

Senator John W. Hickman proposes the following substitute bill:

PUBLIC AGENCY INSURANCE MUTUAL

AMENDMENTS

2002 GENERAL SESSION

STATE OF UTAH

Sponsor: John W. Hickman

This act modifies the Insurance Code and the Revenue and Taxation Code to generally exempt from the scope of the Insurance Code public agency insurance mutuals, to address taxation of public agency insurance mutuals, and to make technical changes.

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

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

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:



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

27 **31A-1-103. Scope and applicability of title.**

28 (1) This title does not apply to:

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

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

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

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

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

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

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

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

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

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

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

49 (b) ocean marine insurance;

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

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

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

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

57 (d) other business specified in rules adopted by the commissioner on a finding that:
58 (i) the transaction of [~~such~~] the business in this state does not require regulation for the
59 protection of the interests of the residents of this state; or [~~on a finding that~~]
60 (ii) it would be impracticable to require compliance with this title;
61 (e) [~~(i) transactions~~] except as provided in Subsection (4), a transaction independently
62 procured through negotiations under Section 31A-15-104;
63 [~~(ii) however, the transactions described in Subsection (3)(e)(i) are subject to taxation~~
64 ~~under Section 31A-3-301;~~]
65 (f) self-insurance;
66 (g) reinsurance;
67 (h) subject to Subsection [~~(4)~~] (5), employee and labor union group or blanket insurance
68 covering risks in this state if:
69 (i) the policyholder exists primarily for purposes other than to procure insurance;
70 (ii) the policyholder:
71 (A) is not a resident of this state [~~or~~];
72 (B) is not a domestic corporation; or
73 (C) does not have its principal office in this state;
74 (iii) no more than 25% of the certificate holders or insureds are residents of this state;
75 (iv) on request of the commissioner, the insurer files with the department a copy of the
76 policy and a copy of each form or certificate; and
77 (v) (A) the insurer agrees to pay premium taxes on the Utah portion of its business, as if
78 it were authorized to do business in this state[-]; and [~~if~~]
79 (B) the insurer provides the commissioner with the security the commissioner considers
80 necessary for the payment of premium taxes under Title 59, Chapter 9, Taxation of Admitted
81 Insurers; [~~or~~]
82 (i) to the extent provided in Subsection [~~(5)~~] (6):
83 (i) a manufacturer's warranty; and
84 (ii) a manufacturer's service contract[-]; or
85 (j) except to the extent provided in Subsection (7), a public agency insurance mutual.
86 (4) A transaction described in Subsection (3)(e) is subject to taxation under Section
87 31A-3-301.

88 ~~[(4)]~~ (5) (a) After a hearing, the commissioner may order an insurer of certain group or
89 blanket contracts to transfer the Utah portion of the business otherwise exempted under Subsection
90 (3)(h) to an authorized insurer if the contracts have been written by an unauthorized insurer.

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

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

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

96 ~~[(5)]~~ (6) (a) As used in Subsection (3)(i) and this Subsection ~~[(5)]~~ (6):

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

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

99 (I) on one specific product; or

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

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

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

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

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

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

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

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

110 (i) a warranty;

111 (ii) a guaranty; or

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

113 (c) This title does not apply to:

114 (i) a manufacturer's warranty;

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

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

- 119 (A) the service contract is paid for with consideration that is in addition to the
120 consideration paid for the product itself; and
- 121 (B) the service contract is for the repair or maintenance of goods;
- 122 (C) the cost of the product is equal to an amount determined in accordance with
123 Subsection [~~(5)~~] (6)(e); and
- 124 (D) the product is not a motor vehicle.
- 125 (d) This title does not apply to a manufacturer's warranty or service contract paid for with
126 consideration that is in addition to the consideration paid for for the product itself regardless of
127 whether the manufacturer's warranty or service contract is sold:
- 128 (i) at the time of the purchase of the product; or
- 129 (ii) at a time other than the time of the purchase of the product.
- 130 (e) (i) For fiscal year 2001-02, the amount described in Subsection [~~(5)~~] (6)(c)(iii)(C) shall
131 be equal to \$3,700 or less.
- 132 (ii) For each fiscal year after fiscal year 2001-02, the commissioner shall annually
133 determine whether the amount described in Subsection [~~(5)~~] (6)(c)(iii)(C) should be adjusted in
134 accordance with changes in the Consumer Price Index published by the United States Bureau of
135 Labor Statistics selected by the commissioner by rule, between:
- 136 (A) the Consumer Price Index for the February immediately preceding the adjustment; and
- 137 (B) the Consumer Price Index for February 2001.
- 138 (iii) If under Subsection [~~(5)~~] (6)(e)(ii) the commissioner determines that an adjustment
139 should be made, the commissioner shall make the adjustment by rule.
- 140 (7) (a) For purposes of this Subsection (7), "public agency insurance mutual" means an
141 entity formed by two or more political subdivisions or public agencies of the state:
- 142 (i) under Title 11, Chapter 13, Interlocal Cooperation Act; and
- 143 (ii) for the purpose of providing for the political subdivisions or public agencies:
- 144 (A) insurance coverage; or
- 145 (B) risk management.
- 146 (b) Except for this Subsection (7), a public agency insurance mutual is exempt from this
147 title.
- 148 (c) A public agency insurance mutual is considered to be a governmental entity and
149 political subdivision of the state with all of the rights, privileges, and immunities of a

150 governmental entity or political subdivision of the state including all the rights and benefits of Title
151 63, Chapter 30, Governmental Immunity Act.

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

153 **31A-1-301. Definitions.**

154 As used in this title, unless otherwise specified:

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

157 (i) a medical condition including:

158 (A) medical care expenses; or

159 (B) the risk of disability;

160 (ii) accident; or

161 (iii) sickness.

162 (b) "Accident and health insurance":

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

164 (A) an income replacement contract;

165 (B) a health care contract;

166 (C) an expense reimbursement contract;

167 (D) a credit accident and health contract;

168 (E) a continuing care contract; and

169 (F) long-term care contracts; and

170 (ii) may provide:

171 (A) hospital coverage;

172 (B) surgical coverage;

173 (C) medical coverage; or

174 (D) loss of income coverage.

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

176 (2) "Administrator" is defined in Subsection [~~110~~] (110).

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

178 (4) "Affiliate" means any person who controls, is controlled by, or is under common

179 control with, another person. A corporation is an affiliate of another corporation, regardless of

180 ownership, if substantially the same group of natural persons manages the corporations.

- 181 (5) "Alien insurer" means an insurer domiciled outside the United States.
- 182 (6) "Amendment" means an endorsement to an insurance policy or certificate.
- 183 (7) "Annuity" means an agreement to make periodical payments for a period certain or over
184 the lifetime of one or more natural persons if the making or continuance of all or some of the series
185 of the payments, or the amount of the payment, is dependent upon the continuance of human life.
- 186 (8) "Application" means a document:
- 187 (a) completed by an applicant to provide information about the risk to be insured; and
- 188 (b) that contains information that is used by the insurer to:
- 189 (i) evaluate risk; and
- 190 (ii) decide whether to:
- 191 (A) insure the risk under:
- 192 (I) the coverages as originally offered; or
- 193 (II) a modification of the coverage as originally offered; or
- 194 (B) decline to insure the risk.
- 195 (9) "Articles" or "articles of incorporation" means the original articles, special laws,
196 charters, amendments, restated articles, articles of merger or consolidation, trust instruments, and
197 other constitutive documents for trusts and other entities that are not corporations, and
198 amendments to any of these.
- 199 (10) "Bail bond insurance" means a guarantee that a person will attend court when
200 required, or will obey the orders or judgment of the court, as a condition to the release of that
201 person from confinement.
- 202 (11) "Binder" is defined in Section 31A-21-102.
- 203 (12) "Board," "board of trustees," or "board of directors" means the group of persons with
204 responsibility over, or management of, a corporation, however designated.
- 205 (13) "Business of insurance" is defined in Subsection (64).
- 206 (14) "Business plan" means the information required to be supplied to the commissioner
207 under Subsections 31A-5-204(2)(i) and (j), including the information required when these
208 subsections are applicable by reference under:
- 209 (a) Section 31A-7-201;
- 210 (b) Section 31A-8-205; or
- 211 (c) Subsection 31A-9-205(2).

212 (15) "Bylaws" means the rules adopted for the regulation or management of a corporation's
213 affairs, however designated and includes comparable rules for trusts and other entities that are not
214 corporations.

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

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

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

218 (b) a third party.

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

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

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

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

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

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

230 (i) provides board and lodging;

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

232 (A) personal services;

233 (B) nursing services;

234 (C) medical services; or

235 (D) other health-related services; and

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

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

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

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

241 (23) (a) "Control," "controlling," "controlled," or "under common control" means the direct
242 or indirect possession of the power to direct or cause the direction of the management and policies

243 of a person. This control may be:

244 (i) by contract;

245 (ii) by common management;

246 (iii) through the ownership of voting securities; or

247 (iv) by a means other than those described in Subsections (23)(a)(i) through (iii).

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

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

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

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

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

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

259 (B) Chapter 26, Insurance Adjusters; or

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

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

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

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

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

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

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

272 (a) matured;

273 (b) unmatured;

- 274 (c) liquidated;
- 275 (d) unliquidated;
- 276 (e) secured;
- 277 (f) unsecured;
- 278 (g) absolute;
- 279 (h) fixed; or
- 280 (i) contingent.
- 281 (29) (a) "Customer service representative" means a person that provides insurance services
- 282 and insurance product information:
- 283 (i) for its agent, broker, or consultant employer; and
- 284 (ii) to its employer's customer, client, or organization.
- 285 (b) A customer service representative may only operate within the scope of authority of
- 286 its agent, broker, or consultant employer.
- 287 (30) "Deadline" means the final date or time:
- 288 (a) imposed by:
- 289 (i) statute;
- 290 (ii) rule; or
- 291 (iii) order; and
- 292 (b) by which a required filing or payment must be received by the department.
- 293 (31) "Deemer clause" means a provision under this title under which upon the occurrence
- 294 of a condition precedent, the commissioner is deemed to have taken a specific action. If the statute
- 295 so provides, the condition precedent may be the commissioner's failure to take a specific action.
- 296 (32) "Degree of relationship" means the number of steps between two persons determined
- 297 by counting the generations separating one person from a common ancestor and then counting the
- 298 generations to the other person.
- 299 (33) "Department" means the Insurance Department.
- 300 (34) "Director" means a member of the board of directors of a corporation.
- 301 (35) "Disability" means a physiological or psychological condition that partially or totally
- 302 limits an individual's ability to:
- 303 (a) perform the duties of:
- 304 (i) that individual's occupation; or

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

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

308 (i) eating;

309 (ii) toileting;

310 (iii) transferring;

311 (iv) bathing; or

312 (v) dressing.

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

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

315 (a) is incorporated;

316 (b) is organized; or

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

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

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

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

322 (A) one or more employers;

323 (B) one or more labor organizations; or

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

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

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

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

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

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

335 (a) written to provide payments for expenses relating to hospital confinements resulting

336 from illness or injury; and

337 (b) written:

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

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

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

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

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

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

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

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

349 (B) rule.

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

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

354 (a) a policy;

355 (b) a rate;

356 (c) a form;

357 (d) a document;

358 (e) a plan;

359 (f) a manual;

360 (g) an application;

361 (h) a report;

362 (i) a certificate;

363 (j) an endorsement;

364 (k) an actuarial certification;

365 (l) a licensee annual statement;

366 (m) a licensee renewal application; or

367 (n) an advertisement.

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

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

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

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

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

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

379 (a) professional services;

380 (b) personal services;

381 (c) facilities;

382 (d) equipment;

383 (e) devices;

384 (f) supplies; or

385 (g) medicine.

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

387 (i) health care benefits; or

388 (ii) payment of incurred health care expenses.

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

391 (i) replacement of income;

392 (ii) short-term accident;

393 (iii) fixed indemnity;

394 (iv) credit accident and health;

395 (v) supplements to liability;

396 (vi) workers' compensation;

397 (vii) automobile medical payment;

- 398 (viii) no-fault automobile;
- 399 (ix) equivalent self-insurance; or
- 400 (x) any type of accident and health insurance coverage that is a part of or attached to
- 401 another type of policy.
- 402 (52) "Income replacement insurance" or "disability income insurance" means insurance
- 403 written to provide payments to replace income lost from accident or sickness.
- 404 (53) "Indemnity" means the payment of an amount to offset all or part of an insured loss.
- 405 (54) "Independent adjuster" means an insurance adjuster required to be licensed under
- 406 Section 31A-26-201 who engages in insurance adjusting as a representative of insurers.
- 407 (55) "Independently procured insurance" means insurance procured under Section
- 408 31A-15-104.
- 409 (56) "Individual" means a natural person.
- 410 (57) "Inland marine insurance" includes insurance covering:
- 411 (a) property in transit on or over land;
- 412 (b) property in transit over water by means other than boat or ship;
- 413 (c) bailee liability;
- 414 (d) fixed transportation property such as bridges, electric transmission systems, radio and
- 415 television transmission towers and tunnels; and
- 416 (e) personal and commercial property floaters.
- 417 (58) "Insolvency" means that:
- 418 (a) an insurer is unable to pay its debts or meet its obligations as they mature;
- 419 (b) an insurer's total adjusted capital is less than the insurer's mandatory control level RBC
- 420 under Subsection 31A-17-601(8)(c); or
- 421 (c) an insurer is determined to be hazardous under this title.
- 422 (59) (a) "Insurance" means:
- 423 (i) an arrangement, contract, or plan for the transfer of a risk or risks from one or more
- 424 persons to one or more other persons; or
- 425 (ii) an arrangement, contract, or plan for the distribution of a risk or risks among a group
- 426 of persons that includes the person seeking to distribute that person's risk.
- 427 (b) "Insurance" includes:
- 428 (i) risk distributing arrangements providing for compensation or replacement for damages

429 or loss through the provision of services or benefits in kind;

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

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

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

437 (61) "Interinsurance exchange" is defined in Subsection [~~100~~] (99).

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

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

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

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

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

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

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

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

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

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

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

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

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

459 (g) transacting or proposing to transact any phase of title insurance, including solicitation,

460 negotiation preliminary to execution, execution of a contract of title insurance, insuring, and
461 transacting matters subsequent to the execution of the contract and arising out of it, including
462 reinsurance; and

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

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

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

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

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

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

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

476 (i) policyholders;

477 (ii) subscribers;

478 (iii) members; and

479 (iv) beneficiaries.

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

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

484 (A) fraternal benefit societies;

485 (B) issuers of gift annuities other than those specified in Subsections 31A-22-1305(2) and
486 (3);

487 (C) motor clubs;

488 (D) employee welfare plans; and

489 (E) any person purporting or intending to do an insurance business as a principal on that
490 person's own account.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

525 (b) "Liability insurance" includes:

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

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

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

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

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

535 (b) The business of life insurance includes:

536 (i) granting death benefits;

537 (ii) granting annuity benefits;

538 (iii) granting endowment benefits;

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

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

542 (vi) providing optional methods of settlement of proceeds.

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

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

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

547 (A) expenses incurred;

548 (B) indemnity;

549 (C) prepayment; or

550 (D) another method;

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

552 (A) diagnostic;

- 553 (B) preventative;
- 554 (C) therapeutic;
- 555 (D) rehabilitative;
- 556 (E) maintenance; or
- 557 (F) personal care; and
- 558 (iv) that may be issued by:
 - 559 (A) an insurer;
 - 560 (B) a fraternal benefit society;
 - 561 (C) (I) a nonprofit health hospital; and
 - 562 (II) a medical service corporation;
 - 563 (D) a prepaid health plan;
 - 564 (E) a health maintenance organization; or
 - 565 (F) an entity similar to the entities described in Subsections (73)(a)(iv)(A) through (E) to
 - 566 the extent that the entity is otherwise authorized to issue life or health care insurance.
- 567 (b) "Long-term care insurance" includes:
 - 568 (i) any of the following that provide directly or supplement long-term care insurance:
 - 569 (A) a group or individual annuity or rider; or
 - 570 (B) a life insurance policy or rider;
 - 571 (ii) a policy or rider that provides for payment of benefits based on:
 - 572 (A) cognitive impairment; or
 - 573 (B) functional capacity; or
 - 574 (iii) a qualified long-term care insurance contract.
- 575 (c) "Long-term care insurance" does not include:
 - 576 (i) a policy that is offered primarily to provide basic Medicare supplement coverage;
 - 577 (ii) basic hospital expense coverage;
 - 578 (iii) basic medical/surgical expense coverage;
 - 579 (iv) hospital confinement indemnity coverage;
 - 580 (v) major medical expense coverage;
 - 581 (vi) income replacement or related asset-protection coverage;
 - 582 (vii) accident only coverage;
 - 583 (viii) coverage for a specified:

584 (A) disease; or
585 (B) accident;
586 (ix) limited benefit health coverage; or
587 (x) a life insurance policy that accelerates the death benefit to provide the option of a lump
588 sum payment:
589 (A) if neither the benefits nor eligibility is conditioned on the receipt of long-term care;
590 and
591 (B) the coverage is for one or more the following qualifying events:
592 (I) terminal illness;
593 (II) medical conditions requiring extraordinary medical intervention; or
594 (III) permanent institutional confinement.
595 (74) "Medical malpractice insurance" means insurance against legal liability incident to
596 the practice and provision of medical services other than the practice and provision of dental
597 services.
598 (75) "Member" means a person having membership rights in an insurance corporation.
599 (76) "Minimum capital" or "minimum required capital" means the capital that must be
600 constantly maintained by a stock insurance corporation as required by statute.
601 (77) "Motor club" means a person:
602 (a) licensed under:
603 (i) Chapter 5, Domestic Stock and Mutual Insurance Corporations;
604 (ii) Chapter 11, Motor Clubs; or
605 (iii) Chapter 14, Foreign Insurers; and
606 (b) that promises for an advance consideration to provide for a stated period of time:
607 (i) legal services under Subsection 31A-11-102(1)(b);
608 (ii) bail services under Subsection 31A-11-102(1)(c); or
609 (iii) trip reimbursement, towing services, emergency road services, stolen automobile
610 services, a combination of these services, or any other services given in Subsections
611 31A-11-102(1)(b) through (f).
612 (78) "Mutual" means mutual insurance corporation.
613 (79) "Nonparticipating" means a plan of insurance under which the insured is not entitled
614 to receive dividends representing shares of the surplus of the insurer.

- 615 (80) "Ocean marine insurance" means insurance against loss of or damage to:
616 (a) ships or hulls of ships;
617 (b) goods, freight, cargoes, merchandise, effects, disbursements, profits, moneys,
618 securities, choses in action, evidences of debt, valuable papers, bottomry, respondentia interests,
619 or other cargoes in or awaiting transit over the oceans or inland waterways;
620 (c) earnings such as freight, passage money, commissions, or profits derived from
621 transporting goods or people upon or across the oceans or inland waterways; or
622 (d) a vessel owner or operator as a result of liability to employees, passengers, bailors,
623 owners of other vessels, owners of fixed objects, customs or other authorities, or other persons in
624 connection with maritime activity.
- 625 (81) "Order" means an order of the commissioner.
- 626 (82) "Outline of coverage" means a summary that explains an accident and health
627 insurance policy.
- 628 (83) "Participating" means a plan of insurance under which the insured is entitled to
629 receive dividends representing shares of the surplus of the insurer.
- 630 (84) "Person" includes an individual, partnership, corporation, incorporated or
631 unincorporated association, joint stock company, trust, reciprocal, syndicate, or any similar entity
632 or combination of entities acting in concert.
- 633 (85) (a) (i) "Policy" means any document, including attached endorsements and riders,
634 purporting to be an enforceable contract, which memorializes in writing some or all of the terms
635 of an insurance contract.
- 636 (ii) "Policy" includes a service contract issued by:
637 (A) a motor club under Chapter 11, Motor Clubs;
638 (B) a service contract provided under Chapter 6a, Service Contracts; and
639 (C) a corporation licensed under:
640 (I) Chapter 7, Nonprofit Health Service Insurance Corporations; or
641 (II) Chapter 8, Health Maintenance Organizations and Limited Health Plans.
- 642 (iii) "Policy" does not include:
643 (A) a certificate under a group insurance contract; or
644 (B) a document that does not purport to have legal effect.
- 645 (b) "Group insurance policy" means a policy covering a group of persons that is issued to

646 a policyholder on behalf of the group, for the benefit of group members who are selected under
647 procedures defined in the policy or in agreements which are collateral to the policy. This type of
648 policy may include members of the policyholder's family or dependents.

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

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

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

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

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

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

663 (90) "Principal officers" of a corporation means the officers designated under Subsection
664 31A-5-203(3).

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

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

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

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

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

681 ~~[(95)]~~ (94) "Qualified long-term care insurance contract" or "federally tax qualified
682 long-term care insurance contract" means:

683 (a) an individual or group insurance contract that meets the requirements of Section
684 7702B(b), Internal Revenue Code; or

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

686 (i) (A) by rider; or

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

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

689 ~~[(96)]~~ (95) (a) "Rate" means:

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

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

693 (A) a single number; or

694 (B) a pure premium rate, adjusted before any application of individual risk variations based
695 on loss or expense considerations to account for the treatment of:

696 (I) expenses;

697 (II) profit; and

698 (III) individual insurer variation in loss experience.

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

700 ~~[(97)]~~ (96) (a) Except as provided in Subsection ~~[(97)]~~ (96)(b), "rate service organization"
701 means any person who assists insurers in rate making or filing by:

702 (i) collecting, compiling, and furnishing loss or expense statistics;

703 (ii) recommending, making, or filing rates or supplementary rate information; or

704 (iii) advising about rate questions, except as an attorney giving legal advice.

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

706 (i) an employee of an insurer;

707 (ii) a single insurer or group of insurers under common control;

- 708 (iii) a joint underwriting group; or
709 (iv) a natural person serving as an actuarial or legal consultant.
- 710 [~~98~~] (97) "Rating manual" means any of the following used to determine initial and
711 renewal policy premiums:
- 712 (a) a manual of rates;
 - 713 (b) classifications;
 - 714 (c) rate-related underwriting rules; and
 - 715 (d) rating formulas that describe steps, policies, and procedures for determining initial and
716 renewal policy premiums.
- 717 [~~99~~] (98) "Received by the department" means:
- 718 (a) except as provided in Subsection [~~99~~] (98)(b), the date delivered to and stamped
719 received by the department, whether delivered:
 - 720 (i) in person;
 - 721 (ii) by a delivery service; or
 - 722 (iii) electronically; and
 - 723 (b) if an item with a department imposed deadline is delivered to the department by a
724 delivery service, the delivery service's postmark date or pick-up date unless otherwise stated in:
 - 725 (i) statute;
 - 726 (ii) rule; or
 - 727 (iii) a specific filing order.
- 728 [~~100~~] (99) "Reciprocal" or "interinsurance exchange" means any unincorporated
729 association of persons:
- 730 (a) operating through an attorney-in-fact common to all of them; and
 - 731 (b) exchanging insurance contracts with one another that provide insurance coverage on
732 each other.
- 733 [~~101~~] (100) "Reinsurance" means an insurance transaction where an insurer, for
734 consideration, transfers any portion of the risk it has assumed to another insurer. In referring to
735 reinsurance transactions, this title sometimes refers to:
- 736 (a) the insurer transferring the risk as the "ceding insurer"; and
 - 737 (b) the insurer assuming the risk as the:
 - 738 (i) "assuming insurer"; or

739 (ii) "assuming reinsurer."

740 [~~(102)~~] (101) "Residential dwelling liability insurance" means insurance against liability
741 resulting from or incident to the ownership, maintenance, or use of a residential dwelling that is
742 a detached single family residence or multifamily residence up to four units.

743 [~~(103)~~] (102) "Retrocession" means reinsurance with another insurer of a liability assumed
744 under a reinsurance contract. A reinsurer "retrocedes" when it reinsures with another insurer part
745 of a liability assumed under a reinsurance contract.

746 [~~(104)~~] (103) "Rider" means an endorsement to:

747 (a) an insurance policy; or

748 (b) an insurance certificate.

749 [~~(105)~~] (104) (a) "Security" means any:

750 (i) note;

751 (ii) stock;

752 (iii) bond;

753 (iv) debenture;

754 (v) evidence of indebtedness;

755 (vi) certificate of interest or participation in any profit-sharing agreement;

756 (vii) collateral-trust certificate;

757 (viii) preorganization certificate or subscription;

758 (ix) transferable share;

759 (x) investment contract;

760 (xi) voting trust certificate;

761 (xii) certificate of deposit for a security;

762 (xiii) certificate of interest of participation in an oil, gas, or mining title or lease or in
763 payments out of production under such a title or lease;

764 (xiv) commodity contract or commodity option;

765 (xv) any certificate of interest or participation in, temporary or interim certificate for,
766 receipt for, guarantee of, or warrant or right to subscribe to or purchase any of the items listed in

767 Subsections [~~(105)~~] (104)(a)(i) through (xiv); or

768 (xvi) any other interest or instrument commonly known as a security.

769 (b) "Security" does not include:

770 (i) any insurance or endowment policy or annuity contract under which an insurance
771 company promises to pay money in a specific lump sum or periodically for life or some other
772 specified period; or

773 (ii) a burial certificate or burial contract.

774 [~~(106)~~] (105) "Self-insurance" means any arrangement under which a person provides for
775 spreading its own risks by a systematic plan.

776 (a) Except as provided in this Subsection [~~(106)~~] (105), self-insurance does not include
777 an arrangement under which a number of persons spread their risks among themselves.

778 (b) Self-insurance does include an arrangement by which a governmental entity, as defined
779 in Section 63-30-2, undertakes to indemnify its employees for liability arising out of the
780 employees' employment.

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

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

786 [~~(107)~~] (106) "Short-term care insurance" means any insurance policy or rider advertised,
787 marketed, offered, or designed to provide coverage that is similar to long-term care insurance but
788 that provides coverage for less than 12 consecutive months for each covered person.

789 [~~(108)~~] (107) (a) "Subsidiary" of a person means an affiliate controlled by that person
790 either directly or indirectly through one or more affiliates or intermediaries.

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

794 [~~(109)~~] (108) Subject to Subsection (59)(b), "surety insurance" includes:

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

797 (b) bail bond insurance; and

798 (c) fidelity insurance.

799 [~~(110)~~] (109) (a) "Surplus" means the excess of assets over the sum of paid-in capital and
800 liabilities.

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

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

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

807 (c) "Excess surplus" means:

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

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

812 (I) 2.5; and

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

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

817 (I) 3.0; and

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

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

821 (A) 1.5; and

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

823 [~~(111)~~] (110) "Third party administrator" or "administrator" means any person who
824 collects charges or premiums from, or who, for consideration, adjusts or settles claims of residents
825 of the state in connection with insurance coverage, annuities, or service insurance coverage,
826 except:

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

828 (b) a person administering any:

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

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

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

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

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

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

838 [~~(H2)~~] (111) "Title insurance" means the insuring, guaranteeing, or indemnifying of
839 owners of real or personal property or the holders of liens or encumbrances on that property, or
840 others interested in the property against loss or damage suffered by reason of liens or
841 encumbrances upon, defects in, or the unmarketability of the title to the property, or invalidity or
842 unenforceability of any liens or encumbrances on the property.

843 [~~(H3)~~] (112) "Total adjusted capital" means the sum of an insurer's or health
844 organization's statutory capital and surplus as determined in accordance with:

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

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

849 [~~(H4)~~] (113) (a) "Trustee" means "director" when referring to the board of directors of a
850 corporation.

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

855 [~~(H5)~~] (114) (a) "Unauthorized insurer," "unadmitted insurer," or "nonadmitted insurer"
856 means an insurer:

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

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

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

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

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

862 [~~(H6)~~] (115) "Vehicle liability insurance" means insurance against liability resulting from

863 or incident to ownership, maintenance, or use of any land vehicle or aircraft, exclusive of vehicle
864 comprehensive and vehicle physical damage coverages under Subsection (93).

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

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

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

870 (i) compensable accidental injuries; and

871 (ii) occupational disease disability;

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

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

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

877 **31A-2-214. Market assistance programs -- Joint underwriting associations.**

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

883 (i) a line of insurance:

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

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

886 (ii) the public interest requires availability of the line of insurance described in Subsection

887 (1)(a)(i).

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

892 (i) the line of insurance:

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

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

895 ~~(ii)~~ which the public interest requires the availability of ~~this~~ the coverage described in

896 Subsection (1)(b)(i).

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

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

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

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

909 (ii) the coverage is:

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

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

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

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

914 ~~(e)~~ ~~(d)~~ The commissioner may not adopt a rule forming a joint underwriting association
915 under Subsection (2)(a) on the basis that:

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

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

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

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

923 (i) give consideration to:

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

- 925 (B) alternative methods of improving the market affected;
- 926 (C) the preference of the insurers and agents;
- 927 (D) the inherent limitations of the insurance mechanism;
- 928 (E) the need for reasonable underwriting standards; and
- 929 (F) the requirement of reasonable loss prevention measures;
- 930 (ii) establish procedures that will create minimum interference with the voluntary market;
- 931 (iii) allocate the burden imposed by the association equitably and efficiently among the
- 932 insurers doing business in this state;
- 933 (iv) establish procedures for applicants and participants to have grievances reviewed by
- 934 an impartial body;
- 935 (v) provide for the method of classifying risks and making and filing applicable rates; and
- 936 (vi) specify:
- 937 (A) the basis of participation of insurers and agents in the association;
- 938 (B) the conditions under which risks must be accepted; and
- 939 (C) the commission rates to be paid for insurance business placed with the association.
- 940 ~~[(f)]~~ (g) Any deficit in an association in any year shall be recouped by rate increases for
- 941 the association, applicable prospectively.
- 942 (h) Any surplus in excess of the loss reserves of the association in any year shall be
- 943 distributed either by rate decreases or by distribution to the members of the association on a
- 944 pro-rata basis.
- 945 (3) Notwithstanding Subsection (2), the commissioner may not create a joint underwriting
- 946 association under Subsection (2) for:
- 947 (a) life insurance;
- 948 (b) annuities;
- 949 (c) accident and health insurance;
- 950 (d) ocean marine insurance;
- 951 (e) medical malpractice insurance;
- 952 (f) earthquake insurance;
- 953 (g) workers' compensation insurance; or
- 954 ~~[(h) public agency insurance mutuals; or]~~
- 955 ~~[(i)]~~ (h) private passenger automobile liability insurance.

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

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

962 (a) establish branch service offices;

963 (b) make special contracts for provision of the service; or

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

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

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

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

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

972 **31A-5-202. Incorporators.**

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

977 ~~[(2)]~~ (1) One or more adult natural persons may organize and act as incorporators of a
978 corporation under Section 31A-5-204.

979 ~~[(3)]~~ (2) One to 15 adult natural persons may organize and act as incorporators of a
980 corporation under the accelerated organization procedure of Section 31A-5-213.

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

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

986 ~~[(5)]~~ (3) This section does not apply to stock and mutual insurance corporations already

987 in existence on July 1, 1986.

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

989 **31A-7-201. Organization, incorporation, and licensing.**

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

992 (1) Section 16-6a-201 applies in place of Section 31A-5-202.

993 (2) Sections 16-6a-401 and 31A-1-109 apply in place of Subsection 31A-5-203 (2)(a).

994 (3) The last sentence of Subsection 31A-5-203(2)(e) does not apply.

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

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

998 **31A-12-107. Governmental immunity.**

999 Notwithstanding any other provision of this title, a governmental entity, as defined in
1000 Section 63-30-2, is not an insurer for purposes of this title and is not engaged in the business of
1001 insurance to the extent that it is:

1002 (1) covering its own liabilities under Title 63, Chapter 30, [~~the~~] Governmental Immunity
1003 Act[;]; or

1004 (2) engaging in other related risk management activities related to the normal course of
1005 its activities. [~~A public agency insurance mutual created or regulated under Section 31A-5-214~~
1006 ~~is a governmental entity entitled to all the rights and benefits of the Governmental Immunity Act.~~]

1007 Section 7. Section **31A-20-108** is amended to read:

1008 **31A-20-108. Single risk limitation.**

1009 (1) This section applies to all lines of insurance, including ocean marine and reinsurance,
1010 except:

1011 (a) title insurance[;];

1012 (b) workers' compensation insurance[;];

1013 (c) occupational disease insurance[;]; and

1014 (d) employers' liability insurance.

1015 (2) (a) Except as provided under Subsections (3)[;] and (4)[~~, and (6)~~] and under Section
1016 31A-20-109, an insurance company authorized to do an insurance business in Utah may not expose
1017 itself to loss on any single risk in an amount exceeding 10% of its capital and surplus.

1018 (b) The commissioner may adopt rules to calculate surplus under this section.

1019 (c) The portion of any risk reinsured by a reinsurance contract worthy of a reserve credit
1020 under Section 31A-17-404 may not be included in determining the limitation of risk under this
1021 section.

1022 (3) (a) The commissioner may adopt rules, after hearings held with notice provided under
1023 Section 31A-2-303, to specify the maximum exposure to which an assessable mutual may subject
1024 itself.

1025 (b) The rules described in Subsection (3)(a) may provide for classifications of insurance
1026 and insurers to preserve the solidity of insurers.

1027 (4) As used in this section, a "single risk" includes all losses reasonably expected as a
1028 result of the same event.

1029 (5) A company transacting fidelity or surety insurance may expose itself to a risk or hazard
1030 in excess of the amount prescribed in Subsection (2), if the commissioner, after considering all the
1031 facts and circumstances, approves the risk.

1032 [~~(6) (a) Subsection (2) does not apply to limit the percentage of capital and surplus that a
1033 public agency insurance mutual may expose to any single risk, if a fellow of the Casualty Actuarial
1034 Society or other actuary acceptable to the commissioner certifies in an opinion filed with and
1035 approved by the commissioner that the single risk diversification exposure of the public agency
1036 insurance mutual does not by itself create a hazardous condition nor a condition that is not
1037 actuarially sound in light of the public agency insurance mutual's operation.]~~

1038 [~~(b) Current obligations of insured policyholders to pay surplus contributions shall be
1039 considered as surplus for the purpose of establishing reasonable single risk diversification
1040 standards for public agency insurance mutuals.]~~

1041 Section 8. Section **31A-22-502** is amended to read:

1042 **31A-22-502. Employee groups.**

1043 (1) As used in this section:

1044 (a) "Employees" includes:

1045 (i) for one or more affiliated corporations, proprietorships, or partnerships under common
1046 control, their:

1047 (A) officers;

1048 (B) managers;

- 1049 (C) retired employees; and
- 1050 (D) individual proprietors or partners; and
- 1051 (ii) for a trusteeship, if their duties are primarily connected with the trusteeship:
- 1052 (A) trustees;
- 1053 (B) employees of trustees; or
- 1054 (C) both Subsection (1)(a)(ii)(A) and (B).
- 1055 (b) "Employer" includes a Utah public agency.
- 1056 (c) (i) "Utah public agency" means a public institution that:
- 1057 (A) derives its authority from this state; and
- 1058 (B) is not privately owned.
- 1059 (ii) "Utah public agency" includes:
- 1060 (A) a municipality as defined in Subsection 11-14-1(1);
- 1061 (B) the state;
- 1062 (C) a department or agency of the state; and
- 1063 (D) all public educational institutions.
- 1064 (2) The lives of a group of individuals may be insured under a policy:
- 1065 (a) issued as policyholder, to:
- 1066 (i) an employer; or [to]
- 1067 (ii) the trustees of a fund established by an employer[;];
- 1068 (b) insuring employees of the employer for the benefit of persons other than the
- 1069 employer[;]; and
- 1070 (c) subject to the [following] requirements[;] of Subsections (3) through (5).
- 1071 [(+)] (3) (a) All the employer's employees or all of any class of employees of the employer
- 1072 [are] shall be eligible for insurance under the policy described in Subsection (2).
- 1073 [(-) As used in this section:]
- 1074 [(i) "Employees" includes the officers and managers, retired employees, and the individual
- 1075 proprietors or partners of one or more affiliated corporations, proprietorships, or partnerships under
- 1076 common control.]
- 1077 [(ii) "Employees" includes trustees, their employees, or both if their duties are primarily
- 1078 connected with the trusteeship.]
- 1079 [(+)] (b) A policy issued to insure the employees of a public body may include elected or

1080 appointed officials.

1081 ~~[(2) (a) As used in this section, "employer" includes all Utah public agencies, as defined~~
1082 ~~under Subsection 31A-5-202 (1);]~~

1083 ~~[(b) These]~~

1084 (4) A Utah public [agencies] agency may pay or authorize the payment out of [its] the Utah
1085 public agency's corporate revenue, the premiums required to maintain the group insurance in force.

1086 ~~[(3)]~~ (5) (a) The premiums for the policy described in Subsection (2) shall be paid by the
1087 policyholders[; either]:

1088 (i) from the employer's funds [or from];

1089 (ii) funds contributed by the insured employees[;]; or

1090 (iii) both the funds described in Subsections (5)(a)(i) and (ii).

1091 (b) Except as provided under Section 31A-22-512, a policy on which no part of the
1092 premium is contributed by the insured employees shall insure all eligible employees.

1093 Section 9. Section **31A-25-205** is amended to read:

1094 **31A-25-205. Financial responsibility.**

1095 (1) Every person licensed under this chapter shall, while licensed and for one year after
1096 that date, maintain an insurance policy or surety bond, issued by an authorized insurer, in an
1097 amount specified under Subsection (2), on a policy or contract form which is acceptable under
1098 Subsection (3).

1099 (2) (a) Insurance policies or surety bonds satisfying the requirement of Subsection (1) shall
1100 be in a face amount equal to at least 10% of the total funds handled by the administrator.
1101 However, no policy or bond under this Subsection (2)(a) may be in a face amount of less than
1102 \$5,000 nor more than \$500,000.

1103 (b) In fixing the policy or bond face amount under Subsection (2)(a), the total funds
1104 handled is:

1105 (i) the greater of:

1106 (A) the premiums received during the previous calendar year; or

1107 (B) claims paid through the administrator during the previous calendar year; or

1108 (ii) if no funds were handled during the preceding year, the total funds reasonably
1109 anticipated to be handled by the administrator during the current calendar year.

1110 (c) This section does not prohibit any person dealing with the administrator from requiring,

1111 by contract, insurance coverage in amounts greater than required under this section.

1112 (3) Insurance policies or surety bonds issued to satisfy Subsection (1) shall be on forms
1113 approved by the commissioner. The policies or bonds shall require the insurer to pay, up to the
1114 policy or bond face amount, any judgment obtained by participants in or beneficiaries of plans
1115 administered by the insured licensee which arise from the negligence or culpable acts of the
1116 licensee or any employee or agent of the licensee in connection with the activities described under
1117 Subsection 31A-1-301~~(H)~~(110). The commissioner may require that policies or bonds issued
1118 to satisfy the requirements of this section require the insurer to give the commissioner 20 day prior
1119 notice of policy cancellation.

1120 (4) The commissioner shall establish annual reporting requirements and forms to monitor
1121 compliance with this section.

1122 (5) This section may not be construed as limiting any cause of action an insured would
1123 otherwise have against the insurer.

1124 Section 10. Section **59-9-101** is amended to read:

1125 **59-9-101. Tax basis -- Rates -- Exemptions.**

1126 (1) (a) Except for annuity considerations, insurance premiums paid by institutions within
1127 the state system of higher education as specified in Section 53B-1-102, and ocean marine
1128 insurance, every admitted insurer shall pay to the commission on or before March 31 in each year,
1129 a tax of 2-1/4% of the total premiums received by it during the preceding calendar year from
1130 insurance covering property or risks located in this state.

1131 (b) This Subsection (1) does not apply to:

1132 (i) workers' compensation insurance, assessed under Subsection (2)~~;~~ or Subsection (8);

1133 and

1134 (ii) title insurance premiums~~;~~ taxed under Subsection (3).

1135 (c) The taxable premium under this Subsection (1) shall be reduced by:

1136 ~~(a)~~ (i) all premiums returned or credited to policyholders on direct business subject to
1137 tax in this state;

1138 ~~(b)~~ (ii) all premiums received for reinsurance of property or risks located in this state;

1139 and

1140 ~~(c)~~ (iii) the dividends, including premium reduction benefits maturing within the year,

1141 paid or credited to policyholders in this state or applied in abatement or reduction of premiums due

1142 during the preceding calendar year.

1143 (2) (a) Every admitted insurer writing workers' compensation insurance in this state,
1144 including the Workers' Compensation Fund created under Title 31A, Chapter 33, shall pay to the
1145 tax commission, on or before March 31 in each year, a premium assessment of between 1% and
1146 8% of the total workers' compensation premium income received by the insurer from workers'
1147 compensation insurance in this state during the preceding calendar year.

1148 (b) Total workers' compensation premium income means the net written premium as
1149 calculated before any premium reduction for any insured employer's deductible, retention, or
1150 reimbursement amounts and also those amounts equivalent to premiums as provided in Section
1151 34A-2-202.

1152 (c) The percentage of premium assessment applicable for a calendar year shall be
1153 determined by the Labor Commission under Subsection (2)(d). The total premium income shall
1154 be reduced in the same manner as provided in Subsections (1)[~~(a)~~](c)(i) and (1)[~~(b)~~](c)(ii), but not
1155 as provided in Subsection (1)(c)(iii). The tax commission shall promptly remit from the premium
1156 assessment collected under Subsection (2):

1157 (i) an amount of up to 7.25% of the premium income to the state treasurer for credit to the
1158 Employers' Reinsurance Fund created under Subsection 34A-2-702(1);

1159 (ii) an amount equal to 0.25% of the premium income to the state treasurer for credit to
1160 the restricted account in the General Fund, created by Section 34A-2-701; and

1161 (iii) an amount of up to 0.50% and any remaining assessed percentage of the premium
1162 income to the state treasurer for credit to the Uninsured Employers' Fund created under Section
1163 34A-2-704.

1164 (d) (i) The Labor Commission shall determine the amount of the premium assessment for
1165 each year on or before each October 15 of the preceding year. The Labor Commission shall make
1166 this determination following a public hearing. The determination shall be based upon the
1167 recommendations of a qualified actuary.

1168 (ii) The actuary shall recommend a premium assessment rate sufficient to provide
1169 payments of benefits and expenses from the Employers' Reinsurance Fund and to project a funded
1170 condition with assets greater than liabilities by no later than June 30, 2025.

1171 (iii) The actuary shall recommend a premium assessment rate sufficient to provide
1172 payments of benefits and expenses from the Uninsured Employers' Fund and to maintain it at a

1173 funded condition with assets equal to or greater than liabilities.

1174 (iv) At the end of each fiscal year the minimum approximate assets in the Employers'
1175 Reinsurance Fund shall be \$5,000,000 which amount shall be adjusted each year beginning in 1990
1176 by multiplying by the ratio that the total workers' compensation premium income for the preceding
1177 calendar year bears to the total workers' compensation premium income for the calendar year 1988.

1178 (v) The requirements of Subsection (2)(d)(iv) cease when the future annual disbursements
1179 from the Employers' Reinsurance Fund are projected to be less than the calculations of the
1180 corresponding future minimum required assets. The Labor Commission shall, after a public
1181 hearing, determine if the future annual disbursements are less than the corresponding future
1182 minimum required assets from projections provided by the actuary.

1183 (vi) At the end of each fiscal year the minimum approximate assets in the Uninsured
1184 Employers' Fund shall be \$2,000,000, which amount shall be adjusted each year beginning in 1990
1185 by multiplying by the ratio that the total workers' compensation premium income for the preceding
1186 calendar year bears to the total workers' compensation premium income for the calendar year 1988.

1187 (e) A premium assessment that is to be transferred into the General Fund may be collected
1188 on premiums received from Utah public agencies.

1189 (3) Every admitted insurer writing title insurance in this state shall pay to the commission,
1190 on or before March 31 in each year, a tax of .45% of the total premium received by either the
1191 insurer or by its agents during the preceding calendar year from title insurance concerning property
1192 located in this state. In calculating this tax, "premium" includes the charges made to an insured
1193 under or to an applicant for a policy or contract of title insurance for:

1194 (a) the assumption by the title insurer of the risks assumed by the issuance of the policy
1195 or contract of title insurance; and

1196 (b) abstracting title, title searching, examining title, or determining the insurability of title,
1197 and every other activity, exclusive of escrow, settlement, or closing charges, whether denominated
1198 premium or otherwise, made by a title insurer, an agent of a title insurer, a title insurance agent,
1199 or any of them.

1200 (4) Beginning July 1, 1986, former county mutuals and former mutual benefit associations
1201 shall pay the premium tax or assessment due under this chapter. All premiums received after July
1202 1, 1986, shall be considered in determining the tax or assessment.

1203 (5) The following insurers are not subject to the premium tax on health care insurance that

1204 would otherwise be applicable under Subsection (1):

1205 (a) insurers licensed under Title 31A, Chapter 5, Domestic Stock and Mutual Insurance
1206 Corporations;

1207 (b) insurers licensed under Title 31A, Chapter 7, Nonprofit Health Service Insurance
1208 Corporations;

1209 (c) insurers licensed under Title 31A, Chapter 8, Health Maintenance Organizations and
1210 Limited Health Plans;

1211 (d) insurers licensed under Title 31A, Chapter 9, Insurance Fraternal;

1212 (e) insurers licensed under Title 31A, Chapter 11, Motor Clubs;

1213 (f) insurers licensed under Title 31A, Chapter 13, Employee Welfare Funds and Plans; and

1214 (g) insurers licensed under Title 31A, Chapter 14, Foreign Insurers.

1215 (6) An insurer issuing multiple policies to an insured may not artificially allocate the
1216 premiums among the policies for purposes of reducing the aggregate premium tax or assessment
1217 applicable to the policies.

1218 (7) The retaliatory provisions of Title 31A, Chapter 3, apply to the tax or assessment
1219 imposed under this chapter.

1220 (8) (a) Except as provided in Subsection (8)(b), a public agency insurance mutual, as
1221 defined in Section 31A-1-103, that writes workers' compensation insurance in this state shall pay
1222 a premium assessment under Subsection (2) in the same manner as an admitted insurer writing
1223 workers' compensation in this state.

1224 [~~(8)~~] (b) [A premium tax paid to the General Fund may not be collected on premiums paid
1225 to] Notwithstanding Subsection (8)(a), a public agency insurance [mutuals] mutual is exempt from
1226 a premium assessment paid to the General Fund.

1227 Section 11. Section **59-9-101.3** is amended to read:

1228 **59-9-101.3. Employers' Reinsurance Fund special assessment.**

1229 (1) For purposes of this section:

1230 (a) "Calendar year" means a time period beginning January 1 and ending December 31
1231 during which an assessment is imposed.

1232 (b) "Public agency insurance mutual" is as defined in Section 31A-1-103.

1233 [~~(b)~~] (c) "Total workers' compensation premium income" has the same meaning as under
1234 Subsection 59-9-101(2).

1235 (2) (a) For calendar years beginning on January 1, 2002, through December 31, 2004, the
1236 following shall pay to the commission, on or before March 31 of each year, an assessment imposed
1237 by the Labor Commission under Subsection (3):

1238 (i) an admitted insurer writing workers' compensation insurance in this state, including the
1239 Workers' Compensation Fund created under Title 31A, Chapter 33, Workers' Compensation Fund;
1240 [~~and~~]

1241 (ii) a public agency mutual that writes workers' compensation insurance in the state; and
1242 [~~(i)~~] (iii) an employer authorized under Section 34A-2-201 to pay workers' compensation
1243 direct.

1244 (b) The assessment imposed under Subsection (3) shall be in addition to:

1245 (i) the premium assessment imposed under Subsection 59-9-101(2) or (8); and
1246 (ii) the assessment imposed under Section 34A-2-202.

1247 (3) (a) If the conditions described in Subsection (3)(b) are met, the Labor Commission may
1248 impose an assessment in accordance with Subsections (3)(c) and (d) of up to 2% of:

1249 (i) the total workers' compensation premium income received by the insurer from workers'
1250 compensation insurance in this state during the preceding calendar year; [~~or~~]

1251 (ii) the total workers' compensation premium income received by a public agency
1252 insurance mutual from workers' compensation insurance in this state during the preceding calendar
1253 year; or

1254 [~~(i)~~] (iii) if authorized under Section 34A-2-201 to pay workers' compensation direct, the
1255 amount calculated under Section 34A-2-202 for a self-insured employer that is equivalent to the
1256 total workers' compensation premium income.

1257 (b) The Labor Commission may impose the assessment described in Subsection (3)(a) if:

1258 (i) the Labor Commission determines that:

1259 (A) all admitted insurers and public agency insurance mutuals writing workers'
1260 compensation insurance in this state shall pay the maximum 7.25% of the premium income under
1261 Subsection 59-9-101(2)(c)(i); and

1262 (B) all employers authorized to pay compensation direct shall pay the maximum 7.25%
1263 assessment under Section 34A-2-202; and

1264 (ii) the maximum 7.25% of the premium income is insufficient to:

1265 (A) provide payment of benefits and expenses from the Employers' Reinsurance Fund to

1266 project a funded condition of the Employers' Reinsurance Fund with assets greater than liabilities
1267 by no later than June 30, 2025; or

1268 (B) maintain the minimum approximate assets required in Subsection 59-9-101(2)(d)(iv).

1269 (c) On or before each October 15 of the preceding year and following a public hearing, the
1270 Labor Commission shall determine:

1271 (i) whether an assessment will be imposed under this section for a calendar year; and

1272 (ii) if the assessment will be imposed, the percentage of the assessment applicable for the
1273 calendar year.

1274 (d) The Labor Commission shall:

1275 (i) base its determination on the recommendations of the qualified actuary required in
1276 Subsection 59-9-101(2)(d)(i); and

1277 (ii) take into consideration the recommended premium assessment rate recommended by
1278 the actuary under Subsection 59-9-101(2)(d)(ii).

1279 (4) An employer shall aggregate all assessments imposed under this section and Section
1280 34A-2-202 or 59-9-101 to determine whether the total assessment obligation shall be paid in
1281 quarterly installments in accordance with Sections 34A-2-202 and 59-9-104.

1282 (5) The commission shall promptly remit the assessment collected under Subsection (2)
1283 to the state treasurer for credit to the Employers' Reinsurance Fund created under Section
1284 34A-2-702.

1285 **Section 12. Repealer.**

1286 This act repeals:

1287 **Section 31A-5-214, Public agency insurance mutuals.**

1288 **Section 31A-5-215, Insurers formed under Interlocal Cooperation Act.**