the Uninsured Employers' Fund in all proceedings brought to enforce claims against or on behalf of the Uninsured Employers' Fund.

(b) If requested by the commission, the following shall aid in the representation of the Uninsured Employers' Fund:

(i) the attorney general; or

(ii) the city attorney, or county attorney of the locality in which:

(A) any investigation, hearing, or trial under this chapter or Chapter 3, Utah Occupational Disease Act, is pending;

(B) the employee resides; or

(C) an employer:

- (I) resides; or
- (II) is doing business.

(6) To the extent of the compensation and other benefits paid or payable to or on behalf of an employee or the employee's dependents from the Uninsured Employers' Fund, the Uninsured Employers' Fund, by subrogation, has all the rights, powers, and benefits of the employee or the employee's dependents against the employer failing to make the compensation payments.

(7) (a) The receiver, trustee, liquidator, or statutory successor of an insolvent employer is bound by settlements of covered claims by the Uninsured Employers' Fund.

(b) The court with jurisdiction shall grant all payments made under this section a priority equal to that to which the claimant would have been entitled in the absence of this section against the assets of the insolvent employer.

(c) The expenses of the Uninsured Employers' Fund in handling claims shall be accorded the same priority as the liquidator's expenses.

(8) (a) The administrator shall periodically file the information described in Subsection (8)(b) with the receiver, trustee, or liquidator of ~~the~~:

- (i) an insolvent employer;
- (ii) an insolvent public agency insurance mutual as defined in Section 31A-1-103; or
- (iii) an insolvent insurance carrier[-].

(b) The information required to be filed under Subsection (8)(a) is:

- (i) statements of the covered claims paid by the Uninsured Employers' Fund; and
- (ii) estimates of anticipated claims against the Uninsured Employers' Fund.

~~(b)~~ (c) The filings under this Subsection (8)~~(a)~~ shall preserve the rights of the Uninsured Employers' Fund for claims against the assets of the insolvent employer.

(9) When any injury or death for which compensation is payable from the Uninsured Employers' Fund has been caused by the wrongful act or neglect of another person not in the same employment, the Uninsured Employers' Fund has the same rights as allowed under Section 34A-2-106.

(10) The Uninsured Employers' Fund, subject to approval of the administrator, shall

discharge its obligations by:

(a) adjusting its own claims; or

(b) contracting with an adjusting company, risk management company, insurance company, or other company that has expertise and capabilities in adjusting and paying workers' compensation claims.

(11) (a) For the purpose of maintaining the Uninsured Employers' Fund, an administrative law judge, upon rendering a decision with respect to any claim for workers' compensation benefits in which an uninsured employer was duly joined as a party, shall:

(i) order the uninsured employer to reimburse the Uninsured Employers' Fund for all benefits paid to or on behalf of an injured employee by the Uninsured Employers' Fund along with interest, costs, and attorneys' fees; and

(ii) impose a penalty against the uninsured employer of 15% of the value of the total award in connection with the claim that shall be paid into the Uninsured Employers' Fund.

(b) Awards may be docketed as other awards under this chapter and Chapter 3, Utah Occupational Disease Act.

(12) The liability of the state, the commission, and the state treasurer, with respect to payment of any compensation benefits, expenses, fees, or disbursement properly chargeable against the Uninsured Employers' Fund, is limited to the assets in the Uninsured Employers' Fund, and they are not otherwise in any way liable for the making of any payment.

(13) The commission may make reasonable rules for the processing and payment of claims for compensation from the Uninsured Employers' Fund.

(14) (a) (i) If it becomes necessary for the Uninsured Employers' Fund to pay benefits under this section to [~~any employee of an insolvent self-insured employer;~~ an employee described in Subsection (14)(a)(ii).] the Uninsured Employers' Fund may assess all other self-insured employers amounts necessary to pay:

~~[(i)]~~ (A) the obligations of the Uninsured Employers' Fund subsequent to an insolvency;

~~[(ii)]~~ (B) the expenses of handling covered claims subsequent to an insolvency;

~~[(iii)]~~ (C) the cost of examinations under Subsection (15); and

~~[(iv)]~~ (D) other expenses authorized by this section.

(ii) This Subsection (14) applies to benefits paid to an employee of:

(A) a self-insured employer, as defined in Section 34A-2-201.5, that is insolvent; or

(B) if the insolvent self-insured employer is a public agency insurance mutual, a member of the public agency insurance mutual.

(b) The assessments of each self-insured employer shall be in the proportion that the manual premium of the self-insured employer for the preceding calendar year bears to the manual premium of all self-insured employers for the preceding calendar year.

(c) Each self-insured employer shall be notified of the employer's assessment not later than 30 days before the assessment is due.

(d) (i) A self-insured employer may not be assessed in any year an amount greater than 2% of that self-insured employer's manual premium for the preceding calendar year.

(ii) If the maximum assessment does not provide in any one year an amount sufficient to make all necessary payments from the Uninsured Employers' Fund for one or more insolvent self-insured employers, the unpaid portion shall be paid as soon as funds become available.

(e) All self-insured employers are liable under this section for a period not to exceed three years after the self-insured employer's voluntary or involuntary termination of self-insurance privileges within this state.

(f) This Subsection (14) does not apply to claims made against an insolvent self-insured employer if the insolvency occurred prior to July 1, 1986.

(15) (a) ~~[A self-insured employer]~~ The following shall notify the division of any information indicating that any ~~[self-insured employer]~~ of the following may be insolvent or in a financial condition hazardous to its employees or the public~~[-]~~:

(i) a self-insured employer; or

(ii) if the self-insured employer is a public agency insurance mutual, a member of the public agency insurance mutual.

(b) Upon receipt of the notification described in Subsection (15)(a) and with good cause appearing, the division may order an examination of:

(i) that self-insured employer[-]; or

(ii) if the self-insured employer is a public agency insurance mutual, a member of the public agency mutual.

(c) The cost of the examination ordered under Subsection (15)(b) shall be assessed against all self-insured employers as provided in Subsection (14).

(d) The results of the examination ordered under Subsection (15)(b) shall be kept confidential.

(16) In any claim against an employer by the Uninsured Employers' Fund, or by or on behalf of the employee to whom or to whose dependents compensation and other benefits are paid or payable from the Uninsured Employers' Fund, the burden of proof is on the employer or other party in interest objecting to the claim. The claim is presumed to be valid up to the full amount of workers' compensation benefits claimed by the employee or the employee's dependents. This Subsection (16) applies whether the claim is filed in court or in an adjudicative proceeding under the authority of the commission.

(17) A partner in a partnership or an owner of a sole proprietorship may not recover compensation or other benefits from the Uninsured Employers' Fund if:

(a) the person is not included as an employee under Subsection 34A-2-104(3); or

(b) the person is included as an employee under Subsection 34A-2-104(3), but:

(i) the person's employer fails to insure or otherwise provide adequate payment of direct compensation; and

(ii) the failure described in Subsection (17)(b)(i) is attributable to an act or omission over which the person had or shared control or responsibility.

(18) A director or officer of a corporation may not recover compensation or other benefits from the Uninsured Employers' Fund if the director or officer is excluded from coverage under Subsection 34A-2-104(4).

(19) The Uninsured Employers' Fund:

(a) shall be:

(i) used in accordance with this section only for:

(A) the purpose of assisting in the payment of workers' compensation benefits in accordance with Subsection (1); and

(B) in accordance with Subsection (3), payment of:

(I) reasonable costs of administering the Uninsured Employers' Fund; or

(II) fees required to be paid by the Uninsured Employers' Fund; and

(ii) expended according to processes that can be verified by audit; and

(b) may not be used for:

(i) administrative costs unrelated to the Uninsured Employers' Fund; or

(ii) any activity of the commission other than an activity described in Subsection (19)(a).

(20) (a) For purposes of Subsection (1), an employment relationship is localized in the state if:

(i) (A) the employer who is liable for the benefits has a business premise in the state; and

(B) (I) the contract for hire is entered into in the state; or

(II) the employee regularly performs work duties in the state for the employer who is liable for the benefits; or

(ii) the employee is:

(A) a resident of the state; and

(B) regularly performs work duties in the state for the employer who is liable for the benefits.

(b) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the commission shall by rule define what constitutes regularly performing work duties in the state.

Section 13. Section **59-9-101** is amended to read:

**59-9-101. Tax basis -- Rates -- Exemptions.**

(1) (a) Except for annuity considerations, insurance premiums paid by institutions within the state system of higher education as specified in Section 53B-1-102, and ocean marine insurance, every admitted insurer shall pay to the commission on or before March 31 in each year, a tax of 2-1/4% of the total premiums received by it during the preceding calendar year from insurance covering property or risks located in this state.

(b) This Subsection (1) does not apply to:

(i) workers' compensation insurance, assessed under Subsection (2)[;]; and

(ii) title insurance premiums[;] taxed under Subsection (3).

(c) The taxable premium under this Subsection (1) shall be reduced by:

~~(a)~~ (i) all premiums returned or credited to policyholders on direct business subject to tax in this state;

~~(b)~~ (ii) all premiums received for reinsurance of property or risks located in this state; and

~~(c)~~ (iii) the dividends, including premium reduction benefits maturing within the year, paid or credited to policyholders in this state or applied in abatement or reduction of premiums due during the preceding calendar year.

(2) (a) Every admitted insurer writing workers' compensation insurance in this state, including the Workers' Compensation Fund created under Title 31A, Chapter 33, Workers' Compensation Fund, shall pay to the tax commission, on or before March 31 in each year, a premium assessment of between 1% and 8% of the total workers' compensation premium income received by the insurer from workers' compensation insurance in this state during the preceding calendar year.

(b) Total workers' compensation premium income means the net written premium as calculated before any premium reduction for any insured employer's deductible, retention, or reimbursement amounts and also those amounts equivalent to premiums as provided in Section 34A-2-202.

(c) The percentage of premium assessment applicable for a calendar year shall be determined by the Labor Commission under Subsection (2)(d). The total premium income shall be reduced in the same manner as provided in Subsections (1)~~(a)~~(c)(i) and (1)~~(b)~~ (c)(ii), but not as provided in Subsection (1)(c)(iii). The tax commission shall promptly remit from the premium assessment collected under Subsection (2):

(i) an amount of up to 7.25% of the premium income to the state treasurer for credit to the Employers' Reinsurance Fund created under Subsection 34A-2-702(1);

(ii) an amount equal to 0.25% of the premium income to the state treasurer for credit to the restricted account in the General Fund, created by Section 34A-2-701; and

(iii) an amount of up to 0.50% and any remaining assessed percentage of the premium



income to the state treasurer for credit to the Uninsured Employers' Fund created under Section 34A-2-704.

(d) (i) The Labor Commission shall determine the amount of the premium assessment for each year on or before each October 15 of the preceding year. The Labor Commission shall make this determination following a public hearing. The determination shall be based upon the recommendations of a qualified actuary.

(ii) The actuary shall recommend a premium assessment rate sufficient to provide payments of benefits and expenses from the Employers' Reinsurance Fund and to project a funded condition with assets greater than liabilities by no later than June 30, 2025.

(iii) The actuary shall recommend a premium assessment rate sufficient to provide payments of benefits and expenses from the Uninsured Employers' Fund and to maintain it at a funded condition with assets equal to or greater than liabilities.

(iv) At the end of each fiscal year the minimum approximate assets in the Employers' Reinsurance Fund shall be \$5,000,000 which amount shall be adjusted each year beginning in 1990 by multiplying by the ratio that the total workers' compensation premium income for the preceding calendar year bears to the total workers' compensation premium income for the calendar year 1988.

(v) The requirements of Subsection (2)(d)(iv) cease when the future annual disbursements from the Employers' Reinsurance Fund are projected to be less than the calculations of the corresponding future minimum required assets. The Labor Commission shall, after a public hearing, determine if the future annual disbursements are less than the corresponding future minimum required assets from projections provided by the actuary.

(vi) At the end of each fiscal year the minimum approximate assets in the Uninsured Employers' Fund shall be \$2,000,000, which amount shall be adjusted each year beginning in 1990 by multiplying by the ratio that the total workers' compensation premium income for the preceding calendar year bears to the total workers' compensation premium income for the calendar year 1988.

(e) A premium assessment that is to be transferred into the General Fund may be collected on premiums received from Utah public agencies.

(3) Every admitted insurer writing title insurance in this state shall pay to the commission,

on or before March 31 in each year, a tax of .45% of the total premium received by either the insurer or by its agents during the preceding calendar year from title insurance concerning property located in this state. In calculating this tax, "premium" includes the charges made to an insured under or to an applicant for a policy or contract of title insurance for:

(a) the assumption by the title insurer of the risks assumed by the issuance of the policy or contract of title insurance; and

(b) abstracting title, title searching, examining title, or determining the insurability of title, and every other activity, exclusive of escrow, settlement, or closing charges, whether denominated premium or otherwise, made by a title insurer, an agent of a title insurer, a title insurance agent, or any of them.

(4) Beginning July 1, 1986, former county mutuals and former mutual benefit associations shall pay the premium tax or assessment due under this chapter. All premiums received after July 1, 1986, shall be considered in determining the tax or assessment.

(5) The following insurers are not subject to the premium tax on health care insurance that would otherwise be applicable under Subsection (1):

(a) insurers licensed under Title 31A, Chapter 5, Domestic Stock and Mutual Insurance Corporations;

(b) insurers licensed under Title 31A, Chapter 7, Nonprofit Health Service Insurance Corporations;

(c) insurers licensed under Title 31A, Chapter 8, Health Maintenance Organizations and Limited Health Plans;

(d) insurers licensed under Title 31A, Chapter 9, Insurance Fraternal;

(e) insurers licensed under Title 31A, Chapter 11, Motor Clubs;

(f) insurers licensed under Title 31A, Chapter 13, Employee Welfare Funds and Plans; and

(g) insurers licensed under Title 31A, Chapter 14, Foreign Insurers.

(6) An insurer issuing multiple policies to an insured may not artificially allocate the premiums among the policies for purposes of reducing the aggregate premium tax or assessment applicable to the policies.

(7) The retaliatory provisions of Title 31A, Chapter 3, Department Funding, Fees, and Taxes, apply to the tax or assessment imposed under this chapter.

~~[(8) A premium tax paid to the General Fund may not be collected on premiums paid to public agency insurance mutuals.]~~

Section 14. Section **59-9-101.3** is amended to read:

**59-9-101.3. Employers' Reinsurance Fund special assessment.**

(1) For purposes of this section:

(a) "Calendar year" means a time period beginning January 1 and ending December 31 during which an assessment is imposed.

(b) "Public agency insurance mutual" is as defined in Section 31A-1-103.

~~[(b)]~~ (c) "Total workers' compensation premium income" has the same meaning as under Subsection 59-9-101(2).

(d) "Self-insured employer" is as defined in Section 34A-2-201.5.

(2) (a) For calendar years beginning on January 1, 2002, through December 31, 2004, the following shall pay to the commission, on or before March 31 of each year, an assessment imposed by the Labor Commission under Subsection (3):

(i) an admitted insurer writing workers' compensation insurance in this state, including the Workers' Compensation Fund created under Title 31A, Chapter 33, Workers' Compensation Fund; ~~[and]~~

(ii) a public agency insurance mutual that is authorized under Sections 34A-2-201 and 34A-2-201.5 to pay workers' compensation direct; and

~~[(ii)]~~ (iii) an employer authorized under [Section] Sections 34A-2-201 and 34A-2-201.5 to pay workers' compensation direct.

(b) The assessment imposed under Subsection (3) shall be in addition to:

(i) the premium assessment imposed under Subsection 59-9-101(2); and

(ii) the assessment imposed under Section 34A-2-202.

(3) (a) If the conditions described in Subsection (3)(b) are met, the Labor Commission may impose an assessment in accordance with Subsections (3)(c) and (d) of up to 2% of:

(i) the total workers' compensation premium income received by the insurer from workers' compensation insurance in this state during the preceding calendar year; or

(ii) if authorized under ~~[Section]~~ Sections 34A-2-201 and 34A-2-201.5 to pay workers' compensation direct, the amount calculated under Section 34A-2-202 for a self-insured employer that is equivalent to the total workers' compensation premium income.

(b) The Labor Commission may impose the assessment described in Subsection (3)(a) if:

(i) the Labor Commission determines that:

(A) all admitted insurers writing workers' compensation insurance in this state shall pay the maximum 7.25% of the premium income under Subsection 59-9-101(2)(c)(i); and

(B) all self-insured employers ~~[authorized to pay compensation direct]~~ shall pay the maximum 7.25% assessment under Section 34A-2-202; and

(ii) the maximum 7.25% of the premium income is insufficient to:

(A) provide payment of benefits and expenses from the Employers' Reinsurance Fund to project a funded condition of the Employers' Reinsurance Fund with assets greater than liabilities by no later than June 30, 2025; or

(B) maintain the minimum approximate assets required in Subsection 59-9-101(2)(d)(iv).

(c) On or before each October 15 of the preceding year and following a public hearing, the Labor Commission shall determine:

(i) whether an assessment will be imposed under this section for a calendar year; and

(ii) if the assessment will be imposed, the percentage of the assessment applicable for the calendar year.

(d) The Labor Commission shall:

(i) base its determination on the recommendations of the qualified actuary required in Subsection 59-9-101(2)(d)(i); and

(ii) take into consideration the recommended premium assessment rate recommended by the actuary under Subsection 59-9-101(2)(d)(ii).

(4) An employer shall aggregate all assessments imposed under this section and Section 34A-2-202 or 59-9-101 to determine whether the total assessment obligation shall be paid in

quarterly installments in accordance with Sections 34A-2-202 and 59-9-104.

(5) The commission shall promptly remit the assessment collected under Subsection (2) to the state treasurer for credit to the Employers' Reinsurance Fund created under Section 34A-2-702.

Section 15. Section **59-9-103** is amended to read:

**59-9-103. Taxation of insurers otherwise untaxed.**

(1) As used in this section:

(a) "Administrative and claims expense" includes all claims paid, agency expenses, third party administrator expenses, taxes, licenses, fees, loss adjustment expenses, legal expenses, reinsurance premiums, and all other expenses incurred directly in connection with the insurance of Utah risks by the insurer, less any recoveries or reimbursements collected or collectible because of reinsurance or any other source, but only with respect to Utah risks. The administrative and claims expense also includes the pro rata portion attributable to Utah risks of the salaries and fringe benefits, including taxes on salaries, of all personnel responsible for the administration of the insurer, the printing and stationery, and all other expenses attributable to the administration of the insurer. When personnel are engaged in the administration of the insurer as only part of their employment, for purposes of this section their salaries and fringe benefits shall be prorated based on the portion of their time devoted to the administration of the insurer. Appropriate overhead charges shall be included with all the expenses listed in this subsection.

(b) "Utah risks" means insurance coverage on the lives, health, or against the liability of persons residing in Utah, or on property located in Utah, other than property temporarily in transit through Utah.

(2) Except for workers' compensation coverage, which is provided in Subsection (3), and except as provided under Subsection (4), every insurer which provides insurance on Utah risks shall pay to the commission, on or before March 31 of each year, a tax of 2-1/4% of the total administrative and claims expense incurred during the prior calendar year by the insurer. This tax shall be deposited in the General Fund.

(3) Except as provided under Subsection (4), every insurer which provides workers' compensation coverage on persons employed in Utah shall pay to the commission on or before

March 31 of each year a tax of 3-1/4% of the total administrative and claims expense incurred during the prior year by the insurer. This tax shall be distributed in the same manner as under Subsection 59-9-101(2).

- (4) The taxes imposed under Subsections (2) and (3) do not apply to:
- (a) admitted insurers;
  - (b) insurers taxed under Section 31A-3-301;
  - (c) self insurers; ~~[or]~~
  - (d) annuity considerations or ocean marine insurance~~[-];~~ or
  - (e) a public agency insurance mutual as defined in Section 31A-1-103.

**Section 16. Repealer.**

This act repeals:

**Section 31A-5-214, Public agency insurance mutuals.**

**Section 31A-5-215, Insurers formed under Interlocal Cooperation Act.**

**Section 17. Effective date.**

This act takes effect on July 1, 2002.

**Section 18. Coordination clause.**

If this bill and 1st Substitute H.B. 250, Retirement Law Recodification, both pass, it is the intent of the Legislature that Subsection 31A-1-103(7)(b)(iii) in this bill be amended to read "(iii) a program authorized by Title 49, Chapter 20, Public Employees' Benefits and Insurance Program Act."