

INSURANCE PRODUCERS AMENDMENTS

2003 GENERAL SESSION

STATE OF UTAH

Sponsor: James A. Dunnigan

This act modifies the Insurance Code. The act provides definitions and substitutes the term producer for the terms agent and broker with respect to certain insurance licenses. The act renumbers and modifies the chapter of the Insurance Code dealing with insurance marketing and licensing. The act further modifies insurance licensing and application procedures, licensing requirements, and license types. The act modifies guidelines for termination, lapsing, probation, or surrender with respect to a license. The act enacts guidelines for the appointment and listing of an individual or agency producer or managing general agent. The act modifies certain continuing education and training period requirements. The act modifies provisions relating to an agency license and designation. The act designates certain failures to forward a premium to an insured as insurance fraud. The act modifies guidelines for licensee compensation. The act makes technical changes. This act provides an effective date. This act contains a coordination clause.

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

AMENDS:

7-1-901, as enacted by Chapter 393, Laws of Utah 1998

31A-1-104, as last amended by Chapter 131, Laws of Utah 1999

31A-1-301, as last amended by Chapters 71 and 308, Laws of Utah 2002

31A-2-205, as last amended by Chapter 2, Laws of Utah 1987

31A-2-214, as last amended by Chapter 71, Laws of Utah 2002

31A-2-308, as last amended by Chapters 130 and 131, Laws of Utah 1999

31A-2-309, as last amended by Chapter 91, Laws of Utah 1987

31A-3-303, as last amended by Chapter 230, Laws of Utah 1992

31A-4-106, as last amended by Chapter 131, Laws of Utah 1999

31A-5-207, as last amended by Chapter 277, Laws of Utah 1992

31A-5-218, as last amended by Chapter 131, Laws of Utah 1999
31A-6a-103, as last amended by Chapter 130, Laws of Utah 1999
31A-6a-108, as enacted by Chapter 203, Laws of Utah 1992
31A-8-103, as last amended by Chapter 308, Laws of Utah 2002
31A-11-101, as last amended by Chapter 204, Laws of Utah 1986
31A-11-102, as last amended by Chapter 116, Laws of Utah 2001
31A-11-104, as last amended by Chapter 10, Laws of Utah 1997
31A-11-107, as last amended by Chapter 204, Laws of Utah 1986
31A-14-211, as last amended by Chapter 9, Laws of Utah 1996, Second Special Session
31A-15-102, as enacted by Chapter 242, Laws of Utah 1985
31A-15-103, as last amended by Chapter 185, Laws of Utah 2002
31A-15-104, as enacted by Chapter 242, Laws of Utah 1985
31A-15-111, as last amended by Chapter 185, Laws of Utah 1997
31A-15-204, as last amended by Chapter 305, Laws of Utah 1993
31A-15-207, as enacted by Chapter 258, Laws of Utah 1992
31A-15-210, as enacted by Chapter 258, Laws of Utah 1992
31A-15-212, as last amended by Chapter 305, Laws of Utah 1993
31A-17-608, as last amended by Chapter 116, Laws of Utah 2001
31A-19a-209, as last amended by Chapter 308, Laws of Utah 2002
31A-19a-216, as enacted by Chapter 130, Laws of Utah 1999
31A-20-110, as enacted by Chapter 242, Laws of Utah 1985
31A-21-302, as last amended by Chapter 204, Laws of Utah 1986
31A-21-305, as enacted by Chapter 242, Laws of Utah 1985
31A-21-404, as last amended by Chapter 116, Laws of Utah 2001
31A-26-201, as last amended by Chapter 20, Laws of Utah 1995
31A-27-103, as last amended by Chapter 308, Laws of Utah 2002
31A-27-316, as enacted by Chapter 242, Laws of Utah 1985
31A-27-324, as enacted by Chapter 242, Laws of Utah 1985

- 31A-30-104**, as last amended by Chapter 308, Laws of Utah 2002
- 31A-35-102**, as last amended by Chapter 259, Laws of Utah 2000
- 31A-35-301**, as last amended by Chapter 259, Laws of Utah 2000
- 31A-35-401**, as last amended by Chapter 259, Laws of Utah 2000
- 31A-35-402**, as last amended by Chapter 259, Laws of Utah 2000
- 31A-35-403**, as enacted by Chapter 293, Laws of Utah 1998
- 31A-35-502**, as last amended by Chapter 259, Laws of Utah 2000
- 31A-35-503**, as last amended by Chapter 259, Laws of Utah 2000
- 31A-35-601**, as enacted by Chapter 293, Laws of Utah 1998
- 31A-35-603**, as last amended by Chapter 259, Laws of Utah 2000
- 31A-35-604**, as last amended by Chapter 259, Laws of Utah 2000
- 31A-35-605**, as enacted by Chapter 293, Laws of Utah 1998
- 31A-35-606**, as enacted by Chapter 293, Laws of Utah 1998
- 31A-35-608**, as last amended by Chapter 9, Laws of Utah 2001
- 31A-35-701**, as last amended by Chapter 259, Laws of Utah 2000
- 31A-35-702**, as last amended by Chapter 259, Laws of Utah 2000
- 31A-35-703**, as last amended by Chapter 259, Laws of Utah 2000
- 31A-35-704**, as last amended by Chapter 259, Laws of Utah 2000
- 34A-2-104**, as last amended by Chapter 171, Laws of Utah 2001
- 35A-4-205**, as last amended by Chapter 21, Laws of Utah 1999
- 41-12a-303.2**, as last amended by Chapter 345, Laws of Utah 2000
- 57-1-39**, as last amended by Chapter 40, Laws of Utah 2002
- 59-9-101**, as last amended by Chapter 71, Laws of Utah 2002
- 63-2-202**, as last amended by Chapter 256, Laws of Utah 2001
- 63-2-302 (Effective 07/01/03)**, as last amended by Chapters 63 and 191, Laws of Utah 2002
- 63-2-302 (Superseded 07/01/03)**, as last amended by Chapter 63, Laws of Utah 2002
- 63-55b-131**, as last amended by Chapter 3, Laws of Utah 2001

73-1-10, as last amended by Chapter 241, Laws of Utah 2001

73-18c-304, as enacted by Chapter 348, Laws of Utah 1997

76-10-915, as last amended by Chapter 141, Laws of Utah 1999

ENACTS:

31A-1-110, Utah Code Annotated 1953

31A-23a-113, Utah Code Annotated 1953

31A-23a-115, Utah Code Annotated 1953

31A-23a-301, Utah Code Annotated 1953

31A-23a-411, Utah Code Annotated 1953

RENUMBERS AND AMENDS:

31A-23a-101, (Renumbered from 31A-23-101, as last amended by Chapter 116, Laws of Utah 2001)

31A-23a-102, (Renumbered from 31A-23-102, as last amended by Chapter 308, Laws of Utah 2002)

31A-23a-103, (Renumbered from 31A-23-201, as last amended by Chapter 116, Laws of Utah 2001)

31A-23a-104, (Renumbered from 31A-23-202, as last amended by Chapter 185, Laws of Utah 2002)

31A-23a-105, (Renumbered from 31A-23-203, as last amended by Chapter 116, Laws of Utah 2001)

31A-23a-106, (Renumbered from 31A-23-204, as last amended by Chapter 308, Laws of Utah 2002)

31A-23a-107, (Renumbered from 31A-23-205, as last amended by Chapter 10, Laws of Utah 1997)

31A-23a-108, (Renumbered from 31A-23-207, as last amended by Chapter 116, Laws of Utah 2001)

31A-23a-109, (Renumbered from 31A-23-209, as last amended by Chapter 116, Laws of Utah 2001)

31A-23a-110, (Renumbered from 31A-23-212, as last amended by Chapter 116, Laws of Utah 2001)

31A-23a-111, (Renumbered from 31A-23-216, as last amended by Chapter 308, Laws of Utah 2002)

31A-23a-112, (Renumbered from 31A-23-217, as last amended by Chapter 185, Laws of Utah 1997)

31A-23a-114, (Renumbered from 31A-23-218, as last amended by Chapter 116, Laws of Utah 2001)

31A-23a-116, (Renumbered from 31A-23-405, as last amended by Chapter 131, Laws of Utah 1999)

31A-23a-201, (Renumbered from 31A-23-201.5, as enacted by Chapter 116, Laws of Utah 2001)

31A-23a-202, (Renumbered from 31A-23-206, as last amended by Chapter 308, Laws of Utah 2002)

31A-23a-203, (Renumbered from 31A-23-208, as last amended by Chapter 261, Laws of Utah 1989)

31A-23a-204, (Renumbered from 31A-23-211, as last amended by Chapter 308, Laws of Utah 2002)

31A-23a-205, (Renumbered from 31A-23-211.5, as enacted by Chapter 293, Laws of Utah 1998)

31A-23a-206, (Renumbered from 31A-23-211.7, as last amended by Chapter 116, Laws of Utah 2001)

31A-23a-207, (Renumbered from 31A-23-214, as enacted by Chapter 242, Laws of Utah 1985)

31A-23a-302, (Renumbered from 31A-23-219, as last amended by Chapter 114, Laws of Utah 2000)

31A-23a-401, (Renumbered from 31A-23-301, as last amended by Chapter 261, Laws of Utah 1989)

31A-23a-402, (Renumbered from 31A-23-302, as last amended by Chapter 308, Laws of Utah 2002)

31A-23a-403, (Renumbered from 31A-23-303, as last amended by Chapter 116, Laws of Utah 2001)

31A-23a-404, (Renumbered from 31A-23-304, as enacted by Chapter 242, Laws of Utah 1985)

31A-23a-405, (Renumbered from 31A-23-305, as last amended by Chapter 293, Laws of Utah 1998)

31A-23a-406, (Renumbered from 31A-23-307, as last amended by Chapter 308, Laws of Utah 2002)

31A-23a-407, (Renumbered from 31A-23-308, as last amended by Chapter 308, Laws of Utah 2002)

31A-23a-408, (Renumbered from 31A-23-309, as last amended by Chapter 230, Laws of Utah 1992)

31A-23a-409, (Renumbered from 31A-23-310, as last amended by Chapter 116, Laws of Utah 2001)

31A-23a-410, (Renumbered from 31A-23-311, as last amended by Chapter 344, Laws of Utah 1995)

31A-23a-412, (Renumbered from 31A-23-312, as last amended by Chapter 116, Laws of Utah 2001)

31A-23a-413, (Renumbered from 31A-23-313, as enacted by Chapter 242, Laws of Utah 1985)

31A-23a-414, (Renumbered from 31A-23-314, as enacted by Chapter 242, Laws of Utah 1985)

31A-23a-415, (Renumbered from 31A-23-315, as last amended by Chapter 260, Laws of Utah 2002)

31A-23a-416, (Renumbered from 31A-23-316, as enacted by Chapter 329, Laws of Utah 1998)

31A-23a-417, (Renumbered from 31A-23-317, as enacted by Chapter 116, Laws of Utah 2001)

31A-23a-501, (Renumbered from 31A-23-401, as last amended by Chapter 293, Laws of Utah 1998)

31A-23a-502, (Renumbered from 31A-23-402, as last amended by Chapter 204, Laws of Utah 1986)

31A-23a-503, (Renumbered from 31A-23-403, as last amended by Chapter 76, Laws of Utah 1995)

31A-23a-504, (Renumbered from 31A-23-404, as last amended by Chapter 116, Laws of Utah 2001)

31A-23a-505, (Renumbered from 31A-23-406, as enacted by Chapter 242, Laws of Utah 1985)

31A-23a-601, (Renumbered from 31A-23-501, as last amended by Chapter 305, Laws of Utah 1993)

31A-23a-602, (Renumbered from 31A-23-502, as enacted by Chapter 258, Laws of Utah 1992)

31A-23a-603, (Renumbered from 31A-23-503, as last amended by Chapter 308, Laws of Utah 2002)

31A-23a-604, (Renumbered from 31A-23-504, as enacted by Chapter 258, Laws of Utah 1992)

31A-23a-605, (Renumbered from 31A-23-505, as enacted by Chapter 258, Laws of Utah 1992)

31A-23a-701, (Renumbered from 31A-23-601, as last amended by Chapter 308, Laws of Utah 2002)

31A-23a-702, (Renumbered from 31A-23-602, as last amended by Chapter 305, Laws of Utah 1993)

31A-23a-703, (Renumbered from 31A-23-603, as enacted by Chapter 258, Laws of Utah 1992)

31A-23a-704, (Renumbered from 31A-23-604, as enacted by Chapter 258, Laws of Utah 1992)

31A-23a-801, (Renumbered from 31A-23-701, as enacted by Chapter 258, Laws of Utah 1992)

31A-23a-802, (Renumbered from 31A-23-702, as last amended by Chapter 116, Laws of Utah 2001)

31A-23a-803, (Renumbered from 31A-23-703, as enacted by Chapter 258, Laws of Utah 1992)

31A-23a-804, (Renumbered from 31A-23-704, as enacted by Chapter 258, Laws of Utah 1992)

31A-23a-805, (Renumbered from 31A-23-705, as last amended by Chapter 116, Laws of Utah 2001)

31A-23a-806, (Renumbered from 31A-23-706, as enacted by Chapter 258, Laws of Utah 1992)

31A-23a-807, (Renumbered from 31A-23-707, as enacted by Chapter 258, Laws of Utah 1992)

31A-23a-808, (Renumbered from 31A-23-708, as enacted by Chapter 258, Laws of Utah 1992)

31A-23a-809, (Renumbered from 31A-23-709, as enacted by Chapter 258, Laws of Utah 1992)

REPEALS:

31A-23-103, as last amended by Chapter 261, Laws of Utah 1989

31A-23-215, as last amended by Chapter 131, Laws of Utah 1999

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

Section 1. Section **7-1-901** is amended to read:

7-1-901. Authorized insurance activities of depository institutions.

(1) A depository institution authorized to do business in this state under this title may directly, or indirectly through a subsidiary or affiliate, engage in the following insurance

activities:

(a) engage in the insurance business as defined under Section 31A-1-301 except as may be limited by federal law;

(b) act as an insurance [~~agent, broker,~~] producer or consultant as defined under Section 31A-1-301; or

(c) engage in insurance adjusting as defined in Section 31A-26-102.

(2) A depository institution, subsidiary, or affiliate, that engages in insurance activities authorized under Subsection (1) shall be subject to Title 31A, Insurance Code.

Section 2. Section **31A-1-104** is amended to read:

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

A person may not engage in the following without complying with this title:

(1) do an insurance business as defined under Section 31A-1-301;

(2) act as an insurance [~~agent, broker,~~] producer or consultant as defined under Section 31A-1-301; or

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

Section 3. Section **31A-1-110** is enacted to read:

31A-1-110. Scope of a license.

Unless a license is designated as limited, a license authorizes the person holding the license to transact business for all products within a line of authority.

Section 4. 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) "Actuary" is as defined by the commissioner by rule, made in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

~~[(2)]~~ (3) "Administrator" is defined in Subsection ~~[(121)]~~ (149).

~~[(3)]~~ (4) "Adult" means a natural person who has attained the age of at least 18 years.

~~[(4)]~~ (5) "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.

(6) "Agency" means:

(a) a person other than an individual, including a sole proprietorship by which a natural person does business under an assumed name; and

(b) an insurance organization licensed or required to be licensed under Section 31A-23a-301.

~~[(5)]~~ (7) "Alien insurer" means an insurer domiciled outside the United States.

~~[(6)]~~ (8) "Amendment" means an endorsement to an insurance policy or certificate.

~~[(7)]~~ (9) "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)]~~ (10) "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)]~~ (11) "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)]~~ (12) "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)]~~ (13) "Binder" is defined in Section 31A-21-102.

~~[(12)]~~ (14) "Board," "board of trustees," or "board of directors" means the group of persons with responsibility over, or management of, a corporation, however designated.

(15) "Business entity" means a corporation, association, partnership, limited liability company, limited liability partnership, or other legal entity.

~~[(13)]~~ (16) "Business of insurance" is defined in Subsection ~~[(68)]~~ (80).

~~[(14)]~~ (17) "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)]~~ (18) "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.

(19) "Captive insurance company" means:

(a) an insurance company:

(i) owned by another organization; and

(ii) whose exclusive purpose is to insure risks of the parent organization and affiliated companies; or

(b) in the case of groups and associations, an insurance organization:

(i) owned by the insureds; and

(ii) whose exclusive purpose is to insure risks of:

(A) member organizations;

(B) group members; and

(C) affiliates of:

(I) member organizations; or

(II) group members.

~~[(16)]~~ (20) "Casualty insurance" means liability insurance as defined in Subsection ~~[(75)]~~ (90).

~~[(17)]~~ (21) "Certificate" means evidence of insurance given to:

- (a) an insured under a group insurance policy; or
- (b) a third party.

~~[(18)]~~ (22) "Certificate of authority" is included within the term "license."

~~[(19)]~~ (23) "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)]~~ (24) "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)]~~ (25) (a) "Commissioner" or "commissioner of insurance" means Utah's insurance commissioner.

(b) When appropriate, the terms listed in Subsection ~~[(21)]~~ (25)(a) apply to the equivalent supervisory official of another jurisdiction.

~~[(22)]~~ (26) (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)]~~ (26)(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)]~~ (26)(a)(ii).

~~[(23)]~~ (27) (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)~~] (27)(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.

(28) "Controlled insurer" means a licensed insurer that is either directly or indirectly controlled by a producer.

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

(30) "Controlling producer" means a producer who directly or indirectly controls an insurer.

~~[(24)]~~ (31) (a) "Corporation" means insurance corporation, except when referring to:

(i) a corporation doing business as an insurance ~~[broker, consultant,]~~ producer, limited line producer, consultant, managing general agent, reinsurance intermediary, third party administrator, or adjuster under:

(A) Chapter ~~[23]~~ 23a, Insurance Marketing - Licensing ~~[Agents, Brokers]~~ Producers, Consultants, and Reinsurance Intermediaries; ~~[and]~~

(B) Chapter 25, Third Party Administrators; and

~~[(B)]~~ (C) 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)]~~ (32) "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)]~~ (33) (a) "Credit insurance" means [surety insurance under which mortgagees and other creditors are indemnified against losses caused by the default of debtors.] insurance offered in connection with an extension of credit that is limited to partially or wholly extinguishing that credit obligation.

(b) "Credit insurance" includes:

(i) credit accident and health insurance;

(ii) credit life insurance;

(iii) credit property insurance;

(iv) credit unemployment insurance;

(v) guaranteed automobile protection insurance;

(vi) involuntary unemployment insurance;

(vii) mortgage accident and health insurance;

(viii) mortgage guaranty insurance; and

(ix) mortgage life insurance.

~~[(27)]~~ (34) "Credit life insurance" means insurance on the life of a debtor in connection with [a loan or other credit transaction.] an extension of credit that pays a person if the debtor dies.

(35) "Credit property insurance" means insurance:

(a) offered in connection with an extension of credit; and

(b) that protects the property until the debt is paid.

(36) "Credit unemployment insurance" means insurance:

(a) offered in connection with an extension of credit; and

(b) that provides indemnity if the debtor is unemployed for payments coming due on a:

(i) specific loan; or

(ii) credit transaction.

(37) "Creditable coverage" is as defined in 45 C.F.R. 146.113(a).

~~[(28)]~~ (38) "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)]~~ (39) (a) "Customer service representative" means a person that provides insurance services and insurance product information:

(i) for ~~[its agent, broker,]~~ the customer service representative's producer or consultant employer; and

(ii) to ~~[its]~~ the customer service representative's employer's customer, client, or organization.

(b) A customer service representative may only operate within the scope of authority of ~~[its agent, broker,]~~ the customer service representative's producer or consultant employer.

~~[(30)]~~ (40) "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)]~~ (41) "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)]~~ (42) "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)]~~ (43) "Department" means the Insurance Department.

~~[(34)]~~ (44) "Director" means a member of the board of directors of a corporation.

~~[(35)]~~ (45) "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.

(46) "Disability income insurance" is defined in Subsection (71).

~~[(36)]~~ (47) "Domestic insurer" means an insurer organized under the laws of this state.

~~[(37)]~~ (48) "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)]~~ (49) (a) "Eligible employee" means:

(i) an employee who:

(A) works on a full-time basis; and

(B) has a normal work week of 30 or more hours; or

(ii) a person described in Subsection ~~[(38)]~~ (49)(b).

(b) "Eligible employee" includes, if the individual is included under a health benefit plan of a small employer:

- (i) a sole proprietor;
- (ii) a partner in a partnership; or
- (iii) an independent contractor.

(c) "Eligible employee" does not include, unless eligible under Subsection [~~(38)~~] (49)(b):

- (i) an individual who works on a temporary or substitute basis for a small employer;
- (ii) an employer's spouse; or
- (iii) a dependent of an employer.

[~~(39)~~] (50) "Employee" means any individual employed by an employer.

[~~(40)~~] (51) "Employee benefits" means one or more benefits or services provided to:

- (a) employees; or
- (b) dependents of employees.

[~~(41)~~] (52) (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.

[~~(42)~~] (53) "Endorsement" means a written agreement attached to a policy or certificate to modify one or more of the provisions of the policy or certificate.

(54) (a) "Escrow" means:

(i) a real estate settlement or real estate closing conducted by a third party pursuant to the requirements of a written agreement between the parties in a real estate transaction; or

(ii) a settlement or closing involving:

(A) a mobile home;

(B) a grazing right;

(C) a water right; or

(D) other personal property authorized by the commissioner.

(b) "Escrow" includes the act of conducting a:

(i) real estate settlement; or

(ii) real estate closing.

[~~(43)~~] (55) "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.

[~~(44)~~] (56) "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.

[~~(45)~~] (57) "Fidelity insurance" means insurance guaranteeing the fidelity of persons holding positions of public or private trust.

[~~(46)~~] (58) (a) "Filed" means that a filing is:

(i) submitted to the department as required by and 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 the appropriate fee in accordance with:

(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 [~~(46)~~] (58)(a).

[~~(47)~~] (59) "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.

[~~(48)~~] (60) "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.

[~~(49)~~] (61) "Foreign insurer" means an insurer domiciled outside of this state, including an alien insurer.

[~~(50)~~] (62) (a) "Form" means one of the following prepared for general use:

- (i) a policy;
- (ii) a certificate;
- (iii) an application; or
- (iv) an outline of coverage.

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

[~~(51)~~] (63) "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.

(64) "General lines of authority" include:

(a) the general lines of insurance in Subsection (65);

(b) title insurance under one of the following sublines of authority:

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

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

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

(iv) title marketing representative only;

(c) surplus lines;

(d) workers' compensation; and

(e) any other line of insurance that the commissioner considers necessary to recognize in the public interest.

(65) "General lines of insurance" include:

(a) accident and health;

(b) casualty;

(c) life;

(d) personal lines;

(e) property; and

(f) variable contracts, including variable life and annuity.

~~[(52)]~~ (66) "Group health plan" means an employee welfare benefit plan to the extent that the plan provides medical care:

(a) (i) to employees; or

(ii) to a dependent of an employee; and

(b) (i) directly;

(ii) through insurance reimbursement; or

(iii) through any other method.

(67) "Guaranteed automobile protection insurance" means insurance offered in

connection with an extension of credit that pays the difference in amount between the insurance settlement and the balance of the loan if the insured automobile is a total loss.

~~[(53)]~~ (68) "Health benefit plan" means a policy or certificate for health care insurance, except that health benefit plan does not include coverage:

- (a) solely for:
 - (i) accident;
 - (ii) dental;
 - (iii) vision;
 - (iv) Medicare supplement;
 - (v) long-term care; or
 - (vi) income replacement; or
- (b) that is:
 - (i) offered and marketed as supplemental health insurance;
 - (ii) not offered or marketed as a substitute for:
 - (A) hospital or medical expense insurance; or
 - (B) major medical expense insurance; and
 - (iii) solely for:
 - (A) a specified disease;
 - (B) hospital confinement indemnity; or
 - (C) limited benefit plan.

~~[(54)]~~ (69) "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.

~~[(55)]~~ (70) (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.

~~[(56)]~~ (71) "Income replacement insurance" or "disability income insurance" means insurance written to provide payments to replace income lost from accident or sickness.

~~[(57)]~~ (72) "Indemnity" means the payment of an amount to offset all or part of an insured loss.

~~[(58)]~~ (73) "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.

~~[(59)]~~ (74) "Independently procured insurance" means insurance procured under Section 31A-15-104.

~~[(60)]~~ (75) "Individual" means a natural person.

~~[(61)]~~ (76) "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.

~~[(62)]~~ (77) "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.

~~[(63)]~~ (78) (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.

~~[(64)]~~ (79) "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.

~~[(65)] "Interinsurance exchange" is defined in Subsection (109).]~~

~~[(66)] 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.]~~

~~[(67) 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.]~~

~~[(68)]~~ (80) "Insurance business" or "business of insurance" includes:

(a) providing health care insurance, as defined in Subsection ~~[(55)]~~ (70), 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 ~~[(82)]~~ (106);

(e) providing other persons with insurance as defined in Subsection ~~[(63)]~~ (78);

(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 ~~[(68)]~~ (80)(a) through (g) in a manner designed to evade the provisions of this title.

~~[(69)]~~ (81) ~~[Except as provided in Subsection 31A-23-201.5(1), "insurance]~~ "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) except as provided in Section 31A-23a-501, is not compensated directly or indirectly by an insurer~~[, agent, or broker]~~ or producer for advice given.

~~[(70)]~~ (82) "Insurance holding company system" means a group of two or more affiliated persons, at least one of whom is an insurer.

(83) (a) "Insurance producer" or "producer" means a person licensed or required to be licensed under the laws of this state to sell, solicit, or negotiate insurance.

(b) With regards to the selling, soliciting, or negotiating of an insurance product to an insurance customer or an insured:

(i) "producer for the insurer" means a producer who is compensated directly or indirectly by an insurer for selling, soliciting, or negotiating any product of that insurer; and

(ii) "producer for the insured" means a producer who:

(A) is compensated directly and only by an insurance customer or an insured; and

(B) receives no compensation directly or indirectly from an insurer for selling, soliciting, or negotiating any product of that insurer to an insurance customer or insured.

~~[(71)]~~ (84) (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 ~~[(71)]~~ (84)(a):

- (i) applies only to this title; and
- (ii) does not define the meaning of this word as used in insurance policies or certificates.

~~[(72)]~~ (85) (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 [~~(125)~~] (153)(b).
- (c) "Alien insurer" is defined in Subsection [~~(5)~~] (7).
- (d) "Authorized insurer" is defined in Subsection [~~(125)~~] (153)(b).
- (e) "Domestic insurer" is defined in Subsection [~~(36)~~] (47).
- (f) "Foreign insurer" is defined in Subsection [~~(49)~~] (61).
- (g) "Nonadmitted insurer" is defined in Subsection [~~(125)~~] (153)(a).
- (h) "Unauthorized insurer" is defined in Subsection [~~(125)~~] (153)(a).

(86) "Interinsurance exchange" is defined in Subsection (135).

(87) "Involuntary unemployment insurance" means insurance:

- (a) offered in connection with an extension of credit;
- (b) that provides indemnity if the debtor is involuntarily unemployed for payments

coming due on a:

- (i) specific loan; or
- (ii) credit transaction.

[~~(73)~~] (88) "Large employer," in connection with a health benefit plan, means an employer who, with respect to a calendar year and to a plan year:

- (a) employed an average of at least 51 eligible employees on each business day during the preceding calendar year; and

(b) employs at least two employees on the first day of the plan year.

~~[(74)]~~ (89) (a) Except for a retainer contract or legal assistance described 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.

(c) "Legal expense insurance" does not include the provision of, or reimbursement for, legal services incidental to other insurance coverages.

~~[(75)]~~ (90) (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 ~~[(79)]~~ (100) for medical malpractice insurance;

(B) Subsection ~~[(102)]~~ (127) for professional liability insurance; and

(C) Subsection ~~[(128)]~~ (157) 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 ~~[(79)]~~ (100) for medical malpractice insurance;

(B) Subsection ~~[(102)]~~ (127) for professional liability insurance; and

(C) Subsection ~~[(128)]~~ (157) 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 [~~(126)~~] (155);

(ii) residential dwelling liability insurance as defined in Subsection [~~(111)~~] (138); 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.

~~[(76)]~~ (91) (a) "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.

(b) "License" includes certificates of authority issued to insurers.

~~[(77)]~~ (92) (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.

(93) "Limited license" means a license that:

(a) is issued for a specific product of insurance; and

(b) limits an individual or agency to transact only for that product or insurance.

(94) "Limited line credit insurance" includes the following forms of insurance:

(a) credit life;

(b) credit accident and health;

(c) credit property;

(d) credit unemployment;

(e) involuntary unemployment;

(f) mortgage life;

(g) mortgage guaranty;

(h) mortgage accident and health;

(i) guaranteed automobile protection; and

(j) any other form of insurance offered in connection with an extension of credit that:

(i) is limited to partially or wholly extinguishing the credit obligation; and

(ii) the commissioner determines by rule should be designated as a form of limited line credit insurance.

(95) "Limited line credit insurance producer" means a person who sells, solicits, or negotiates one or more forms of limited line credit insurance coverage to individuals through a master, corporate, group, or individual policy.

(96) "Limited line insurance" includes:

(a) bail bond;

(b) limited line credit insurance;

(c) legal expense insurance;

(d) motor club insurance;

(e) rental car-related insurance;

(f) travel insurance; and

(g) any other form of limited insurance that the commissioner determines by rule should be designated a form of limited line insurance.

(97) "Limited lines authority" includes:

(a) the lines of insurance listed in Subsection (96); and

(b) a customer service representative.

(98) "Limited lines producer" means a person who sells, solicits, or negotiates limited lines insurance.

~~[(78)]~~ (99) (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 [~~(78)~~] (99)(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 the following are not conditioned on the receipt of long-term care:
 - (I) benefits; or
 - (II) eligibility; 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.

~~[(79)]~~ (100) "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.

~~[(80)]~~ (101) "Member" means a person having membership rights in an insurance corporation.

~~[(81)]~~ (102) "Minimum capital" or "minimum required capital" means the capital that must be constantly maintained by a stock insurance corporation as required by statute.

(103) "Mortgage accident and health insurance" means insurance offered in connection with an extension of credit that provides indemnity for payments coming due on a mortgage while the debtor is disabled.

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

(105) "Mortgage life insurance" means insurance on the life of a debtor in connection with an extension of credit that pays if the debtor dies.

~~[(82)]~~ (106) "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).

~~[(83)]~~ (107) "Mutual" means mutual insurance corporation.

~~[(84)]~~ (108) "Network plan" means health care insurance:

- (a) that is issued by an insurer; and
- (b) under which the financing and delivery of medical care is provided, in whole or in part, through a defined set of providers under contract with the insurer, including the financing and delivery of items paid for as medical care.

~~[(85)]~~ (109) "Nonparticipating" means a plan of insurance under which the insured is not entitled to receive dividends representing shares of the surplus of the insurer.

~~[(86)]~~ (110) "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.

~~[(87)]~~ (111) "Order" means an order of the commissioner.

~~[(88)]~~ (112) "Outline of coverage" means a summary that explains an accident and health insurance policy.

~~[(89)]~~ (113) "Participating" means a plan of insurance under which the insured is entitled to receive dividends representing shares of the surplus of the insurer.

~~[(90)]~~ (114) "Participation," as used in a health benefit plan, means a requirement relating to the minimum percentage of eligible employees that must be enrolled in relation to the total number of eligible employees of an employer reduced by each eligible employee who voluntarily declines coverage under the plan because the employee has other health care insurance coverage.

~~[(91)]~~ (115) "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.

(116) "Personal lines insurance" means property and casualty insurance coverage sold for primarily noncommercial purposes to:

(a) individuals; and

(b) families.

~~[(92)]~~ (117) "Plan sponsor" is as defined in 29 U.S.C. Sec. 1002(16)(B).

~~[(93)]~~ (118) "Plan year" means:

(a) the year that is designated as the plan year in:

- (i) the plan document of a group health plan; or
- (ii) a summary plan description of a group health plan;
- (b) if the plan document or summary plan description does not designate a plan year or

there is no plan document or summary plan description:

- (i) the year used to determine deductibles or limits;
- (ii) the policy year, if the plan does not impose deductibles or limits on a yearly basis; or
- (iii) the employer's taxable year if:
 - (A) the plan does not impose deductibles or limits on a yearly basis; and
 - (B) (I) the plan is not insured; or
 - (II) the insurance policy is not renewed on an annual basis; or
- (c) in a case not described in Subsection [~~93~~] (118)(a) or (b), the calendar year.

[~~94~~] (119) (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) (i) "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.

(ii) A group insurance 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.

~~[(95)]~~ (120) "Policyholder" means the person who controls a policy, binder, or oral contract by ownership, premium payment, or otherwise.

~~[(96)]~~ (121) "Policy illustration" means a presentation or depiction that includes nonguaranteed elements of a policy of life insurance over a period of years.

~~[(97)]~~ (122) "Policy summary" means a synopsis describing the elements of a life insurance policy.

~~[(98)]~~ (123) "Preexisting condition," in connection with a health benefit plan, means:

(a) a condition for which medical advice, diagnosis, care, or treatment was recommended or received during the six months immediately preceding the earlier of:

- (i) the enrollment date; or
- (ii) the effective date of coverage; or

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

~~[(99)]~~ (124) (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."

~~[(100)]~~ (125) "Principal officers" of a corporation means the officers designated under Subsection 31A-5-203(3).

~~[(101)]~~ (126) "Proceedings" includes actions and special statutory proceedings.

~~[(102)]~~ (127) "Professional liability insurance" means insurance against legal liability incident to the practice of a profession and provision of any professional services.

~~[(103)]~~ (128) "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 ~~[(61)]~~ (76) and ~~[(86)]~~ (110).

~~[(104)]~~ (129) "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.

(130) "Qualified United States financial institution" means an institution that:

(a) is:

(i) organized under the laws of the United States or any state; or

(ii) in the case of a United States office of a foreign banking organization, licensed under the laws of the United States or any state;

(b) is regulated, supervised, and examined by United States federal or state authorities having regulatory authority over banks and trust companies; and

(c) meets the standards of financial condition and standing that are considered necessary and appropriate to regulate the quality of financial institutions whose letters of credit will be acceptable to the commissioner as determined by:

(i) the commissioner by rule; or

(ii) the Securities Valuation Office of the National Association of Insurance

Commissioners.

~~[(105)]~~ (131) (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.

~~[(106)]~~ (132) (a) Except as provided in Subsection ~~[(106)]~~ (132)(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.

~~[(107)]~~ (133) "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.

~~[(108)]~~ (134) "Received by the department" means:

(a) except as provided in Subsection ~~[(108)]~~ (134)(b), the date delivered to and stamped received by the department, whether delivered:

- (i) in person; or
- ~~[(ii) by a delivery service; or]~~
- ~~[(iii)]~~ (ii) 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.

~~[(109)]~~ (135) "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.

~~[(110)]~~ (136) "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."

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

~~[(111)]~~ (138) "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.

~~[(112)]~~ (139) "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.

~~[(113)]~~ (140) "Rider" means an endorsement to:

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

~~[(114)]~~ (141) (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 ~~[(114)]~~ (141)(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.

~~[(115)]~~ (142) "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 ~~[(115)]~~ (142), 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.

(143) "Sell" means to exchange a contract of insurance:

(a) by any means;

(b) for money or its equivalent; and

(c) on behalf of an insurance company.

~~[(116)]~~ (144) "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.

~~[(117)]~~ (145) "Small employer," in connection with a health benefit plan, means an employer who, with respect to a calendar year and to a plan year:

(a) employed an average of at least two employees but not more than 50 eligible employees on each business day during the preceding calendar year; and

(b) employs at least two employees on the first day of the plan year.

~~[(118)]~~ (146) (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.

~~[(119)]~~ (147) Subject to Subsection ~~[(63)]~~ (78)(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.

~~[(120)]~~ (148) (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 ~~[(123)]~~ (151), 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 ~~[(123)]~~ (151), 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).

~~[(121)]~~ (149) "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]~~ 23a, Insurance Marketing - Licensing Producers, Consultants, and Reinsurance Intermediaries, or Chapter 26, Insurance Adjusters, whose activities are limited to those authorized under the license the person holds or for which the person is exempt.

~~[(122)]~~ (150) "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.

~~[(123)]~~ (151) "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.

~~[(124)]~~ (152) (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.

~~[(125)]~~ (153) (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.

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

~~[(126)]~~ (155) "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 ~~[(103)]~~ (128).

~~[(127)]~~ (156) "Voting security" means a security with voting rights, and includes any security convertible into a security with a voting right associated with it.

~~[(128)]~~ (157) "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 5. Section **31A-2-205** is amended to read:

31A-2-205. Examination costs.

(1) (a) Except as provided in Subsection (3), examinees that are insurers, rate service organizations, or the subsidiaries of either shall reimburse the Insurance Department for the reasonable costs of examinations made under Sections 31A-2-203 and 31A-2-204. The following costs shall be reimbursed:

(i) actual travel expenses[;];

(ii) reasonable living expense allowance[;];

(iii) compensation at reasonable rates for all professionals reasonably employed for the examination under Subsection (4)[;];

(iv) the administration and supervisory expense of the Insurance Department and the attorney general's office[;]; and

(v) an amount necessary to cover fringe benefits authorized by the commissioner or provided by law. In determining rates, the commissioner shall consider the rates recommended by the National Association of Insurance Commissioners and outlined in the examination manual sponsored by the association.

(b) Subsection (1) applies to surplus lines [~~brokers~~] producers to the extent that the examinations are of their surplus lines business.

(2) An insurer requesting the examination of one of its [~~agents~~] producers shall pay the cost of the examination. Otherwise, the department shall pay the cost of examining licensees other than those specified under Subsection (1).

(3) On the examinee's request or at the commissioner's discretion, the Insurance Department may pay all or part of the costs of an examination whenever the commissioner finds that because of the frequency of examinations or the financial condition of the examinee,

imposition of the costs would place an unreasonable burden on the examinee. The commissioner shall include in his annual report information about any instance in which the commissioner has applied this Subsection (3).

(4) Technical experts employed under Subsection 31A-2-203(3) shall present to the commissioner a statement of all expenses incurred by them in conjunction with an examination. The examined insurer shall, at the commissioner's direction, pay to the technical experts or specialists the actual travel expenses, reasonable living expenses, and compensation at customary rates for expenses necessarily incurred as approved by the commissioner. The examined insurer shall reimburse department examiners for their actual travel expenses and reasonable living expenses and shall reimburse the department for the compensation of department examiners involved in the examination. The examined insurer shall certify the consolidated account of all charges and expenses for the examination. One copy shall be retained by the insurer and the other shall be filed with the department as a public record. An annual report of examination charges paid by examined insurers directly to persons employed under Subsection 31A-2-203(3) or to department examiners shall be included with the department's budget request, but amounts paid directly by examined insurers to persons employed under Subsection 31A-2-203(3) or to department examiners may not be deducted from the department's appropriation.

(5) The amount payable under Subsection (1) is due ten days after the examinee has been served with a detailed account of the costs. Payments received by the department under this Subsection (5) shall be handled as provided by Subsection 31A-3-101.

(6) The commissioner may require an examinee under Subsection (1), or an insurer requesting an examination under Subsection (2), either before or during an examination, to make deposits with the state treasurer to pay the costs of examination. Any deposit made under this Subsection (6) shall be held in trust by the state treasurer until applied to pay the Insurance Department the costs payable under this section. If a deposit exceeds examination costs, the state treasurer shall refund the surplus.

(7) Domestic insurers may offset the examination expenses paid under this section against premium taxes under Subsection 59-9-102(2).

Section 6. Section **31A-2-214** is amended to read:

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

(1) (a) The commissioner may by rule implement a market assistance program whereby all licensed insurers and [~~agents~~] producers 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:

(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

(ii) the public interest requires the availability of 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.

(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

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

(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.

(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]~~ producers;

(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~~] producers 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.

(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) private passenger automobile liability insurance.

(4) Every insurer and [~~agent~~] producer 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~~] producers

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 7. Section **31A-2-308** is amended to read:

31A-2-308. Enforcement penalties and procedures.

(1) (a) A person who violates any insurance statute or rule or any order issued under Subsection 31A-2-201(4) shall forfeit to the state twice the amount of any profit gained from the violation, in addition to any other forfeiture or penalty imposed.

(b) (i) The commissioner may order an individual [~~agent, broker~~] producer, limited line producer, customer service representative, managing general agent, reinsurance intermediary, adjuster, or insurance consultant who violates an insurance statute or rule to forfeit to the state not more than \$2,500 for each violation.

(ii) The commissioner may order any other person who violates an insurance statute or rule to forfeit to the state not more than \$5,000 for each violation.

(c) (i) The commissioner may order an individual [~~agent, broker~~] producer, limited line producer, customer service representative, managing general agent, reinsurance intermediary, adjuster, or insurance consultant who violates an order issued under Subsection 31A-2-201(4) to forfeit to the state not more than \$2,500 for each violation. Each day the violation continues is a separate violation.

(ii) The commissioner may order any other person who violates an order issued under

Subsection 31A-2-201(4) to forfeit to the state not more than \$5,000 for each violation. Each day the violation continues is a separate violation.

(d) The commissioner may accept or compromise any forfeiture under this Subsection (1) until after a complaint is filed under Subsection (2). After the filing of the complaint, only the attorney general may compromise the forfeiture.

(2) When a person fails to comply with an order issued under Subsection 31A-2-201(4), including a forfeiture order, the commissioner may file an action in any court of competent jurisdiction or obtain a court order or judgment:

(a) enforcing the commissioner's order;

(b) (i) directing compliance with the commissioner's order and restraining further violation of the order; and

(ii) subjecting the person ordered to the procedures and sanctions available to the court for punishing contempt if the failure to comply continues; or

(c) imposing a forfeiture in an amount the court considers just, up to \$10,000 for each day the failure to comply continues after the filing of the complaint until judgment is rendered.

(3) The Utah Rules of Civil Procedure govern actions brought under Subsection (2), except that the commissioner may file a complaint seeking a court-ordered forfeiture under Subsection (2)(c) no sooner than two weeks after giving written notice of the commissioner's intention to proceed under Subsection (2)(c). The commissioner's order issued under Subsection 31A-2-201(4) may contain a notice of intention to seek a court-ordered forfeiture if the commissioner's order is disobeyed.

(4) If, after a court order is issued under Subsection (2), the person fails to comply with the commissioner's order or judgment:

(a) the commissioner may certify the fact of the failure to the court by affidavit; and

(b) the court may, after a hearing following at least five days written notice to the parties subject to the order or judgment, amend the order or judgment to add the forfeiture or forfeitures, as prescribed in Subsection (2)(c), until the person complies.

(5) (a) The proceeds of all forfeitures under this section, including collection expenses,

shall be paid into the General Fund.

(b) The expenses of collection shall be credited to the Insurance Department's budget.

(c) The attorney general's budget shall be credited to the extent the Insurance Department reimburses the attorney general's office for its collection expenses under this section.

(6) (a) Forfeitures and judgments under this section bear interest at the rate charged by the United States Internal Revenue Service for past due taxes on the:

(i) date of entry of the commissioner's order under Subsection (1); or

(ii) date of judgment under Subsection (2).

(b) Interest accrues from the later of the dates described in Subsection (6)(a) until the forfeiture and accrued interest are fully paid.

(7) A forfeiture may not be imposed under Subsection (2)(c) if:

(a) at the time the forfeiture action is commenced, the person was in compliance with the commissioner's order; or

(b) the violation of the order occurred during the order's suspension.

(8) The commissioner may seek an injunction as an alternative to issuing an order under Subsection 31A-2-201(4).

(9) (a) A person is guilty of a class B misdemeanor if that person:

(i) intentionally violates:

(A) an insurance statute or rule of this state; or

(B) an order issued under Subsection 31A-2-201(4);

(ii) intentionally permits a person over whom that person has authority to violate:

(A) an insurance statute or rule of this state; or

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

(iii) intentionally aids any person in violating:

(A) an insurance statute or rule of this state; or

(B) an order issued under Subsection 31A-2-201(4).

(b) Unless a specific criminal penalty is provided elsewhere in this title, the person may be fined not more than:

- (i) \$10,000 if a corporation; or
- (ii) \$5,000 if a person other than a corporation.
- (c) If the person is an individual, the person may, in addition, be imprisoned for up to one year.

(d) As used in this Subsection (9), "intentionally" has the same meaning as under Subsection 76-2-103(1).

(10)(a) After a hearing, the commissioner may, in whole or in part, revoke, suspend, place on probation, limit, or refuse to renew the licensee's license or certificate of authority:

- (i) when a licensee of the department, other than a domestic insurer:
 - (A) persistently or substantially violates the insurance law; or
 - (B) violates an order of the commissioner under Subsection 31A-2-201(4);
- (ii) if there are grounds for delinquency proceedings against the licensee under Section 31A-27-301 or Section 31A-27-307; or
- (iii) if the licensee's methods and practices in the conduct of the licensee's business endanger, or the licensee's financial resources are inadequate to safeguard, the legitimate interests of the licensee's customers and the public.

(b) Additional license termination or probation provisions for licensees other than insurers are set forth in Sections 31A-19a-303, 31A-19a-304, [~~31A-23-216~~] 31A-23a-111, [~~31A-23-217~~] 31A-23a-112, 31A-25-208, 31A-25-209, 31A-26-213, 31A-26-214, 31A-35-501, and 31A-35-503.

(11) The enforcement penalties and procedures set forth in this section are not exclusive, but are cumulative of other rights and remedies the commissioner has pursuant to applicable law.

Section 8. Section **31A-2-309** is amended to read:

31A-2-309. Service of process through state officer.

(1) The commissioner, or the lieutenant governor when the subject proceeding is brought by the state, is the agent for receipt of service of any summons, notice, order, pleading, or any other legal process relating to a Utah court or administrative agency upon the following:

- (a) all insurers authorized to do business in this state, while authorized to do business in

this state, and thereafter in any proceeding arising from or related to any transaction having a connection with this state;

(b) all surplus lines insurers for any proceeding arising out of a contract of insurance that is subject to the surplus lines law, or out of a certificate, cover note, or other confirmation of that type of insurance;

(c) all unauthorized insurers or other persons assisting unauthorized insurers under Subsection 31A-15-102(1) by doing an act specified in Subsection 31A-15-102(2), for a proceeding arising out of the transaction that is subject to the unauthorized insurance law;

(d) any nonresident [~~agent, broker~~] producer, consultant, adjuster, and third party administrator, while authorized to do business in this state, and thereafter in any proceeding arising from or related to any transaction having a connection with this state; and

(e) any reinsurer submitting to the commissioner's jurisdiction under Subsection 31A-17-404(7).

(2) Each licensed insurer by applying for and receiving a certificate of authority, each surplus lines insurer by entering into a contract subject to the surplus lines law, each unauthorized insurer by doing in this state any of the acts prohibited by Section 31A-15-101, and each nonresident [~~agent, broker~~] producer, consultant, adjuster, and third party administrator is considered to have irrevocably appointed the commissioner and lieutenant governor as his agents in accordance with Subsection (1).

(3) The commissioner and lieutenant governor are also agents for the executors, administrators or personal representatives, receivers, trustees, or other successors in interest of the persons specified under Subsection (1).

(4) Litigants serving process on the commissioner or lieutenant governor under this section shall pay the fee applicable under Section 31A-3-103.

(5) The right to substituted service under this section does not limit the right to serve a summons, notice, order, pleading, demand, or other process upon a person in any other manner provided by law.

Section 9. Section **31A-3-303** is amended to read:

31A-3-303. Payment of tax.

(1) The insurer, all [~~brokers~~] producers involved in the transaction, and the policyholder are jointly and severally liable for the payment of the taxes required under Section 31A-3-301. The policyholder's liability for payment of the premium tax under Section 31A-3-301 ends when the policyholder pays the tax to the [~~broker~~] producer or insurer. The insurer and all [~~brokers~~] producers involved in the transaction are jointly and severally liable for the payment of the additional tax required under Section 31A-3-302. Except for the tax under Section 31A-3-302, the taxes under this part shall be paid by the policyholder who shall be billed specifically for the tax when billed for the premium. Except for the tax imposed under Section 31A-3-302, absorption of the tax by the [~~agent, broker,~~] producer or insurer is an unfair method of competition under Section [~~31A-23-302~~] 31A-23a-402.

(2) The commissioner shall by rule prescribe accounting and reporting forms and procedures for insurers, [~~brokers~~] producers, and policyholders to use in determining the amount of taxes owed under this part, and the manner and time of payment. If a tax is not paid within the time prescribed under the commissioner's rule, a penalty shall be imposed of 25% of the tax due, plus 1-1/2% per month from the time of default until full payment of the tax.

(3) Upon making a record of its actions, and upon reasonable cause shown, the Tax Commissioner may waive, reduce, or compromise any of the penalties or interest imposed under this part.

(4) If a policy covers risks that are only partially located in this state, for computation of tax under this part the premium shall be reasonably allocated among the states on the basis of risk locations. However, all premiums with respect to surplus lines insurance received in this state by a surplus lines [~~broker~~] producer or charged on policies written or negotiated in or from this state are taxable in full under this part, subject to a credit for any tax actually paid in another state to the extent of a reasonable allocation on the basis of risk locations.

(5) All premium taxes collected under this part by a [~~broker~~] producer or by an insurer are the property of this state.

(6) If the property of any [~~broker~~] producer is seized under any process in a court in this

state, or if his business is suspended by the action of creditors or put into the hands of an assignee, receiver, or trustee, all taxes and penalties due this state under this part are preferred claims and the state is to that extent a preferred creditor.

Section 10. Section **31A-4-106** is amended to read:

31A-4-106. Provision of health care.

(1) As used in this section, "health care provider" has the same definition as in Section 78-14-3.

(2) Except under Subsection (3) or (4), a person may not directly or indirectly provide health care, or arrange for, manage, or administer the provision or arrangement of, collect advance payments for, or compensate providers of health care unless authorized to do so or employed by someone authorized to do so under Chapter 5, 7, 8, 9, or 14.

(3) Subsection (2) does not apply to:

(a) a natural person or professional corporation that alone or with others professionally associated with the natural person or professional corporation, and without receiving consideration for services in advance of the need for a particular service, provides the service personally with the aid of nonprofessional assistants;

(b) a health care facility as defined in Section 26-21-2 which:

(i) is licensed or exempt from licensing under Title 26, Chapter 21; and

(ii) does not engage in health care insurance as defined under Section 31A-1-301;

(c) a person who files with the commissioner under Section 31A-1-105 a certificate from the United States Department of Labor, or other evidence satisfactory to the commissioner, showing that the laws of Utah are preempted under Section 514 of the Employee Retirement Income Security Act of 1974 or other federal law;

(d) a person licensed under Chapter ~~[23]~~ 23a, Insurance Marketing - Licensing Producers, Consultants, and Reinsurance Intermediaries, who~~[-(i)]~~ has arranged for the insurance of all services under:

~~[(A)]~~ (i) Subsection (2) by an insurer authorized to do business in Utah;

~~[(B)]~~ (ii) Section 31A-15-103; or

[(€)] (iii) works for an uninsured employer that complies with Chapter 13; or
(e) an employer that self-funds its obligations to provide health care services or indemnity for its employees if the employer complies with Chapter 13.

(4) A person may not provide administrative or management services for any other person subject to Subsection (2) and not exempt under Subsection (3) unless the person is an authorized insurer under Chapter 5, 7, 8, 9, or 14, or complies with Chapter 25.

(5) It is unlawful for any insurer or person providing, administering, or managing health care insurance under Chapter 5, 7, 8, 9, or 14 to enter into a contract that limits a health care provider's ability to advise the health care provider's patients or clients fully about treatment options or other issues that affect the health care of the health care provider's patients or clients.

Section 11. Section **31A-5-207** is amended to read:

31A-5-207. Powers under organization permit.

(1) While its organization permit is in effect a stock corporation may:

(a) register stock under Section 31A-5-302, solicit subscriptions subject to Section 16-10a-620, accept payment for the subscriptions in cash or, with the approval of the commissioner, in other property constituting a permitted investment under Chapter 18, and issue receipts for payments made at values approved by the commissioner, but no certificates for shares may be issued until a certificate of authority has been issued; and

(b) transact all other business necessary and appropriate in the organization of the planned insurance enterprise.

(2) While its organization permit is in effect a mutual may:

(a) register mutual bonds under Section 31A-5-302, solicit applications for qualifying insurance policies under Subsection 31A-5-211(5), solicit subscriptions for mutual bonds and contribution notes and accept payment for the subscriptions in cash or, with the approval of the commissioner, in property constituting a permitted investment under Chapter 18, and issue receipts for payments made at values approved by the commissioner, but no policies or bonds are effective or may be issued until a certificate of authority has been issued; and

(b) transact all other business necessary and appropriate in the organization of the

planned insurance enterprise.

(3) (a) The existence of the organization permit may not be used as an inducement in any solicitation.

(b) No person may knowingly, with intent to deceive, exhibit any false document or account regarding the affairs of any organization under Section 31A-5-204 or make any misrepresentation about its affairs.

(4) Solicitations under this section may be made for stock or bond subscriptions only by persons registered under Title 61, Chapter 1, as broker-dealers or agents. Solicitations under this section may be made for qualifying insurance policies only by persons licensed under Chapter [23] 23a, Insurance Marketing - Licensing Producers, Consultants, and Reinsurance Intermediaries, as insurance [~~agents~~] producers. Before any solicitation, the solicitor shall obtain from the commissioner a license to solicit, after paying the fee applicable under Section 31A-3-103.

(5) This section does not apply to stock or mutual insurance corporations already in existence on July 1, 1986.

Section 12. Section **31A-5-218** is amended to read:

31A-5-218. Subsidiaries.

(1) Subject to the limitations under Subsection 31A-18-106(1)(k), an insurance corporation may form or acquire subsidiaries to do any lawful insurance business.

(2) An insurance corporation may form or acquire subsidiaries to hold or manage any assets that it might hold or manage directly.

(3) (a) An insurance corporation may form or acquire subsidiaries to perform functions or provide services that are ancillary to its insurance operations.

(b) A subsidiary is an ancillary subsidiary if it is engaged principally in one or more of the following:

- (i) acting as an insurance [~~agent or broker~~] producer;
- (ii) investing, reinvesting, or trading in securities, or acting as a securities broker, dealer, or marketing representative;

(iii) managing investment companies registered under the federal Investment Company Act of 1940, as amended, including related sales and services;

(iv) providing investment advice and services;

(v) acting as administrative agent for a government instrumentality performing an insurance, public assistance, or related function;

(vi) providing services related to insurance operations, including accounting, actuarial, pension administration, appraisal, auditing, claims adjusting, collection, data processing, communications, loss prevention, premium financing, safety engineering, and underwriting services;

(vii) holding or managing property used by the corporation, alone or with its affiliates for the convenient transaction of its business;

(viii) engaging in the motor club business under Chapter 11, Motor Clubs;

(ix) engaging in the business of any institution subject to the jurisdiction of the Department of Financial Institutions under Title 7, Financial Institutions;

(x) providing similar services or performing similar activities which the commissioner declares ancillary by rule; and

(xi) owning corporations that would be authorized as subsidiaries under Subsections (3)(b)(i) through (3)(b)(ix) and under Subsections (1) and (2).

(4) An insurance corporation may form or acquire subsidiaries other than those under Subsections (1) through (3), but only to the extent the insurer has excess surplus as defined under Section 31A-1-301.

(5) (a) An insurance corporation shall notify the commissioner immediately following the formation or acquisition of a subsidiary under this section.

(b) Chapter 16 provides additional requirements that are applicable to the acquisition of certain subsidiaries.

Section 13. Section **31A-6a-103** is amended to read:

31A-6a-103. Requirements for doing business.

(1) Service contracts may not be issued, sold, or offered for sale in this state unless the

service contract is insured under a service contract reimbursement insurance policy issued by an insurer authorized to do business in this state, or a recognized surplus lines carrier.

(2) (a) Service contracts may not be issued, sold, or offered for sale unless a true and correct copy of the service contract and the provider's reimbursement insurance policy have been filed with the commissioner. Copies of contracts and policies must be filed no less than 30 days prior to the issuance, sale offering for sale, or use of the service contract or reimbursement insurance policy in this state.

(b) Each modification of the terms of any service contract or reimbursement insurance policy must also be filed 30 days prior to its use in this state. Each filing must be accompanied by a filing fee as required under Subsection 31A-3-103, or the filing shall be rejected.

(c) Persons complying with this chapter are not required to comply with:

- (i) Subsections 31A-21-201(1) and [~~31A-23-302~~] 31A-23a-402(3); or
- (ii) Chapter 19a, Utah Rate Regulation Act.

(3) (a) Premiums collected on service contracts are not subject to premium taxes.

(b) Premiums collected by issuers of reimbursement insurance policies are subject to premium taxes.

(4) Persons marketing, selling, or offering to sell service contracts for service contract providers that comply with this chapter are exempt from the licensing requirements of this title.

(5) Service contract providers complying with this chapter are not required to comply with:

- (a) Chapter 5, Domestic Stock and Mutual Insurance Corporations;
- (b) Chapter 7, Nonprofit Health Service Insurance Corporations;
- (c) Chapter 8, Health Maintenance Organizations and Limited Health Plans;
- (d) Chapter 9, Insurance Fraternal;
- (e) Chapter 10, Annuities;
- (f) Chapter 11, Motor Clubs;
- (g) Chapter 12, State Risk Management Fund;
- (h) Chapter 13, Employee Welfare Funds and Plans;

- (i) Chapter 14, Foreign Insurers;
- (j) Chapter 19a, Utah Rate Regulation Act;
- (k) Chapter 25, Third Party Administrators; and
- (l) Chapter 28, Guaranty Associations.

Section 14. Section **31A-6a-108** is amended to read:

31A-6a-108. Obligation of reimbursement insurance issuers.

Providers under this chapter are considered to be the agent of the issuer of the reimbursement insurance for purposes of Section [~~31A-23-311~~] 31A-23a-410. In cases where a provider is acting as an administrator and enlists other providers, the provider acting as the administrator shall notify the issuer of the reimbursement insurance of the other providers.

Section 15. Section **31A-8-103** is amended to read:

31A-8-103. Applicability to other provisions of law.

(1) (a) Except for exemptions specifically granted under this title, an organization is subject to regulation under all of the provisions of this title.

(b) Notwithstanding any provision of this title, an organization licensed under this chapter:

(i) is wholly exempt from:

- (A) Chapter 7, Nonprofit Health Service Insurance Corporations;
- (B) Chapter 9, Insurance Fraternal;
- (C) Chapter 10, Annuities;
- (D) Chapter 11, Motor Clubs;
- (E) Chapter 12, State Risk Management Fund;
- (F) Chapter 13, Employee Welfare Funds and Plans;
- (G) Chapter 19a, Utah Rate Regulation Act; and
- (H) Chapter 28, Guaranty Associations; and

(ii) not subject to:

- (A) Chapter 3, Department Funding, Fees, and Taxes, except for Part I;
- (B) Section 31A-4-107;

(C) Chapter 5, Domestic Stock and Mutual Insurance Corporations, except for provisions specifically made applicable by this chapter;

(D) Chapter 14, Foreign Insurers, except for provisions specifically made applicable by this chapter;

(E) Chapter 17, Determination of Financial Condition, except:

(I) Parts II and VI; or

(II) as made applicable by the commissioner by rule consistent with this chapter;

(F) Chapter 18, Investments, except as made applicable by the commissioner by rule consistent with this chapter; and

(G) Chapter 22, Contracts in Specific Lines, except for Parts VI, VII, and XII.

(2) The commissioner may by rule waive other specific provisions of this title that the commissioner considers inapplicable to health maintenance organizations or limited health plans, upon a finding that the waiver will not endanger the interests of:

(a) enrollees;

(b) investors; or

(c) the public.

(3) Title 16, Chapter 6a, Utah Revised Nonprofit Corporation Act, and Title 16, Chapter 10a, Utah Revised Business Corporation Act, do not apply to an organization except as specifically made applicable by:

(a) this chapter;

(b) a provision referenced under this chapter; or

(c) a rule adopted by the commissioner to deal with corporate law issues of health maintenance organizations that are not settled under this chapter.

(4) (a) Whenever in this chapter, Chapter 5, or Chapter 14 is made applicable to an organization, the application is:

(i) of those provisions that apply to a mutual corporation if the organization is nonprofit; and

(ii) of those that apply to a stock corporation if the organization is for profit.

(b) When Chapter 5 or 14 is made applicable to an organization under this chapter, "mutual" means nonprofit organization.

(5) Solicitation of enrollees by an organization is not a violation of any provision of law relating to solicitation or advertising by health professionals if that solicitation is made in accordance with:

(a) this chapter; and

(b) Chapter ~~[23]~~ 23a, Insurance Marketing - Licensing ~~[Agents, Brokers]~~ Producers, Consultants, and Reinsurance Intermediaries.

(6) This title does not prohibit any health maintenance organization from meeting the requirements of any federal law that enables the health maintenance organization to:

(a) receive federal funds; or

(b) obtain or maintain federal qualification status.

(7) Except as provided in Section 31A-8-501, an organization is exempt from statutes in this title or department rules that restrict or limit the organization's freedom of choice in contracting with or selecting health care providers, including Section 31A-22-618.

(8) An organization is exempt from the assessment or payment of premium taxes imposed by Sections 59-9-101 through 59-9-104.

Section 16. Section **31A-11-101** is amended to read:

31A-11-101. Prohibition of unauthorized motor clubs.

(1) No person may act as a motor club, except:

(a) a corporation authorized under Chapter 5 or 14 which actually engages in the insurance of automobiles against liability, physical damage, or both; or

(b) a corporation or division of a corporation authorized under this chapter.

(2) No person is acting as a motor club merely by offering travel-related services that do not constitute insurance, or by arranging, through ~~[agents]~~ producers qualified under Chapter ~~[23;]~~ 23a, Insurance Marketing - Licensing Producers, Consultants, and Reinsurance Intermediaries, for insurance coverages underwritten by insurers authorized to do business in this state.

Section 17. Section **31A-11-102** is amended to read:

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

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

(a) service as [~~agent or broker~~] producer in obtaining insurance coverage from authorized insurers, subject to Chapter [23] 23a, Insurance Marketing - Licensing Producers, Consultants, and Reinsurance Intermediaries;

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

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

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

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

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

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

(3) If a motor club is a separate division of a corporation, the activities of the other divisions of the corporation are not limited by this section, if the motor club division complies with Subsection 31A-11-106(3).

Section 18. Section **31A-11-104** is amended to read:

31A-11-104. Applicability of other portions of the Insurance Code.

In addition to this chapter, motor clubs are subject to the applicable sections of Chapters

1, 2, 4, 16, 21, 22, 26, and 27, Part I of Chapter 3, Parts I, ~~[HH]~~ IV, and ~~[FV]~~ V of Chapter ~~[23]~~ 23a, Insurance Marketing - Licensing Producers, Consultants, and Reinsurance Intermediaries, and Section ~~[31A-23-214]~~ 31A-23a-207. Sections 31A-14-204 and 31A-14-216 apply to nondomestic motor clubs. Section 31A-5-401 applies to domestic motor clubs. Sections 31A-5-105, 31A-5-106, and 31A-5-216 apply to both domestic and nondomestic motor clubs. Both domestic and nondomestic motor clubs are subject to the Insurance Department fees under Section 31A-3-103. Other provisions of the Insurance Code apply to motor clubs only as specifically provided in this chapter.

Section 19. Section **31A-11-107** is amended to read:

31A-11-107. Issuance of certificate of authority -- Reinsurance of excess services.

(1) The commissioner shall issue a certificate applied for under Section 31A-11-106 if he finds that:

(a) the corporation is able to negotiate, execute, and carry out the motor club business in a sound, reliable, and ongoing manner;

(b) the reinsurance requirements of Subsection (2) are satisfied; and

(c) all other applicable requirements of law are satisfied.

(2) If a motor club provides legal expense service other than that authorized in Subsection 31A-11-102(1)(b), or other trip reimbursement service than that authorized in Subsection 31A-11-102(1)(d), or bail service other than that authorized under Section 31A-11-112, it must fully reinsure the excess service with an insurer authorized under Chapter 5 or 14. That insurer must assume direct liability to the insured, and must fully comply with Chapter ~~[23]~~ 23a, Insurance Marketing - Licensing Producers, Consultants, and Reinsurance Intermediaries.

Section 20. Section **31A-14-211** is amended to read:

31A-14-211. Restrictions on foreign title insurers.

(1) An authorized foreign title insurer may not insure property in this state except:

(a) through a title insurance ~~[agent]~~ producer who is a resident in Utah;

(b) through a bona fide branch office in Utah under the direction and control of the title

insurer that pays all the expenses of the branch office including compensation of all employees;
or

(c) through a subsidiary title insurer authorized to do business in Utah.

(2) This section does not apply to reinsurance.

Section 21. Section **31A-15-102** is amended to read:

31A-15-102. Assisting unauthorized insurers.

(1) No person may do any act enumerated under Subsection (2) who knows or should know that the act may assist in the illegal placement of insurance with an unauthorized insurer or the subsequent servicing of an insurance policy illegally placed with an unauthorized insurer.

(2) An act performed by mail is performed both at the place of mailing and at the place of delivery. Any of the following acts, whether performed by mail or otherwise, fall within the prohibition of Subsection (1):

(a) soliciting, making, or proposing to make an insurance contract;

(b) taking, receiving, or forwarding an application for insurance;

(c) collecting or receiving, in full or in part, an insurance premium;

(d) issuing or delivering an insurance policy or other evidence of an insurance contract except as a messenger not employed by the insurer, or an insurance ~~[agent, or a broker]~~ producer;

(e) doing any of the following in connection with the solicitation, negotiation, procuring, or effectuation of insurance coverage for another: inspecting risks, setting rates, advertising, disseminating information, or advising on risk management;

(f) publishing or disseminating any advertisement encouraging the placement or servicing of insurance that would violate Subsection (1); however this provision does not apply to publication or dissemination to an audience primarily outside Utah that also reaches persons in Utah unless the extension to persons inside Utah can be conveniently avoided without substantial expense other than loss of revenue; nor does it apply to regional or national network programs on radio or television unless they originate in Utah;

(g) investigating, settling, adjusting, or litigating claims; or

(h) representing or assisting any person to do an unauthorized insurance business or to

procure insurance from an unauthorized insurer.

(3) Subsection (1) does not prohibit:

(a) an attorney acting for a client;

(b) a full-time salaried employee of an insured acting in the capacity of an insurance buyer or manager; or

(c) insurance activities described under Section 31A-15-103.

(4) Any act performed in Utah which is prohibited under this section constitutes appointment of the commissioner or the lieutenant governor as agent for service of process under Sections 31A-2-309 and 31A-2-310.

Section 22. Section **31A-15-103** is amended to read:

31A-15-103. Surplus lines insurance -- Unauthorized insurers.

(1) Notwithstanding Section 31A-15-102, a foreign insurer that has not obtained a certificate of authority to do business in this state under Section 31A-14-202 may negotiate for and make insurance contracts with persons in this state and on risks located in this state, subject to the limitations and requirements of this section.

(2) For contracts made under this section, the insurer may, in this state, inspect the risks to be insured, collect premiums and adjust losses, and do all other acts reasonably incidental to the contract, through employees or through independent contractors.

(3) (a) Subsections (1) and (2) do not permit any person to solicit business in this state on behalf of an insurer that has no certificate of authority.

(b) Any insurance placed with a nonadmitted insurer shall be placed with a surplus lines ~~[broker]~~ producer licensed under Chapter ~~[23]~~ 23a, Insurance Marketing - Licensing Producers, Consultants, and Reinsurance Intermediaries.

(c) The commissioner may by rule prescribe how a surplus lines ~~[broker]~~ producer may:

(i) pay or permit the payment, commission, or other remuneration on insurance placed by the surplus lines ~~[broker]~~ producer under authority of the surplus lines ~~[broker's]~~ producer's license to one holding a license to act as an insurance ~~[agent]~~ producer; and

(ii) advertise the availability of the surplus lines ~~[broker's]~~ producer's services in

procuring, on behalf of persons seeking insurance, contracts with nonadmitted insurers.

(4) For contracts made under this section, nonadmitted insurers are subject to Sections ~~[31A-23-302]~~ 31A-23a-402 and ~~[31A-26-303]~~ 31A-23a-403 and the rules adopted under those sections.

(5) A nonadmitted insurer may not issue workers' compensation insurance coverage to employers located in this state, except for stop loss coverages issued to employers securing workers' compensation under Subsection 34A-2-201(3).

(6) (a) The commissioner may by rule prohibit making contracts under Subsection (1) for a specified class of insurance if authorized insurers provide an established market for the class in this state that is adequate and reasonably competitive.

(b) The commissioner may by rule place restrictions and limitations on and create special procedures for making contracts under Subsection (1) for a specified class of insurance if there have been abuses of placements in the class or if the policyholders in the class, because of limited financial resources, business experience, or knowledge, cannot protect their own interests adequately.

(c) The commissioner may prohibit an individual insurer from making any contract under Subsection (1) and all insurance ~~[agents and brokers]~~ producers from dealing with the insurer if:

(i) the insurer has willfully violated this section, Section 31A-4-102, ~~[31A-23-302]~~ 31A-23a-402, or 31A-26-303, or any rule adopted under any of these sections;

(ii) the insurer has failed to pay the fees and taxes specified under Section 31A-3-301; or

(iii) the commissioner has reason to believe that the insurer is in an unsound condition or is operated in a fraudulent, dishonest, or incompetent manner or in violation of the law of its domicile.

(d) (i) The commissioner may issue lists of unauthorized foreign insurers whose solidity the commissioner doubts, or whose practices the commissioner considers objectionable.

(ii) The commissioner shall issue lists of unauthorized foreign insurers the commissioner considers to be reliable and solid.

(iii) In addition to the lists described in Subsections (6)(d)(i) and (ii), the commissioner

may issue other relevant evaluations of unauthorized insurers.

(iv) An action may not lie against the commissioner or any employee of the department for any written or oral communication made in, or in connection with the issuance of, the lists or evaluations described in this Subsection (6)(d).

(e) A foreign unauthorized insurer shall be listed on the commissioner's "reliable" list only if the unauthorized insurer:

- (i) has delivered a request to the commissioner to be on the list;
- (ii) has established satisfactory evidence of good reputation and financial integrity;
- (iii) has delivered to the commissioner a copy of its current annual statement certified by

the insurer and continues each subsequent year to file its annual statements with the commissioner within 60 days of its filing with the insurance regulatory authority where it is domiciled;

(iv) (A) is in substantial compliance with the solvency standards in Chapter 17, Part VI, Risk-Based Capital, or maintains capital and surplus of at least \$15,000,000, whichever is greater, and maintains in the United States an irrevocable trust fund in either a national bank or a member of the Federal Reserve System, or maintains a deposit meeting the statutory deposit requirements for insurers in the state where it is made, which trust fund or deposit:

(I) shall be in an amount not less than \$2,500,000 for the protection of all of the insurer's policyholders in the United States;

(II) may consist of cash, securities, or investments of substantially the same character and quality as those which are "qualified assets" under Section 31A-17-201; and

(III) may include as part of the trust arrangement a letter of credit that qualifies as acceptable security under Subsection 31A-17-404(3)(c)(iii); or

(B) in the case of any "Lloyd's" or other similar incorporated or unincorporated group of alien individual insurers, maintains a trust fund that:

(I) shall be in an amount not less than \$50,000,000 as security to its full amount for all policyholders and creditors in the United States of each member of the group;

(II) may consist of cash, securities, or investments of substantially the same character and

quality as those which are "qualified assets" under Section 31A-17-201; and

(III) may include as part of this trust arrangement a letter of credit that qualifies as acceptable security under Subsection 31A-17-404(3)(c)(iii); and

(v) for an alien insurer not domiciled in the United States or a territory of the United States, is listed on the Quarterly Listing of Alien Insurers maintained by the National Association of Insurance Commissioners International Insurers Department.

(7) A surplus lines ~~broker~~ producer may not, either knowingly or without reasonable investigation of the financial condition and general reputation of the insurer, place insurance under this section with financially unsound insurers or with insurers engaging in unfair practices, or with otherwise substandard insurers, unless the ~~broker~~ producer gives the applicant notice in writing of the known deficiencies of the insurer or the limitations on his investigation, and explains the need to place the business with that insurer. A copy of this notice shall be kept in the office of the ~~broker~~ producer for at least five years. To be financially sound, an insurer shall satisfy standards that are comparable to those applied under the laws of this state to authorized insurers. Insurers on the "doubtful or objectionable" list under Subsection (6)(d) and insurers not on the commissioner's "reliable" list under Subsection (6)(e) are presumed substandard.

(8) A policy issued under this section shall include a description of the subject of the insurance and indicate the coverage, conditions, and term of the insurance, the premium charged and premium taxes to be collected from the policyholder, and the name and address of the policyholder and insurer. If the direct risk is assumed by more than one insurer, the policy shall state the names and addresses of all insurers and the portion of the entire direct risk each has assumed. All policies issued under the authority of this section shall have attached or affixed to the policy the following statement: "The insurer issuing this policy does not hold a certificate of authority to do business in this state and thus is not fully subject to regulation by the Utah insurance commissioner. This policy receives no protection from any of the guaranty associations created under Title 31A, Chapter 28."

(9) Upon placing a new or renewal coverage under this section, the ~~broker~~ surplus lines

producer shall promptly deliver to the policyholder or his agent evidence of the insurance consisting either of the policy as issued by the insurer or, if the policy is not then available, a certificate, cover note, or other confirmation of insurance complying with Subsection (8).

(10) If the commissioner finds it necessary to protect the interests of insureds and the public in this state, the commissioner may by rule subject policies issued under this section to as much of the regulation provided by this title as is required for comparable policies written by authorized foreign insurers.

(11) (a) Each surplus lines transaction in this state shall be examined to determine whether it complies with:

- (i) the surplus lines tax levied under Chapter 3;
- (ii) the solicitation limitations of Subsection (3);
- (iii) the requirement of Subsection (3) that placement be through a surplus lines ~~[broker]~~ producer;
- (iv) placement limitations imposed under Subsections (6)(a), (b), and (c); and
- (v) the policy form requirements of Subsections (8) and (10).

(b) The examination described in Subsection (11)(a) shall take place as soon as practicable after the transaction. The surplus lines ~~[broker]~~ producer shall submit to the examiner information necessary to conduct the examination within a period specified by rule.

(c) The examination described in Subsection (11)(a) may be conducted by the commissioner or by an advisory organization created under Section 31A-15-111 and authorized by the commissioner to conduct these examinations. The commissioner is not required to authorize any additional advisory organizations to conduct examinations under this Subsection (11)(c). The commissioner's authorization of one or more advisory organizations to act as examiners under this Subsection (11)(c) shall be by rule. In addition, the authorization shall be evidenced by a contract, on a form provided by the commissioner, between the authorized advisory organization and the department.

(d) The person conducting the examination described in Subsection (11)(a) shall collect a stamping fee of an amount not to exceed 1% of the policy premium payable in connection with

the transaction. Stamping fees collected by the commissioner shall be deposited in the General Fund. The commissioner shall establish this fee by rule. Stamping fees collected by an advisory organization are the property of the advisory organization to be used in paying the expenses of the advisory organization. Liability for paying the stamping fee is as required under Subsection 31A-3-303(1) for taxes imposed under Section 31A-3-301. The commissioner shall adopt a rule dealing with the payment of stamping fees. If stamping fees are not paid when due, the commissioner or advisory organization may impose a penalty of 25% of the fee due, plus 1-1/2% per month from the time of default until full payment of the fee. Fees relative to policies covering risks located partially in this state shall be allocated in the same manner as under Subsection 31A-3-303(4).

(e) The commissioner, representatives of the department, advisory organizations, representatives and members of advisory organizations, authorized insurers, and surplus lines insurers are not liable for damages on account of statements, comments, or recommendations made in good faith in connection with their duties under this Subsection (11)(e) or under Section 31A-15-111.

(f) Examinations conducted under this Subsection (11) and the documents and materials related to the examinations are confidential.

Section 23. Section **31A-15-104** is amended to read:

31A-15-104. Direct placement of insurance.

(1) Subject to this section, any person seeking insurance may obtain it from an unauthorized insurer if no ~~[agent or broker]~~ producer resident doing business in Utah is involved and if negotiations occur primarily outside Utah. Negotiations by mail occur within Utah if a letter or other document containing insurance-related solicitations or negotiations is sent from or to a Utah address. Negotiations by telephone take place within Utah if one of the parties to the conversation is in Utah.

(2) Each policyholder who procures or renews insurance otherwise subject to this code from any insurer not authorized to do business in Utah, other than insurance procured under Section 31A-15-103 and the renewal of guaranteed renewable insurance lawfully issued outside

Utah, shall within 60 days after the insurance is procured or renewed, report to the commissioner in the form required by the commissioner and pay the taxes specified by Section 31A-3-301.

(3) (a) Any insurance on personal property sold on the installment plan, under a conditional sales contract, or an equivalent security agreement under the Uniform Commercial Code which charges the buyer, as a part of the consideration in the agreement of sale for insurance on the property, shall be placed with an insurer authorized to do business in Utah.

(b) Whenever the law of Utah requires a person to purchase insurance on risks in Utah, it shall be obtained from an insurer authorized to do business in Utah, or under Section 31A-15-103.

Section 24. Section **31A-15-111** is amended to read:

31A-15-111. Surplus lines advisory organizations.

(1) Advisory organizations of surplus lines [~~brokers~~] producers may be formed to:

(a) facilitate and encourage compliance by its members with the laws of this state and the rules of the commissioner relative to surplus lines insurance;

(b) if authorized by the commissioner, perform and report to the commissioner on the confidential examinations and assess and receive the stamping fees described in Subsection 31A-15-103(11);

(c) make recommendations to the commissioner concerning classes of insurance for which a rule under Subsection 31A-15-103(6)(a) is appropriate;

(d) investigate "abuses of placements," as described in Subsection 31A-15-103(6)(b), and provide recommendations to the commissioner concerning rules under Subsection 31A-15-103(6)(b);

(e) bring to the commissioner's attention the existence of grounds for issuing an order under Subsection 31A-15-103(6)(c) concerning a particular unauthorized insurer;

(f) provide recommendations to the commissioner concerning unauthorized insurers which should be listed on a "doubtful or objectionable" list under Subsection 31A-15-103(6)(d);

(g) provide comments to the commissioner concerning whether an unauthorized insurer has a good reputation and financial integrity under Subsection 31A-15-103(6)(d)(ii);

(h) provide recommendations to the commissioner concerning rules under Subsection 31A-15-103(10) necessary to protect the interests of insureds and the public; and

(i) receive and disseminate to its members information relative to surplus lines coverages.

(2) Every advisory organization formed under this section shall file with the commissioner:

(a) a copy of its constitution, articles of agreement or association or articles of incorporation, and any amendments to these documents;

(b) a copy of its bylaws and any other writing governing the organization's activities and any amendments to these documents;

(c) a list of the names and addresses of residents of this state upon whom notices or orders of the commissioner or processes issued at his direction may be served, with changes in this list to be filed within ten days of a change; and

(d) an agreement, on a form provided by the commissioner and executed by the advisory organization, that the commissioner may examine the advisory organization in accordance with the provisions of Sections 31A-2-203, 31A-2-204, and 31A-2-205.

(3) The commissioner may by rule or order require each person licensed as a surplus lines ~~broker~~ producer under Chapter ~~[23]~~ 23a, Insurance Marketing - Licensing Producers, Consultants, and Reinsurance Intermediaries, to be a member of one or more specified advisory organizations operating under this section. The commissioner may make compliance with the rule or order a condition to continued licensure as a surplus lines ~~broker~~ producer.

(4) The comments and recommendations given the commissioner under Subsection (1) are merely advisory. The formation of an advisory organization under this section does not alter the commissioner's authority under this chapter.

Section 25. Section **31A-15-204** is amended to read:

31A-15-204. Risk retention groups not chartered in this state -- Designation of commissioner as agent -- Compliance with unfair claims settlement practices act -- Deceptive, false, or fraudulent practices -- Examination regarding financial condition --

Prohibitions -- Penalties -- Operation prior to enactment of this part.

(1) Risk retention groups chartered and licensed in other states and seeking to do business as a risk retention group in this state shall comply with the following:

(a) Before offering insurance in this state a risk retention group shall submit to the commissioner:

(i) a statement identifying the states in which the group is chartered and licensed as a liability insurance company, its charter date, its principal place of business, and any other information, including information on its membership, the commissioner may require to verify that the group is a qualified risk retention group as defined in Subsection 31A-15-202(11); and

(ii) a copy of its plan of operations or feasibility study and revisions of the plan or study submitted to the state in which the risk retention group is chartered and licensed, except a plan or study is not required for any line or classification of liability insurance that:

(A) was defined in the Product Liability Risk Retention Act of 1981 before October 27, 1986; and

(B) was offered before that date by any risk retention group that had been chartered and operating for not less than three years before that date.

(b) The risk retention group shall submit to the commissioner a copy of any revision to its plan or study required by Subsection 31A-15-203(2) at the same time it submits the revision of its chartering state.

(c) The risk retention group shall submit, on a form approved by the commissioner, a statement of registration and a notice designating the commissioner as agent for the purpose of receiving service of legal documents or process.

(d) The risk retention group shall pay annual license fees [~~in this state equal to the license fees required of an admitted liability insurer licensed to transact business in this state~~] required by Section 31A-3-103.

(2) Any risk retention group doing business in this state shall submit to the commissioner:

(a) a copy of the group's financial statement submitted to the state in which the risk

retention group is chartered and licensed, which shall be certified by an independent public accountant and shall contain a statement of opinion on loss and loss adjustment expense reserves made by a member of the American Academy of Actuaries or a loss reserve specialist qualified under criteria approved by the commissioner;

(b) a copy of each examination of the risk retention group as certified by the commissioner or public official conducting the examination;

(c) if the commissioner requests, a copy of any information or document pertaining to any outside audit performed with respect to the risk retention group; and

(d) any other information required to verify the group's continuing qualification as a risk retention group within the definition in Subsection 31A-15-202(11).

(3) (a) Each risk retention group shall pay premium taxes and taxes on premiums of direct business for risks resident or located within this state, and shall report to the Utah State Tax Commission the net premiums written for risks resident or located within this state. Each risk retention group shall be subject to taxation, and any applicable fines and penalties related to taxation, on the same basis as a foreign admitted insurer.

(b) To the extent licensed [~~agents or brokers~~] producers are utilized pursuant to Section 31A-15-212, they shall report to the commissioner the premiums for direct business for all risks resident or located within this state that the [~~agents or brokers~~] producers have placed with, or on behalf of, a risk retention group not chartered in this state.

(c) To the extent that insurance [~~agents or brokers~~] producers are utilized pursuant to Section 31A-15-212 they shall keep a complete and separate record of all policies procured from each risk retention group. The record shall be open to examination by the commissioner, as provided under Section [~~31A-23-312~~] 31A-23a-412. These records shall include the following for each policy and each kind of insurance provided under each policy:

- (i) the limit of liability;
- (ii) the time period covered;
- (iii) the effective date;
- (iv) the name of the risk retention group that issued the policy;

- (v) the gross premium charged;
- (vi) the amount of any returned premiums; and
- (vii) additional information required by the insurance commissioner.

(4) Each risk retention group and its agents and representatives shall comply with the Unfair Claims Settlement Practices Act, including Section 31A-15-207, Title 31A, Chapter 26, Part 3, Claim Practices, and any other provision of law relating to claims settlement practices.

(5) Each risk retention group shall comply with the laws of this state regarding deceptive, false, and fraudulent acts, practices regulated under Title 31A, Chapter ~~[23]~~ 23a, Part ~~[3]~~ 4, Marketing Practices, and any other provision of law relating to deceptive, false, or fraudulent practices. The commissioner may only obtain an injunction regarding the conduct described in this subsection from a court of competent jurisdiction.

(6) If the commissioner of the jurisdiction in which the group is chartered and licensed has not initiated an examination or does not initiate an examination within 60 days after a request by the commissioner of this state, the risk retention group shall submit to an examination by the commissioner of this state to determine its financial condition. Any examination conducted under this subsection shall be coordinated to avoid unjustified repetition and shall be conducted in an expeditious manner and in accordance with the NAIC's Examiner Handbook.

(7) Each application form for insurance from a risk retention group and each policy and certificate issued by a risk retention group shall contain the following notice in ten-point type on its front and declaration pages:

"NOTICE

This policy is issued by your risk retention group. Your risk retention group may not be subject to all of the insurance laws and regulations of your state. State insurance insolvency guaranty funds are not available for your risk retention group."

- (8) The following acts by a risk retention group are prohibited:
- (a) the solicitation or sale of insurance by a risk retention group to any person who is not eligible for membership in the group; and
 - (b) the solicitation or sale of insurance by, or operation of, a risk retention group that is

in hazardous financial condition or financially impaired.

(9) A risk retention group may not do business in this state if an insurance company is directly or indirectly a member or owner of the risk retention group, unless all members of the group are insurance companies.

(10) The terms of any insurance policy issued by a risk retention group may not provide, or be construed to provide, coverage prohibited generally by statute of this state or declared unlawful by the Utah Supreme Court.

(11) A risk retention group not chartered in this state and doing business in this state shall comply with a lawful order issued in a voluntary dissolution proceeding or in a delinquency proceeding commenced by any state's insurance commissioner if there has been a finding of financial impairment after an examination under Subsection (6).

(12) A risk retention group that violates any provision of this part is subject to fines and penalties applicable to licensed insurers generally, including revocation of its right to do business in this state.

(13) In addition to complying with the requirements of this section, each risk retention group operating in this state before the effective date of this part shall comply with Subsection (1)(a) within 30 days after the effective date of this part.

Section 26. Section **31A-15-207** is amended to read:

31A-15-207. Purchasing groups -- Exemption from certain laws.

A purchasing group and its insurers are subject to all applicable laws of this state, except that a purchasing group and its insurers are exempt, in regard to liability insurance for the purchasing group, from any law that would:

- (1) prohibit the establishment of a purchasing group;
- (2) make it unlawful for an insurer to provide, or offer to provide, to a purchasing group or its members insurance on a basis providing advantages based on their loss and expense experience not afforded to other persons with respect to rates, policy forms, coverages, or other matters;
- (3) prohibit a purchasing group or its members from purchasing insurance on a group

basis described in Subsection (2);

(4) prohibit a purchasing group from obtaining insurance on a group basis because the group has not been in existence for a minimum period of time or because any member has not belonged to the group for a minimum period of time;

(5) require that a purchasing group must have a minimum number of members, common ownership or affiliation, or certain legal form;

(6) require that a certain percentage of a purchasing group must obtain insurance on a group basis;

(7) otherwise discriminate against a purchasing group or any of its members; or

(8) require that any insurance policy issued to a purchasing group or any of its members be countersigned by an insurance [~~agent or broker~~] producer residing in this state.

Section 27. Section **31A-15-210** is amended to read:

31A-15-210. Purchasing group taxation.

Premium taxes and taxes on premiums paid for coverage of risks resident or located in this state by a purchasing group or any members of the purchasing groups are imposed and must be paid as follows:

(1) If the insurer is an admitted insurer, taxes are imposed on the insurer at the same rate and in the same manner and subject to the same procedures, interest, and penalties that apply to premium taxes and other taxes imposed on other admitted liability insurers relative to coverage of risks resident or located in this state.

(2) If the insurer is an approved, nonadmitted surplus lines insurer, taxes are imposed on the licensed [~~broker~~] producer who effected coverage on risks resident or located in this state at the same rate and in the same manner and subject to the same procedures, interest, and penalties that apply to taxes imposed on other licensed [~~brokers~~] producers effecting coverage with approved, nonadmitted surplus lines insurers on risks resident or located in this state.

Section 28. Section **31A-15-212** is amended to read:

31A-15-212. Duty of producers to obtain license -- Risk retention groups -- Purchasing groups.

(1) A person may do the following only if he is licensed as an insurance agent or broker or is exempt from licensure under Title 31A, Chapter ~~[23]~~ 23a, Insurance Marketing - Licensing ~~[Agents, Brokers]~~ Producers, Consultants, and Reinsurance Intermediaries:

(a) solicit, negotiate, or procure liability insurance in this state from a risk retention group;

(b) solicit, negotiate, or procure liability insurance in this state for a purchasing group from an authorized insurer or a risk retention group; and

(c) solicit, negotiate, or procure liability insurance coverage in this state for any member of a purchasing group under a purchasing group's policy.

(2) A person may solicit, negotiate, or procure liability insurance from an insurer not authorized to do business in this state on behalf of a purchasing group located in this state only if he is licensed as a surplus lines ~~[broker]~~ producer or is exempt ~~[for]~~ from licensure under Title 31A, Chapter ~~[23]~~ 23a, Insurance Marketing - Licensing ~~[Agents, Brokers]~~ Producers, Consultants, and Reinsurance Intermediaries.

(3) The requirement of residence in this state does not apply for purposes of acting as ~~[an agent or broker]~~ a producer for a risk retention group or purchasing group under Subsections (1) and (2).

(4) On business placed with a risk retention group or written through a purchasing group, each person licensed under this title shall provide to each prospective insured the notice required by Subsection 31A-15-204(7) in the case of a risk retention group, and by Subsection 31A-15-209(1) in the case of a purchasing group.

(5) Solicitation for membership in a purchasing group is not of itself a solicitation for insurance.

Section 29. Section **31A-17-608** is amended to read:

31A-17-608. Confidentiality -- Prohibition on announcements -- Prohibition on use in ratemaking.

(1) (a) The commissioner shall keep confidential to the extent that information in a report or plan is not required to be included in a publicly available annual statement schedule, any detail

in an RBC report or RBC plan including the results or report of any examination or analysis of an insurer or health organization performed pursuant to this part, that is filed by a domestic or foreign insurer or health organization with the commissioner or any corrective order issued by the commissioner pursuant to examination or analysis.

(b) Information kept confidential under Subsection (1)(a) may not be made public or be subject to subpoena, other than by the commissioner and then only for the purpose of enforcement actions taken by the commissioner pursuant to this part or any other provision of the insurance laws of this state.

(2) (a) Except as otherwise required under this part, any insurer or health organization, [~~agent, broker~~] producer, or other person engaged in any manner in the insurance business may not publish, disseminate, circulate or place before the public, or cause, directly or indirectly, the publishing, disseminating, circulating or placing before the public including, in a newspaper, magazine, other publication, a notice, circular, pamphlet, letter, or poster, or over any radio or television station, an advertisement, announcement, or statement containing an assertion, representation, or statement with regard to the RBC levels of any insurer or health organization, or of any component derived in the calculation.

(b) If any materially false statement with respect to the comparison regarding an insurer's or health organization's total adjusted capital to its RBC levels, or an inappropriate comparison of any other amount to the insurer's or health organization's RBC levels is published in any written publication and the insurer or health organization is able to demonstrate to the commissioner with substantial proof the falsity of the statement or the inappropriateness, the insurer or health organization may publish an announcement in a written publication if the sole purpose of the announcement is to rebut the materially false statement or inappropriate comparison.

(3) The commissioner may not use an RBC instruction, report, plan, or revised plan:

(a) for ratemaking;

(b) as evidence in any rate proceeding; or

(c) to calculate or derive any element of an appropriate premium level or rate of return for any line of insurance or coverage that an insurer or health organization or any affiliate is

authorized to write or cover.

Section 30. Section **31A-19a-209** is amended to read:

31A-19a-209. Special provisions for title insurance.

(1) In addition to the considerations in determining compliance with rate standards and rating methods as set forth in Sections 31A-19a-201 and 31A-19a-202, the commissioner shall also consider the costs and expenses incurred by title insurance companies, agencies, and [~~agents~~] producers peculiar to the business of title insurance including:

(a) the maintenance of title plants; and
(b) the searching and examining of public records to determine insurability of title to real redevelopment property.

(2) (a) Every title insurance company, agency, and title insurance [~~agent~~] producer shall file with the commissioner a schedule of the escrow charges that it proposes to use in this state for services performed in connection with the issuance of policies of title insurance.

(b) The filing required by Subsection (2)(a) shall state the effective date of this schedule, which may not be less than 30 calendar days after the date of filing.

(3) A title insurance company, agency, or [~~agent~~] producer may not file or use any rate or other charge relating to the business of title insurance, including rates or charges filed for escrow that would cause the title insurance company, agency, or [~~agent~~] producer to:

- (a) operate at less than the cost of doing:
 - (i) the insurance business; or
 - (ii) the escrow business; or
- (b) fail to adequately underwrite a title insurance policy.

(4) (a) All or any of the schedule of rates or schedule of charges, including the schedule of escrow charges, may be changed or amended at any time, subject to the limitations in this Subsection (4).

- (b) Each change or amendment shall:
 - (i) be filed with the commissioner; and
 - (ii) state the effective date of the change or amendment, which may not be less than 30

calendar days after the date of filing.

(c) Any change or amendment remains in force for a period of at least 90 calendar days from its effective date.

(5) While the schedule of rates and schedule of charges are effective, a copy of each shall be:

(a) retained in each of the offices of:

- (i) the insurance company in this state;
- (ii) its ~~[agents]~~ producers in this state; and

(b) upon request, furnished to the public.

(6) Except in accordance with the schedules of rates and charges filed with the commissioner, a title insurance company, agency, or ~~[agent]~~ producer may not make or impose any premium or other charge:

(a) in connection with the issuance of a policy of title insurance; or

(b) for escrow services performed in connection with the issuance of a policy of title insurance.

Section 31. Section **31A-19a-216** is amended to read:

31A-19a-216. Charging of rates.

An authorized insurer, licensed insurance ~~[agent]~~ producer, employee, other representative of an authorized insurer~~[, or licensed insurance broker]~~ may not knowingly:

- (1) charge or demand a rate or receive a premium that departs from the rates, rating plans, classifications, schedules, rules, and standards in effect on behalf of the insurer; or
- (2) issue or make any policy or contract involving a violation of Subsection (1).

Section 32. Section **31A-20-110** is amended to read:

31A-20-110. Underwriting rules for title insurance.

(1) No title insurance policy may be written until the title insurer or its ~~[agent]~~ producer has conducted a reasonable search and examination of the title and has made a determination of insurability of title under sound underwriting principles. Evidence of this search and reasonable determination shall be retained in the files of the title insurer or its ~~[agent]~~ producer for not less

than 15 years after the policy has been issued, either in its original form or as recorded by any process which can accurately and reliably reproduce the original. This section does not apply to a company assuming liability through a contract of reinsurance, or to a company acting as coinsurer, if another reinsuring company has complied with this section.

(2) No title insurance policy may be issued except by a title insurance company or by ~~an agent~~ a producer licensed under Section ~~[31A-23-203]~~ 31A-23a-105.

(3) This section is enforceable only by the commissioner. It does not create, eliminate, or modify any private cause of action or remedy.

Section 33. Section **31A-21-302** is amended to read:

31A-21-302. Premiums.

(1) Subject to Section 31A-21-310 and Subsection 31A-21-106(1), the policy shall clearly state the amount of the total premium or shall explain in detail how it is calculated. Any fee, charge, or other consideration that is not part of the premium shall be disclosed and explained in writing to the insured. The disclosure and explanation shall be clearly stated either on the policy, or on the insurer's billing to the insured. The premium need not be contained in a certificate issued under a group policy. This Subsection (1) does not preclude premium adjustments or changes upon the renewal or endorsement of an existing policy. However, the renewal or endorsement notice shall contain or be accompanied by a statement of the renewal or endorsement premium or credit.

(2) Except as provided in Chapter ~~[23]~~ 23a, Insurance Marketing - Licensing Producers, Consultants, and Reinsurance Intermediaries, no person may charge or receive any consideration for the insurance policy which is not stated in Subsection (1).

(3) No person may knowingly collect any excessive amount as a premium or any amount for insurance which is not in the course of processing. Any amount unknowingly collected shall be returned immediately on learning of the mistake. Prepayment of premiums pursuant to the policy is not an excessive collection. Insurance is in the course of processing if an application has been made for it which is being considered by the insurer, even though it has not yet been accepted or rejected.

Section 34. Section **31A-21-305** is amended to read:

31A-21-305. Cancellation upon request of a premium finance company.

(1) As used in this section:

(a) "Insurance premium finance company" means a person engaged in the business of entering into premium finance agreements.

(b) "Premium finance agreement" means an agreement by which an insured or prospective insured promises to pay to an insurance premium finance company the amount advanced or to be advanced under the agreement to an insurer or to an insurance [~~agent or broker~~] producer in payment of premiums on an insurance policy, together with a service charge, an interest charge, or both.

(2) When a premium finance agreement contains a power of attorney or other authority enabling the insurance premium finance company to cancel any insurance policy listed in the agreement, the following applies:

(a) Not less than ten days' written notice of the intent of the insurance premium finance company to order cancellation of the insurance policy, unless the policyholder's default is cured prior to the date stated in the notice, shall be delivered or mailed first-class to the policyholder. The insurance [~~agent or insurance broker~~] producer indicated on the premium finance agreement shall also be given the same notice.

(b) Pursuant to the power of attorney or other authority, evidence of which is delivered to the insurer, the insurance premium finance company may order cancellation on behalf of the insured. This cancellation shall be effected by mailing to the insurer a written notice stating when the cancellation is effective. The insurance policy shall be cancelled as if the notice of cancellation had been given by the insured, but without requiring the return of the insurance policy. The insurance premium finance company shall also send a copy of the same notice to the insured at his last known address and to the insurance [~~agent or insurance broker~~] producer indicated on the premium finance agreement.

(c) Where statutory, rule, or contractual restrictions provide that the insurance policy may not be cancelled unless notice is given to a governmental agency, mortgagee, or other third party,

the insurer shall give the prescribed notice on behalf of itself or the insured to that governmental agency, mortgagee, or other third party within a reasonable time after the day it receives the notice of cancellation from the premium finance company. When any statutory, rule, or contractual restrictions require the continuation of insurance beyond the effective date of cancellation specified by the premium finance company, the insurance is limited to the coverage required by those restrictions and to the persons those restrictions are designed to protect.

(d) Whenever a financed insurance policy is cancelled, the insurer shall return any unearned premiums due under the insurance policy to the insurance premium finance company for the account of the insured, and this action by the insurer satisfies the insurer's obligations under the insurance policy which relate to the return of unearned premiums. If the crediting of return premiums to the account of the insured results in a surplus over the amount due from the insured, the premium finance company shall refund that excess to the insured if it exceeds \$5.

(3) No filing of the premium finance agreement or recording of a premium finance transaction is necessary to perfect the validity of the agreement as a secured transaction as against creditors, subsequent purchasers, pledgees, encumbrancers, successors, or assigns.

Section 35. Section **31A-21-404** is amended to read:

31A-21-404. Out-of-state insurers.

Any insurer extending mass marketed life or accident and health insurance under a group or blanket policy issued outside of this state to residents of this state shall, with respect to the mass marketed life or accident and health insurance policy:

(1) comply with Sections [~~31A-23-302 and 31A-23-303~~] 31A-23a-402 and 31A-23a-403 and Part III of Chapter 26; and

(2) upon the commissioner's request, deliver to the commissioner a copy of any mass marketed life or accident and health insurance policy, certificates issued under these policies, and advertising material used in this state in connection with the policy.

Section 36. Section **31A-23a-101**, which is renumbered from Section 31A-23-101 is renumbered and amended to read:

CHAPTER 23a. INSURANCE MARKETING - LICENSING PRODUCERS,

CONSULTANTS, AND REINSURANCE INTERMEDIARIES

Part 1. General Provisions

~~[31A-23-101].~~ **31A-23a-101. Purposes.**

The purposes of this chapter include:

(1) promoting the professional competence of insurance ~~[agents, brokers, and]~~ producers, limited line producers, customer service representatives, consultants, managing general agents, and reinsurance intermediaries;

(2) providing maximum freedom of marketing methods for insurance, consistent with the interests of the Utah public;

(3) preserving and encouraging competition at the consumer level;

(4) regulating insurance marketing practices in conformity with the general purposes of this title; ~~[and]~~

(5) governing the qualifications and procedures for the licensing of insurance producers~~[-]~~, limited line producers, customer service representatives, consultants, managing general agents, and reinsurance intermediaries; and

(6) promoting uniform licensing requirements between the several states.

Section 37. Section **31A-23a-102**, which is renumbered from Section 31A-23-102 is renumbered and amended to read:

~~[31A-23-102].~~ **31A-23a-102. Definitions.**

As used in this chapter:

~~[(1) "Actuary" means a person who is a member in good standing of the American Academy of Actuaries;]~~

~~[(2) "Agency" means a person other than an individual, and includes a sole proprietorship by which a natural person does business under an assumed name.]~~

~~[(3) "Broker" means an insurance broker or any other person, firm, association, or corporation that for any compensation, commission, or other thing of value acts or aids in any manner in soliciting, negotiating, or procuring the making of any insurance contract on behalf of an insured other than itself.]~~

~~[(4)]~~ (1) "Bail bond ~~[agent]~~ producer" means ~~[an individual]~~ a person who:

(a) is appointed by ~~[an authorized bail bond];~~

(i) a surety insurer ~~[or appointed by a licensed]~~ that issues bail bonds; or

(ii) a bail bond surety company licensed under Chapter 35;

(b) is designated to execute or countersign undertakings of bail in connection with judicial proceedings; and

~~[(b)]~~ (c) ~~[who]~~ receives or is promised money or other things of value for ~~[this service]~~ engaging in an act described in Subsection (1)(b).

~~[(5)]~~ "Captive insurer" means:

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

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

~~[(6)]~~ "Controlled insurer" means a licensed insurer that is either directly or indirectly controlled by a broker.]

~~[(7)]~~ "Controlling broker" means a broker who either directly or indirectly controls an insurer.]

~~[(8)]~~ "Controlling person" means any person, firm, association, or corporation that directly or indirectly has the power to direct or cause to be directed, the management, control, or activities of a reinsurance intermediary.]

~~[(9)]~~ (a) "Escrow" means:

~~[(i)]~~ a real estate settlement or real estate closing conducted by a third party pursuant to the requirements of a written agreement between the parties in a real estate transaction; or]

~~[(ii)]~~ a settlement or closing involving:]

~~[(A)]~~ a mobile home;]

~~[(B)]~~ a grazing right;]

~~[(C)]~~ a water right; or]

~~[(D) other personal property authorized by the commissioner.]~~

~~[(b) "Escrow" includes the act of conducting a:]~~

~~[(i) real estate settlement; or]~~

~~[(ii) real estate closing.]~~

(2) "Escrow" means a license subline of authority in conjunction with the title insurance line of authority that allows a person to conduct escrow as defined in Section 31A-1-301.

~~[(10)]~~ (3) "Home state" means any state or territory of the United States or the District of Columbia in which an insurance producer:

(a) maintains the insurance producer's principal:

(i) place of residence; or

(ii) place of business; and

(b) is licensed to act as an insurance producer.

~~[(11)]~~ (4) "Insurer" is as defined in Section 31A-1-301, except the following persons or similar persons are not insurers for purposes of Part ~~[6]~~ 7, ~~[Broker]~~ Producer Controlled Insurers:

(a) all risk retention groups as defined in:

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

(ii) the Risk Retention Act, 15 U.S.C. Sec. 3901 et seq.; and

(iii) Chapter 15, Part II, Risk Retention Groups Act;

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

(c) all captive insurers.

~~[(12)]~~ (5) "License" is defined in Section 31A-1-301.

~~[(13) "Limited license" means a license that:]~~

~~[(a) is issued for a specific product of insurance; and]~~

~~[(b) limits an individual or agency to transact only for that product or insurance.]~~

~~[(14) "Limited line insurance" includes:]~~

~~[(a) bail bond;]~~

~~[(b) limited line credit insurance;]~~

~~[(c) legal expense insurance;]~~

~~[(d) motor club insurance;]~~

~~[(e) rental car-related insurance;]~~

~~[(f) travel insurance; and]~~

~~[(g) any other form of limited insurance that the commissioner determines by rule should be designated a form of limited line insurance.]~~

~~[(15) "Limited line credit insurance" includes the following forms of insurance:]~~

~~[(a) credit life;]~~

~~[(b) credit accident and health;]~~

~~[(c) credit property;]~~

~~[(d) credit unemployment;]~~

~~[(e) involuntary unemployment;]~~

~~[(f) mortgage life;]~~

~~[(g) mortgage guaranty;]~~

~~[(h) mortgage accident and health;]~~

~~[(i) guaranteed automobile protection; and]~~

~~[(j) any other form of insurance offered in connection with an extension of credit that:]~~

~~[(i) is limited to partially or wholly extinguishing that credit obligation; and]~~

~~[(ii) the commissioner determines by rule should be designated as a form of limited line credit insurance.]~~

~~[(16) "Limited line credit insurance producer" means a person who sells, solicits, or negotiates one or more forms of limited line credit insurance coverage to individuals through a master, corporate, group, or individual policy.]~~

~~[(17) "Limited lines insurance" includes:]~~

~~[(a) the lines of insurance listed in Subsection (14); or]~~

~~[(b) any other line of insurance that the commissioner considers necessary to recognize in the public interest.]~~

~~[(18) "Limited lines producer" means a person authorized to sell, solicit, or negotiate limited lines insurance.]~~

~~[(19)]~~ (6) (a) "Managing general agent" means any person, firm, association, or corporation that:

(i) manages all or part of the insurance business of an insurer, including the management of a separate division, department, or underwriting office;

(ii) acts as an agent for the insurer whether it is known as a managing general agent, manager, or other similar term;

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

(iv) (A) adjusts or pays claims in excess of an amount determined by the commissioner;

or

(B) negotiates reinsurance on behalf of the insurer.

(b) Notwithstanding Subsection ~~[(19)]~~ (6)(a), the following persons may not be considered as managing general agent for the purposes of this chapter:

(i) an employee of the insurer;

(ii) a United States manager of the United States branch of an alien insurer;

(iii) an underwriting manager that, pursuant to contract:

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

(B) is under common control with the insurer;

(C) is subject to Chapter 16, Insurance Holding Companies; and

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

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

~~[(20)]~~ (7) "Negotiate" means the act of conferring directly with or offering advice directly to a purchaser or prospective purchaser of a particular contract of insurance concerning any of the substantive benefits, terms, or conditions of the contract if the person engaged in that act:

- (a) sells insurance; or
- (b) obtains insurance from insurers for purchasers.

~~[(21) "Personal lines" means property and casualty insurance coverage sold to individuals and families for primarily noncommercial purposes.]~~

~~[(22) "Producer" means a person required to be licensed under the laws of this state to sell, solicit, or negotiate insurance.]~~

~~[(23) "Qualified United States financial institution" means an institution that:]~~

~~[(a) is organized or, in the case of a United States office of a foreign banking organization licensed, under the laws of the United States or any state;]~~

~~[(b) is regulated, supervised, and examined by United States federal or state authorities having regulatory authority over banks and trust companies; and]~~

~~[(c) meets the standards of financial condition and standing that are considered necessary and appropriate to regulate the quality of financial institutions whose letters of credit will be acceptable to the commissioner as determined by:]~~

~~[(i) the commissioner; or]~~

~~[(ii) the Securities Valuation Office of the National Association of Insurance Commissioners.]~~

~~[(24)]~~ (8) "Reinsurance intermediary" means a reinsurance intermediary-broker or a reinsurance intermediary-manager as these terms are defined in Subsections ~~[(25)]~~ (9) and ~~[(26)]~~ (10).

~~[(25)]~~ (9) "Reinsurance intermediary-broker" means a person other than an officer or employee of the ceding insurer, firm, association, or corporation who solicits, negotiates, or places reinsurance cessions or retrocessions on behalf of a ceding insurer without the authority or power to bind reinsurance on behalf of the insurer.

~~[(26)]~~ (10) (a) "Reinsurance intermediary-manager" means a person, firm, association, or corporation who:

- (i) has authority to bind or who manages all or part of the assumed reinsurance business of a reinsurer, including the management of a separate division, department, or underwriting

office; and

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

(b) Notwithstanding Subsection ~~[(26)]~~ (10)(a), the following persons may not be considered reinsurance intermediary-managers for the purpose of this chapter with respect to the reinsurer:

- (i) an employee of the reinsurer;
- (ii) a United States manager of the United States branch of an alien reinsurer;
- (iii) an underwriting manager that, pursuant to contract:
 - (A) manages all the reinsurance operations of the reinsurer;
 - (B) is under common control with the reinsurer;
 - (C) is subject to Chapter 16, Insurance Holding Companies; and
 - (D) is not compensated based on the volume of premiums written; and
- (iv) the manager of a group, association, pool, or organization of insurers that:
 - (A) engage in joint underwriting or joint reinsurance; and
 - (B) are subject to examination by the insurance commissioner of the state in which the manager's principal business office is located.

~~[(27) "Reinsurer" means any person, firm, association, or corporation duly licensed in this state as an insurer with the authority to assume reinsurance.]~~

~~[(28)]~~ (11) "Search" means a license ~~[category]~~ subline of authority in conjunction with the title insurance line of authority that allows a person to issue title insurance commitments or policies on behalf of a title insurer.

~~[(29)]~~ (12) "Sell" means to exchange a contract of insurance:

- (a) by any means;
- (b) for money or its equivalent; and
- (c) on behalf of an insurance company.

~~[(30)]~~ (13) "Solicit" means~~[-(a)]~~ attempting to sell ~~[insurance; or]~~:
~~[(b) asking or urging a person to apply:]~~

~~[(i) for] (a)~~ a particular kind of insurance; and

~~[(ii)] (b)~~ from a particular insurance company.

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

~~[(32)] (14)~~ "Terminate" means:

(a) the cancellation of the relationship between:

(i) an insurance producer; and

(ii) a particular insurer; or

(b) the termination of the producer's authority to transact insurance on behalf of a particular insurance company.

~~[(33)] (15)~~ "Title marketing representative" means a person who:

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

(i) title insurance; or

(ii) escrow services; and

(b) does not have a search or escrow license as provided in Section ~~[31A-23-204]~~ 31A-23a-106.

~~[(34) "Underwrite" means the authority to accept or reject risk on behalf of the insurer.]~~

~~[(35)] (16)~~ "Uniform application" means the version of the National Association of Insurance Commissioner's uniform application for resident and nonresident producer licensing at the time the application is filed.

~~[(36)] (17)~~ "Uniform business entity application" means the version of the National Association of Insurance Commissioner's uniform business entity application for resident and nonresident business entities at the time the application is filed.

Section 38. Section **31A-23a-103**, which is renumbered from Section 31A-23-201 is renumbered and amended to read:

~~[31A-23-201].~~ **31A-23a-103. Requirement of license.**

(1) (a) Unless exempted from the licensing requirement under Section ~~[31A-23-201.5]~~ 31A-23a-201 or ~~[31A-23-214]~~ 31A-23a-207, a person may not perform, offer to perform, or

advertise any service as ~~[an agent, broker, or]~~ a producer, limited line producer, customer service representative, consultant, managing general agent, or reinsurance intermediary in Utah, without a valid individual or agency license issued under [Section 31A-23-203] this chapter.

(b) A valid license includes at least one license type and one line of authority pertaining to that license type.

~~[(b)]~~ (c) A person may not utilize the services of another as [an] a producer, limited line producer, customer service representative, consultant, managing general agent, [broker,] or [consultant] reinsurance intermediary if that person knows or should know that the other does not have a license as required by law.

(2) This part may not be construed to require an insurer to obtain an insurance producer license.

(3) An insurance contract is not invalid as a result of a violation of this section.

Section 39. Section **31A-23a-104**, which is renumbered from Section 31A-23-202 is renumbered and amended to read:

~~[31A-23-202].~~ **31A-23a-104. Application for resident or nonresident individual license -- Application for resident or nonresident agency license.**

(1) (a) Subject to Subsection (2) ~~[the]~~ an application for [a resident] an individual license as [an agent, a broker, or a] a producer, limited line producer, customer service representative, consultant, managing general agent, or reinsurance intermediary shall be:

(i) made to the commissioner on forms and in a manner the commissioner prescribes; and

(ii) accompanied by ~~[an applicable]~~ a license fee that is not refunded if the application is denied[; and] or, if incomplete, is never completed by the applicant.

~~[(b) the application for a nonresident license as an agent, a broker, or a consultant shall be:]~~

~~[(i) made on the uniform application; and]~~

~~[(ii) accompanied by an applicable fee that is not refunded if the application is denied.]~~

(b) Nonresident individual producer applicants may use the National Association of

Insurance Commissioners Uniform Application for Individual Nonresident License.

(2) An application described in Subsection (1)(a) shall provide:

(a) information about the applicant's identity;

(b) the applicant's[~~(i)~~] Social Security number[~~; or~~];

[~~(ii) federal employer identification number;~~]

(c) the applicant's personal history, experience, education, and business record;

(d) [~~if the applicant is a natural person,~~] whether the applicant is 18 years of age or older;

(e) whether the applicant has committed an act that is a ground for denial, suspension, or revocation as set forth in Section [~~31A-23-216~~] 31A-23a-105 or 31A-23a-111; and

(f) any other information the commissioner reasonably requires.

(3) The commissioner may require any documents reasonably necessary to verify the information contained in an application.

(4) The following [~~are private records under Subsection 63-2-302(1)(a)(vii), an applicant's~~] information contained in an application filed under this section is a private record under Title 63, Chapter 2, Government Records Access and Management Act:

(a) an applicant's Social Security number; or

(b) an applicant's federal employer identification number.

(5) (a) Subject to Subsection (5)(c) an application for an agency license as a producer, limited line producer, customer service representative, consultant, managing general agent, or reinsurance intermediary shall be:

(i) made to the commissioner on forms and in a manner the commissioner prescribes;
and

(ii) accompanied by a license fee that is not refunded if the application is denied, or, if incomplete, is never completed by the applicant.

(b) Nonresident producer agency applicants may use the National Association of Insurance Commissioners Uniform Application for Business Entity Nonresident License/Registration.

(c) An application described in Subsection (5)(a) shall provide:

- (i) information about the applicant's identity;
- (ii) the applicant's federal employer identification number;
- (iii) the designated responsible licensed producer;
- (iv) the identity of all owners, partners, officers, and directors;
- (v) whether the applicant has committed an act that is a ground for denial, suspension, or revocation as set forth in Section 31A-23a-105 or 31A-23a-111; and
- (vi) any other information the commissioner reasonably requires.
- (d) The commissioner may require any documents reasonably necessary to verify the information contained in an application.
- (e) An applicant's federal employer identification number is a private record under Title 63, Chapter 2, Government Records Access and Management Act.

Section 40. Section **31A-23a-105**, which is renumbered from Section 31A-23-203 is renumbered and amended to read:

~~[31A-23-203].~~ **31A-23a-105.** **General requirements for individual and agency license issuance and renewal.**

(1) The commissioner shall issue or renew a license to act as ~~[an agent, broker, or]~~ a producer, limited line producer, customer service representative, consultant, managing general agent, or reinsurance intermediary to any person who, as to the license type and line of authority classification applied for under Section ~~[31A-23-204]~~ 31A-23a-106:

- (a) has satisfied the character requirements under Section ~~[31A-23-205]~~ 31A-23a-107;
- (b) has satisfied any applicable continuing education requirements under Section ~~[31A-23-206]~~ 31A-23a-202;
- (c) has satisfied any applicable examination requirements under Section ~~[31A-23-207]~~ 31A-23a-108;
- (d) has satisfied any applicable training period requirements under Section ~~[31A-23-208]~~ 31A-23a-203;
- (e) if a nonresident:
 - (i) has complied with Section ~~[31A-23-209]~~ 31A-23a-109; and

(ii) holds an active similar license in that person's state of residence;

(f) ~~[as to applicants]~~ if an applicant for [licenses to act as] a title insurance [agents] producer license, has satisfied the requirements of ~~[Section 31A-23-211]~~ Sections 31A-23a-203 and 31A-23a-204; and

(g) has paid the applicable fees under Section 31A-3-103.

(2) (a) This Subsection (2) applies to the following persons:

(i) an applicant for a pending ~~[producer's]~~ individual or agency producer, limited line producer, customer service representative, consultant, managing general agent, or reinsurance intermediary license; or

(ii) a licensed individual or agency producer, limited line producer, customer service representative, consultant, managing general agent, or reinsurance intermediary.

(b) A person described in Subsection (2)(a) shall report to the commissioner:

(i) any administrative action taken against the person:

(A) in another jurisdiction; or

(B) by another regulatory agency in this state; and

(ii) any criminal prosecution taken against the person in any jurisdiction.

(c) The report required by Subsection (2)(b) shall:

(i) be filed:

(A) at the time the person files the application for ~~[a producer's]~~ an individual or agency license; or

(B) within 30 days of the initiation of an action or prosecution described in Subsection (2)(b); and

(ii) include a copy of the complaint or other relevant legal documents related to the action or prosecution described in Subsection (2)(b).

(3) (a) The department may request:

(i) criminal background information maintained pursuant to Title 53, Chapter 10, Part 2, from the Bureau of Criminal Identification; and

(ii) complete Federal Bureau of Investigation criminal background checks through the

national criminal history system.

(b) Information obtained by the department from the review of criminal history records received under Subsection (3)(a) shall be used by the department for the purposes of:

(i) determining if a person satisfies the character requirements under Section ~~[31A-23-205]~~ 31A-23a-107 for issuance or renewal of a license;

(ii) determining if a person has failed to maintain the character requirements under Section ~~[31A-23-205]~~ 31A-23a-107; and

(iii) preventing persons who violate the federal Violent Crime Control and Law Enforcement Act of 1994, 18 U.S.C. Secs. 1033 and 1034, from engaging in the business of insurance in the state.

(c) If the department requests the criminal background information, the department shall:

(i) pay to the Department of Public Safety the costs incurred by the Department of Public Safety in providing the department criminal background information under Subsection (3)(a)(i);

(ii) pay to the Federal Bureau of Investigation the costs incurred by the Federal Bureau of Investigation in providing the department criminal background information under Subsection (3)(a)(ii); and

(iii) charge the person applying for a license or for renewal of a license a fee equal to the aggregate of Subsections (3)(c)(i) and (ii).

(4) To become a resident licensee in accordance with Section 31A-23a-104 and this section, a person licensed as an insurance producer, limited line producer, customer service representative, consultant, managing general agent, or reinsurance intermediary in another state who moves to this state shall apply within 90 days of establishing legal residence in this state.

Section 41. Section **31A-23a-106**, which is renumbered from Section 31A-23-204 is renumbered and amended to read:

~~[31A-23-204].~~ **31A-23a-106. License types.**

A resident or nonresident license issued under this chapter shall be issued under the ~~[classifications]~~ license types described under Subsections (1) through ~~[(6)]~~ (7). ~~[These classifications]~~ License types and lines of authority pertaining to each license type describe the

type of licensee and the lines of business that licensee may sell, solicit, or negotiate. License types are intended to describe the matters to be considered under any education, examination, and training required of license applicants under Sections ~~[31A-23-206 through 31A-23-208]~~ 31A-23a-108, 31A-23a-202, and 31A-23a-203.

(1) ~~[An agent and broker]~~ A producer license [classification] type includes the following lines of authority:

(a) life insurance, including nonvariable contracts;

(b) variable contracts, including variable life and annuity, if the producer has the life insurance line of authority;

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

(d) property~~[/liability]~~ insurance~~[, which includes:];~~

~~[(i) property insurance;]~~

~~[(ii) liability insurance;]~~

~~[(iii)]~~ (e) casualty insurance, including surety and other bonds; ~~[and]~~

~~[(iv) policies containing any combination of these coverages;]~~

~~[(e)]~~ (f) title insurance under one or more of the following categories:

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

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

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

(iv) title marketing representative only;

~~[(f)]~~ (g) workers' compensation insurance; ~~[and]~~

~~[(g)]~~ (h) personal lines insurance; and

(i) surplus lines, if the producer has the property or casualty or both lines of authority.

(2) A limited line producer license [classification] type includes the following limited lines of authority:

(a) limited line credit insurance;

(b) travel insurance;

- (c) motor club insurance;
- (d) car rental related insurance;
- (e) legal expense insurance; and
- (f) bail bond ~~[agent; and]~~ producer.
- ~~[(g) customer service representative.]~~

(3) A ~~[consultant]~~ customer service representative license ~~[classification]~~ type includes the following lines of authority, if held by the customer service representative's employer producer:

- (a) life insurance, including nonvariable contracts;
- ~~[(b) variable contracts;]~~
- ~~[(c)]~~ (b) accident and health insurance, including contracts issued to policyholders under Chapter 7 or 8;
- ~~[(d)]~~ (c) property[/~~liability~~] insurance[~~, which includes:~~];
- (d) casualty insurance, including surety and other bonds;
- ~~[(i) property insurance;]~~
- ~~[(ii) liability insurance;]~~
- ~~[(iii) surety and other bonds; and]~~
- ~~[(iv) policies containing any combination of these coverages; and]~~
- (e) workers' compensation insurance[-];
- (f) personal lines insurance; and
- (g) surplus lines, if the employer producer has the property or casualty or both lines of authority.

(4) A consultant license type includes the following lines of authority:

- (a) life insurance, including nonvariable contracts;
- (b) variable contracts, including variable life and annuity, if the consultant has the life insurance line of authority;
- (c) accident and health insurance, including contracts issued to policyholders under Chapter 7 or 8;

(d) property insurance;

(e) casualty insurance, including surety and other bonds;

(f) workers' compensation insurance; and

(g) personal lines insurance.

(5) A managing general agent license type includes the following lines of authority:

(a) life insurance, including nonvariable contracts;

(b) variable contracts, including variable life and annuity, if the managing general agent has the life insurance line of authority;

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

(d) property insurance;

(e) casualty insurance, including surety and other bonds;

(f) workers' compensation insurance; and

(g) personal lines insurance.

(6) A reinsurance intermediary license type includes the following lines of authority:

(a) life insurance, including nonvariable contracts;

(b) variable contracts, including variable life and annuity, if the reinsurance intermediary has the life insurance line of authority;

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

(d) property insurance;

(e) casualty insurance, including surety and other bonds;

(f) workers' compensation insurance; and

(g) personal lines insurance.

~~[(4)]~~ (7) A holder of licenses under Subsections (1)~~[(a)],~~ (4), (5), and ~~[(1)(c)]~~ (6) has all qualifications necessary to act as a holder of a license under ~~[Subsection]~~ Subsections (2)~~[(a)]~~ and (3).

~~[(5)(a)]~~ Upon satisfying the additional applicable requirements, a holder of a brokers

license may obtain a license to act as a surplus lines broker.]

~~[(b) A license to act as a surplus lines broker gives the holder the authority to arrange insurance contracts with unauthorized insurers under Section 31A-15-103, but only as to the types of insurance under Subsection (1) for which the broker holds a brokers license.]~~

~~[(6)] (8) The commissioner may by rule recognize other [agent, broker,] producer, limited [license] line producer, [or] customer service representative, consultant [license classifications], managing general agent, or reinsurance intermediary lines of authority as to kinds of insurance not listed under Subsections (1)[, (2), and (3)] through (6).~~

(9) The variable contracts, including variable life and annuity line of authority requires:

(a) licensure as a registered agent or broker by the National Association of Securities Dealers (NASD); and

(b) current registration with a securities broker/dealer.

(10) A surplus lines producer is a producer who has a surplus lines line of authority.

Section 42. Section **31A-23a-107**, which is renumbered from Section 31A-23-205 is renumbered and amended to read:

~~[31A-23-205].~~ **31A-23a-107. Character requirements.**

Each applicant for a license under this chapter shall show to the commissioner that:

(1) the applicant has the intent in good faith, to engage in the type of business that the license applied for would permit;

(2) if a natural person, the applicant is competent and trustworthy; or, if the applicant is an agency, all the partners, directors, or principal officers or persons having comparable powers are trustworthy, and that it will transact business in such a way that all acts that may only be performed by a licensed ~~[agent]~~ producer, limited line producer, customer service representative, consultant, managing general agent, ~~[broker, surplus lines broker, or consultant]~~ or reinsurance intermediary are performed exclusively by natural persons who are licensed under this chapter to transact that type of business and ~~[listed]~~ designated on the agency's license ~~[under Subsection 31A-23-212(1)(d)]~~;

(3) the applicant intends to comply with Section ~~[31A-23-402]~~ 31A-23a-502; and

(4) if a natural person, the applicant is at least 18 years of age.

Section 43. Section **31A-23a-108**, which is renumbered from Section 31A-23-207 is renumbered and amended to read:

~~[31A-23-207].~~ **31A-23a-108. Examination requirements.**

(1) (a) The commissioner may require applicants for any particular ~~[class of]~~ license type under Section ~~[31A-23-204]~~ 31A-23a-106 to pass ~~[an]~~ a line of authority examination as a requirement for a license, except that an examination may not be required of applicants for:

- (i) licenses under ~~[Subsection 31A-23-204]~~ Subsections 31A-23a-106(2) and (3); or
- (ii) other limited line license ~~[classifications]~~ lines of authority recognized by the

commissioner by rule as provided in Subsection ~~[31A-23-204(6)]~~ 31A-23a-106(8).

(b) The examination described in Subsection (1)(a):

(i) shall reasonably relate to the ~~[specific classes]~~ line of authority for which it is prescribed; and

(ii) may be administered by the commissioner or as otherwise specified by rule.

(2) The commissioner shall waive the requirement of an examination for a nonresident applicant who:

(a) applies for an insurance producer license in this state;

(b) has been licensed for the same line of authority in another state; and

(c) (i) is licensed in the state described in Subsection (2)(b) at the time the applicant applies for an insurance producer license in this state; or

(ii) if the application is received within 90 days of the cancellation of the applicant's previous license:

(A) the prior state certifies that at the time of cancellation, the applicant was in good standing in that state; or

(B) the state's producer database records maintained by the National Association of Insurance Commissioners or the National Association of Insurance Commissioner's affiliates or subsidiaries, indicates that the producer is or was licensed in good standing for the line of authority requested.

(3) ~~[(a) To become a resident licensee in accordance with Sections 31A-23-202 and 31A-23-203, a person licensed as an insurance producer in another state]~~ A nonresident producer licensee who moves to this state [shall make application] and applies for a resident license within 90 days of establishing legal residence in this state shall be exempt from any line of authority examination that the producer was authorized on the producer's nonresident producer license, except where the commissioner determines otherwise by rule.

~~[(b) A person who becomes a resident licensee under Subsection (3)(a) may not be required to meet precicensing education or examination requirements to obtain any line of authority previously held in the prior state unless:]~~

~~[(i) the prior state would require a prior resident of this state to meet the prior state's precicensing education or examination requirements to become a resident licensee; or]~~

~~[(ii) the commissioner imposes the requirements by rule.]~~

(4) This section's requirement may only be applied to applicants who are natural persons.

Section 44. Section **31A-23a-109**, which is renumbered from Section 31A-23-209 is renumbered and amended to read:

~~[31A-23-209].~~ **31A-23a-109. Nonresident jurisdictional agreement.**

(1) (a) If a nonresident license applicant has a valid producer, limited line producer, customer service representative, consultant, managing general agent, or reinsurance intermediary license from the nonresident license applicant's home state and the conditions of Subsection (1)(b) are met, the commissioner shall:

(i) waive ~~[any]~~ all license ~~[requirement]~~ requirements for a license under this chapter; and

(ii) issue the nonresident license applicant a nonresident ~~[producer]~~ license.

(b) Subsection (1)(a) applies if:

(i) the nonresident license applicant:

(A) is licensed as a resident in the nonresident license applicant's home state at the time the nonresident license applicant applies for a nonresident producer, limited line producer, customer service representative, consultant, managing general agent, or reinsurance intermediary

license;

(B) has submitted the proper request for licensure;

(C) has submitted to the commissioner:

(I) the application for licensure that the nonresident license applicant submitted to the applicant's home state; or

(II) a completed uniform application; and

(D) has paid the applicable fees under Section 31A-3-103; and

(ii) the nonresident license applicant's license in the applicant's home state is in good standing[~~;~~and].

~~[(iii) the nonresident license applicant's home state awards nonresident producer licenses to residents of this state on the same basis as this state awards licenses to residents of that home state.]~~

(2) A nonresident applicant applying under Subsection (1) shall in addition to complying with all license requirements for a license under this chapter execute, in a form acceptable to the commissioner, an agreement to be subject to the jurisdiction of the Utah commissioner and courts on any matter related to the applicant's insurance activities in this state, on the basis of:

(a) service of process under Sections 31A-2-309 and 31A-2-310; or

(b) service authorized:

(i) in the Utah Rules of Civil Procedure; or

(ii) under Section 78-27-25.

(3) The commissioner may verify [~~the~~] a producer's licensing status through the producer database maintained by:

(a) the National Association of Insurance Commissioners; or

(b) an affiliate or subsidiary of the National Association of Insurance Commissioners.

(4) The commissioner may not assess a greater fee for an insurance license or related service to a person not residing in this state solely on the fact that the person does not reside in this state.

Section 45. Section **31A-23a-110**, which is renumbered from Section 31A-23-212 is

renumbered and amended to read:

~~[31A-23-212].~~ **31A-23a-110. Form and contents of license.**

(1) Licenses issued under this chapter shall be in the form the commissioner prescribes and shall set forth:

- (a) the name, address, and telephone number of the licensee;
- (b) the license ~~[classifications]~~ types and lines of authority under Section ~~[31A-23-204]~~

31A-23a-106;

- (c) the date of license issuance; and
- (d) any other information the commissioner considers necessary.

(2) ~~[An insurance producer]~~ A licensee under this chapter doing business under any other name than the ~~[producer's]~~ licensee's legal name shall notify the commissioner prior to using the assumed name in this state.

~~[(3) (a) An agency shall be licensed as an agency if the agency acts as:]~~

~~[(i) an agent;]~~

~~[(ii) a broker;]~~

~~[(iii) a surplus lines broker;]~~

~~[(iv) a managing general agent; or]~~

~~[(v) a consultant.]~~

~~[(b) The agency license issued under Subsection (3)(a) shall set forth the names of all natural persons licensed under this chapter who are authorized to act in those capacities for the agency in this state.]~~

~~[(4) (a) So far as is practicable, the commissioner shall issue a single license to each agent, broker, or consultant for a single fee.]~~

~~[(b) For purposes of the fee described in Subsection (4)(a), the less expensive license is included within the most expensive license.]~~

Section 46. Section **31A-23a-111**, which is renumbered from Section 31A-23-216 is renumbered and amended to read:

~~[31A-23-216].~~ **31A-23a-111. Termination of license.**

(1) A license type issued under this chapter remains in force until:

(a) ~~revoked[;] or suspended[; or limited under Subsection (2);(b) lapsed]~~ under Subsection ~~[(3)]~~ (4);

~~[(c)]~~ (b) surrendered to and accepted by the commissioner in lieu of administrative action; ~~[or]~~

~~[(d)]~~ (c) the licensee dies or is adjudicated incompetent as defined under:

(i) Title 75, Chapter 5, Part 3, Guardians of Incapacitated Persons; or
(ii) Title 75, Chapter 5, Part 4, Protection of Property of Persons Under Disability and Minors~~[-];~~

(d) lapsed under Section 31A-23a-113; or

(e) voluntarily surrendered.

(2) Lapsed or voluntarily surrendered licenses may be reinstated during the current license period.

(3) A line of authority issued under this chapter remains in force until:

(a) the qualifications pertaining to a line of authority are no longer met by the licensee; or
(b) the supporting license type is revoked or suspended under Subsection (4) or voluntarily surrendered.

~~[(2)]~~ (4) (a) If the commissioner makes a finding under Subsection ~~[(2)]~~ (4)(b), after an adjudicative proceeding under Title 63, Chapter 46b, Administrative Procedures Act, the commissioner may:

(i) revoke a license ~~[of an agent, broker, surplus lines broker, or consultant]~~ line of authority;

(ii) suspend for a specified period of 12 months or less a license ~~[of an agent, broker, surplus lines broker, or consultant]~~ or line of authority; or

(iii) limit in whole or in part ~~[the]~~ a license ~~[of any agent, broker, surplus lines broker, or consultant]~~ or line of authority.

(b) The commissioner may take an action described in Subsection ~~[(2)]~~ (4)(a) if the commissioner finds that the licensee:

(i) is unqualified for a license or line of authority under [~~Section 31A-23-203~~] Sections 31A-23a-104 and 31A-23a-105;

(ii) has violated:

(A) an insurance statute;

(B) a rule that is valid under Subsection 31A-2-201(3); or

(C) an order that is valid under Subsection 31A-2-201(4);

(iii) is insolvent or the subject of receivership, conservatorship, rehabilitation, or other delinquency proceedings in any state;

(iv) fails to pay any final judgment rendered against the person in this state within 60 days after the day the judgment became final;

(v) fails to meet the same good faith obligations in claims settlement that is required of admitted insurers;

(vi) is affiliated with and under the same general management or interlocking directorate or ownership as another insurance producer that transacts business in this state without a license;

(vii) refuses to be examined or to produce its accounts, records, and files for examination;

(viii) has an officer who refuses to:

(A) give information with respect to the administrator's affairs; or

(B) perform any other legal obligation as to an examination;

(ix) provided information in the license application that is:

(A) incorrect;

(B) misleading;

(C) incomplete; or

(D) materially untrue;

(x) has violated any insurance law, valid rule, or valid order of another state's insurance department;

(xi) has obtained or attempted to obtain a license through misrepresentation or fraud;

(xii) has improperly withheld, misappropriated, or converted any monies or properties

received in the course of doing insurance business;

(xiii) has intentionally misrepresented the terms of an actual or proposed:

(A) insurance contract; or

(B) application for insurance;

(xiv) has been convicted of a felony;

(xv) has admitted or been found to have committed any insurance unfair trade practice or fraud;

(xvi) in the conduct of business in this state or elsewhere has:

(A) used fraudulent, coercive, or dishonest practices; or

(B) demonstrated incompetence, untrustworthiness, or financial irresponsibility;

(xvii) has had an insurance license, or its equivalent, denied, suspended, or revoked in any other state, province, district, or territory;

(xviii) has forged another's name to:

(A) an application for insurance; or

(B) any document related to an insurance transaction;

(xix) has improperly used notes or any other reference material to complete an examination for an insurance license;

(xx) has knowingly accepted insurance business from an individual who is not licensed;

(xxi) has failed to comply with an administrative or court order imposing a child support obligation;

(xxii) has failed to:

(A) pay state income tax; or

(B) comply with any administrative or court order directing payment of state income tax;

(xxiii) has violated or permitted others to violate the federal Violent Crime Control and Law Enforcement Act of 1994, 18 U.S.C. Secs. 1033 and 1034; or

(xxiv) has engaged in methods and practices in the conduct of business that endanger the legitimate interests of customers and the public.

(c) For purposes of this section, if a license is held by an agency, both the agency itself

and any natural person named on the license are considered to be the holders of the license.

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

(i) the natural person;

(ii) the agency, if the agency:

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

(B) knowingly participated in the act or failure to act that is the ground for suspending, revoking, or limiting the license; or

(iii) (A) the natural person; and

(B) the agency if the agency meets the requirements of Subsection (4)(d)(ii).

~~[(3) (a) Any license issued under this chapter shall lapse if the licensee fails:]~~

~~[(i) to pay when due a fee under Section 31A-3-103;]~~

~~[(ii) to complete continuing education requirements under Section 31A-23-206 before submitting the license renewal application;]~~

~~[(iii) to submit a completed renewal application as required by Section 31A-23-202; or]~~

~~[(iv) to submit additional documentation required to complete the licensing process as related to a specific license type.]~~

~~[(b) A licensee whose license lapses due to military service or some other extenuating circumstances such as long-term medical disability may request:]~~

~~[(i) reinstatement of the license; and]~~

~~[(ii) waiver of any of the following imposed for failure to comply with renewal procedures:]~~

~~[(A) an examination requirement;]~~

~~[(B) a fine; or]~~

~~[(C) other sanction imposed for failure to comply with renewal procedures.]~~

~~[(c) The commissioner shall by rule prescribe the license renewal and reinstatement procedures, in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act.]~~

~~[(4)]~~ (5) A licensee under this chapter whose license is revoked, suspended, ~~[revoked, or]~~ limited, surrendered in lieu of administrative action, lapsed, [but] or voluntarily surrendered, who continues to act as a licensee or violates the terms of the license limitation, is subject to the penalties for acting as a licensee without a license.

~~[(5)]~~ (6) ~~[Any person licensed in this state]~~ A licensee under this chapter shall immediately report to the commissioner:

- (a) a revocation, suspension, or [revocation] limitation of ~~[that]~~ the person's license in any other state, District of Columbia, or territory of the United States;
- (b) the imposition of a disciplinary sanction imposed on that person by any other state, District of Columbia, or territory of the United States; and
- (c) a judgment or injunction entered against that person on the basis of conduct involving fraud, deceit, misrepresentation, or violation of an insurance law or rule.

~~[(6)]~~ (7) (a) An order revoking a license under Subsection ~~[(2)]~~ (4) may specify a time, not to exceed five years, within which the former licensee may not apply for a new license.

(b) If no time is specified in an order revoking a license under Subsection ~~[(2)]~~ (4), the former licensee may not apply for a new license for five years without express approval by the commissioner.

~~[(7) (a) Any person whose license is suspended or revoked under Subsection (2) shall, when the suspension ends or a new license is issued, pay all fees that would have been payable if the license had not been suspended or revoked, unless the commissioner by order waives the payment of the interim fees.]~~

~~[(b) If a new license is issued more than three years after the revocation of a similar license, this Subsection (7) applies only to the fees that would have accrued during the three years immediately following the revocation.]~~

(8) The division shall promptly withhold, suspend, restrict, or reinstate the use of a license issued under this part if so ordered by a court.

Section 47. Section **31A-23a-112**, which is renumbered from Section 31A-23-217 is renumbered and amended to read:

~~[31A-23-217].~~ 31A-23a-112. Probation.

(1) The commissioner may place a licensee on probation for a period not to exceed 24 months as follows:

~~[(1) In]~~ (a) After an adjudicative proceeding under Title 63, Chapter 46b, Administrative Procedures Act, for any circumstances that would justify a suspension under Section [31A-23-216, the] 31A-23a-111; or

(b) at the issuance of a new license:

(i) with an admitted violation under 18 U.S.C. Sections 1033 and 1034; or

(ii) with a response to background information questions on any new license application indicating that:

(A) the person has been convicted of a crime, as defined by rule made in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act;

(B) the person is currently charged with a crime, as defined by rule made in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, regardless of whether adjudication was withheld;

(C) the person has been involved in an administrative proceeding regarding any professional or occupational license; or

(D) any business in which the person is or was an owner, partner, officer, or director has been involved in an administrative proceeding regarding any professional or occupational license.

(2) The commissioner may [instead, after a formal adjudicative proceeding,] put [the] a new licensee on probation for a specified period no longer than [24] 12 months if the licensee has admitted to violations under 18 U.S.C. Sections 1033 and 1034.

~~[(2)]~~ (3) The probation order shall state the conditions for retention of the license, which shall be reasonable.

~~[(3)]~~ (4) Any violation of the probation is grounds for revocation pursuant to any proceeding authorized under Title 63, Chapter 46b, Administrative Procedures Act.

Section 48. Section **31A-23a-113** is enacted to read:

31A-23a-113. License lapse and voluntary surrender.

(1) (a) A license issued under this chapter shall lapse if the licensee fails:

(i) to pay when due a fee under Section 31A-3-103;

(ii) to complete continuing education requirements under Section 31A-23a-202 before submitting the license renewal application;

(iii) to submit a completed renewal application as required by Section 31A-23a-104 or 31A-23a-302; or

(iv) to submit additional documentation required to complete the licensing process as related to a specific license type or line of authority.

(b) A licensee whose license lapses due to military service or some other extenuating circumstances such as long-term medical disability may request:

(i) reinstatement of the license; and

(ii) waiver of any of the following imposed for failure to comply with renewal procedures:

(A) an examination requirement;

(B) reinstatement fees; or

(C) other sanction imposed for failure to comply with renewal procedures.

(2) If a license type or line of authority issued under this chapter is voluntarily surrendered, the license or line of authority may be reinstated during the current license period.

(3) The commissioner shall by rule prescribe the license renewal and reinstatement procedures, in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

Section 49. Section **31A-23a-114**, which is renumbered from Section 31A-23-218 is renumbered and amended to read:

~~[31A-23-218].~~ **31A-23a-114. Temporary individual or agency license --
Trustee for terminated licensee's business.**

(1) (a) The commissioner may issue a temporary [~~insurance producer~~] individual or agency license:

(i) to a person listed in Subsection (1)(b):

- (A) if the commissioner considers that the temporary license is necessary:
 - (I) for the servicing of an insurance business in the public interest; and
 - (II) to provide continued service to the insureds who procured insurance in a circumstance described in Subsection (1)(b);
- (B) for a period not to exceed 180 days; and
- (C) without requiring an examination; or
- (ii) in any other circumstance:
 - (A) if the commissioner considers the public interest will best be served by issuing the temporary license;
 - (B) for a period not to exceed 180 days; and
 - (C) without requiring an examination.
- (b) The commissioner may issue a temporary ~~[insurance producer]~~ individual or agency license in accordance with Subsection (1)(a) to:
 - (i) the surviving spouse or court-appointed personal representative of a ~~[licensed insurance producer]~~ licensee who dies or becomes mentally or physically disabled to allow adequate time for:
 - (A) the sale of the insurance business owned by the ~~[producer]~~ licensee;
 - (B) recovery or return of the ~~[producer]~~ licensee to the business; or
 - (C) the training and licensing of new personnel to operate the ~~[producer's]~~ licensee's business;
 - (ii) to a member or employee of a business entity licensed as an ~~[insurance producer]~~ agency upon the death or disability of an individual designated in:
 - (A) the business entity application; or
 - (B) the license; or
 - (iii) the designee of a licensed ~~[insurance producer]~~ agency entering active service in the armed forces of the United States of America.
- (2) If a person's license is terminated under Section ~~[31A-23-216]~~ 31A-23a-111 or 31A-23a-113, the commissioner may appoint a trustee to provide in the public interest continuing

service to the insureds who procured insurance through the person whose license is terminated:

- (a) at the request of the person whose license is terminated; or
- (b) upon the commissioner's own initiative.

(3) This section does not apply if the deceased or disabled [~~agent or broker~~] licensee does not or did not own any ownership interest in the accounts and associated expiration lists that were previously serviced by the [~~agent or broker~~] licensee.

(4) (a) A person issued a temporary license under Subsection (1) receives the license and shall perform the duties under the license subject to the commissioner's authority to:

- (i) require a temporary licensee to have a suitable sponsor who:
 - (A) is a [~~licensed producer~~] licensee; and
 - (B) assumes responsibility for all acts of the temporary licensee; or
- (ii) impose other requirements that are:
 - (A) designed to protect the insureds and the public; and
 - (B) similar to the condition described in Subsection (4)(a)(i).

(b) A trustee appointed under Subsection (2) shall be appointed and perform the trustee's duties subject to the terms and conditions described in Subsections (4)(b)(i) through (vi).

(i) (A) A trustee appointed under Subsection (2) shall be licensed under this chapter to perform the services required by the trustor's clients.

(B) When possible, the commissioner shall appoint a trustee who is no longer actively engaged on the trustee's own behalf in business as [~~an agent or broker~~] a licensee.

(C) The commissioner shall only select a person to act as trustee who is trustworthy and competent to perform the necessary services.

(ii) (A) If the deceased, disabled, or unlicensed person for whom the trustee is acting was [~~an agent~~] a producer, the insurers through which the former [~~agent's~~] producer's business was written shall cooperate with the trustee in allowing the trustee to service the policies written through the insurer.

(B) The trustee shall abide by the terms of the agency agreement between the former [~~agent~~] producer and the issuing insurer, except that terms in those agreements terminating the

agreement upon the death, disability, or license termination of the former [~~agent~~] producer do not bar the trustee from continuing to act under the agreement.

(iii) (A) The commissioner shall set the trustee's compensation, which:

(I) may be stated in terms of a percentage of commissions; and

(II) shall be equitable.

(B) The compensation shall be paid exclusively from:

(I) the commissions generated by the former [~~agent or broker's~~] licensee's insurance accounts serviced by the trustee; and

(II) other funds the former [~~agent or broker~~] licensee or the [~~agent's or broker's~~] licensee's successor in interest agree to pay.

(C) The trustee has no special priority to commissions over the former [~~agent or broker's~~] licensee's creditors.

(iv) (A) The commissioner or the state may not be held liable for errors or omissions of:

(I) the former [~~agent or broker~~] licensee; or

(II) the trustee.

(B) The trustee may not be held liable for errors and omissions that were caused in any material way by the negligence of the former [~~agent or broker~~] licensee.

(C) The trustee may be held liable for errors and omissions which arise solely from the trustee's negligence.

(D) The trustee's compensation level shall be sufficient to allow the trustee to purchase errors and omissions coverage, if that coverage is not provided the trustee by:

(I) the former [~~agent or broker~~] licensee; or

(II) the [~~agent's or broker's~~] licensee's successor in interest.

(v) (A) It is a breach of the trustee's fiduciary duty to capture the accounts of trustor's clients, either directly or indirectly.

(B) The trustee may not purchase the accounts or expiration lists of the former [~~agent or broker~~] licensee, unless the commissioner expressly ratifies the terms of the sale.

(C) The commissioner may adopt rules that:

- (I) further define the trustee's fiduciary duties; and
- (II) explain how the trustee is to carry out the trustee's responsibilities.
- (vi) (A) The trust may be terminated by:
 - (I) the commissioner; or
 - (II) the person that requested the trust be established.
- (B) The trust is terminated by written notice being delivered to:
 - (I) the trustee; and
 - (II) the commissioner.
- (5) (a) The commissioner may by order:
 - (i) limit the authority of any temporary licensee or trustee in any way the commissioner considers necessary to protect insureds and the public; and
 - (ii) revoke a temporary license or trustee's appointment if the commissioner finds that the insureds or the public are endangered.
- (b) A temporary license or trustee's appointment may not continue after the owner or personal representative disposes of the business.

Section 50. Section **31A-23a-115** is enacted to read:

31A-23a-115. Appointment and listing of individual and agency insurance producer, limited line producer, or managing general agent.

(1) (a) An insurer shall appoint a natural person or agency that has an insurance producer, limited line producer, or managing general agent license to act as an insurance producer, limited line producer, or managing general agent on its behalf prior to any producer, limited line producer, or managing general agent doing business for the insurer in this state.

(b) All insurers shall report to the commissioner, at intervals and in the form the commissioner establishes by rule, all new appointments and all terminations of appointments.

(c) All insurers shall submit to the commissioner on or before July 1 of each odd-numbered year a list of all appointments then in force in this state.

(2) (a) An insurer shall report to the commissioner the cause of termination of an appointment. The information provided to the commissioner is a private record under Title 63,

Chapter 2, Government Records Access and Management Act.

(b) An insurer is immune from civil action, civil penalty, or damages if the insurer complies in good faith with this Subsection (2) in reporting to the commissioner the cause of termination of an appointment.

(c) Notwithstanding any other provision in this section, an insurer is not immune from any action or resulting penalty imposed on the reporting insurer as a result of proceedings brought by or on behalf of the department if the action is based on evidence other than the report submitted in compliance with this Subsection (2).

(3) If an insurer appoints an agency, the insurer need not appoint, report, or pay appointment reporting fees for natural persons designated on the agency's license under Section 31A-23a-302.

(4) (a) Each insurer shall maintain with the department a list of natural persons with authority to appoint and remove the company's producers, limited line producers, or managing general agents in this state on forms:

(i) supplied by the department; and

(ii) signed by any officer of the insurer.

(b) The insurer shall submit the list required under Subsection (4)(a) to the commissioner pursuant to Subsection (1).

(5) If an insurer lists a licensee in reports submitted under Subsection (2), there is a rebuttable presumption that in placing a risk with the insurer the appointed licensee or any of the licensee's licensed employees acted on behalf of the insurer.

Section 51. Section **31A-23a-116**, which is renumbered from Section 31A-23-405 is renumbered and amended to read:

~~[31A-23-405].~~ **31A-23a-116. Services performed for unauthorized insurers.**

(1) A person licensed under Chapter [23] 23a, Insurance Marketing - Licensing Producers, Consultants, and Reinsurance Intermediaries, may not perform any act that assists any person not authorized as an insurer to act as an insurer.

(2) It is a violation of this section to assist any person purporting to be exempt from state

insurance regulation under Section 514 of the Employee Retirement Income Security Act of 1974, unless that person has rebutted the presumption of jurisdiction under Section 31A-1-105.

(3) It is not a violation of this section:

(a) to assist persons engaged in self insurance as defined under Section 31A-1-301; or

(b) for a surplus lines ~~broker~~ producer to engage in the placement of insurance under Section 31A-15-103.

Section 52. Section **31A-23a-201**, which is renumbered from Section 31A-23-201.5 is renumbered and amended to read:

Part 2. Producers and Consultants

~~[31A-23-201.5].~~ **31A-23a-201. Exceptions to producer licensing.**

(1) The commissioner may not require a license as an insurance producer of:

(a) an officer, director, or employee of an insurer or of an insurance producer if:

(i) the officer, director, or employee does not receive any commission on a policy written or sold to insure risks residing, located, or to be performed in this state; and

(ii) (A) the officer's, director's, or employee's activities are:

(I) executive, administrative, managerial, clerical, or a combination of these activities;

and

(II) only indirectly related to the sale, solicitation, or negotiation of insurance;

(B) the officer's, director's, or employee's function relates to:

(I) underwriting;

(II) loss control;

(III) inspection; or

(IV) the processing, adjusting, investigating or settling of a claim on a contract of insurance; or

(C) (I) the officer, director, or employee is acting in the capacity of a special agent or agency supervisor assisting an insurance producer;

(II) the officer's, director's, or employee's activities are limited to providing technical advice and assistance to a licensed insurance producer; and

(III) the officer's, director's, or employee's activities do not include the sale, solicitation, or negotiation of insurance;

(b) a person who:

(i) is paid no commission for the services described in Subsection (1)(b)(ii); and

(ii) secures and furnishes information for the purpose of:

(A) group life insurance;

(B) group property and casualty insurance;

(C) group annuities;

(D) group or blanket accident and health insurance;

(E) enrolling individuals under plans;

(F) issuing certificates under plans; or

(G) otherwise assisting in administering plans;

(c) a person who:

(i) is paid no commission for the services described in Subsection (1)(c)(ii); and

(ii) performs administrative services related to mass marketed property and casualty insurance;

(d) (i) any of the following if the conditions of Subsection (1)(d)(ii) are met:

(A) an employer or association; or

(B) an officer, director, employee, or trustee of an employee trust plan;

(ii) a person listed in Subsection (1)(d)(i):

(A) to the extent that the employer, officer, employee, director, or trustee is engaged in the administration or operation of a program of employee benefits for:

(I) the employer's or association's own employees; or

(II) the employees of a subsidiary or affiliate of an employer or association;

(B) the program involves the use of insurance issued by an insurer; and

(C) the employer, association, officer, director, employee, or trustee is not in any manner compensated, directly or indirectly, by the company issuing the contract;

(e) an employee of an insurer or organization employed by an insurer who:

- (i) is engaging in:
 - (A) the inspection, rating, or classification of risks; or
 - (B) the supervision of the training of insurance producers; and
- (ii) is not individually engaged in the sale, solicitation, or negotiation of insurance;
- (f) a person whose activities in this state are limited to advertising:
 - (i) without the intent to solicit insurance in this state;
 - (ii) through communications in mass media including:
 - (A) a printed publication; or
 - (B) a form of electronic mass media;
 - (iii) that is distributed to residents outside of the state; and
 - (iv) if the person does not sell, solicit, or negotiate insurance that would insure risks residing, located, or to be performed in this state;
- (g) a person who:
 - (i) is not a resident of this state;
 - (ii) sells, solicits, or negotiates a contract of insurance:
 - (A) for commercial property and casualty risks to an insured with risks located in more than one state insured under that contract; and
 - (B) insures risks located in a state in which the person is licensed as provided in Subsection (1)(g)(iii); and
 - (iii) is licensed as an insurance producer to sell, solicit, or negotiate that insurance in the state where the insured maintains its principal place of business; or
 - (h) if the employee does not sell, solicit, or receive a commission for a contract of insurance, a salaried full-time employee who counsels or advises the employee's employer relating to the insurance interests of:
 - (i) the employer; or
 - (ii) a subsidiary or business affiliate of the employer.
- (2) The commissioner may by rule exempt a class of persons from the license requirement of Subsection [~~31A-23-201~~] 31A-23a-103(1) if:

- (a) the functions performed by the class of persons does not require:
 - (i) special competence;
 - (ii) special trustworthiness; or
 - (iii) regulatory surveillance made possible by licensing; or
- (b) other existing safeguards make regulation unnecessary.

Section 53. Section ~~31A-23a-202~~, which is renumbered from Section 31A-23-206 is renumbered and amended to read:

~~[31A-23-206].~~ 31A-23a-202. **Continuing education requirements --**

Regulatory authority.

(1) The commissioner shall by rule prescribe the continuing education requirements for ~~[each class of agent's license under Subsection 31A-23-204(1), except that the commissioner may not impose a continuing education requirement on a holder of a license under:]~~ a producer and a consultant.

~~[(a) Subsection 31A-23-204(2); or]~~

~~[(b) a license classification other than under Subsection 31A-23-204(2) that is recognized by the commissioner by rule as provided in Subsection 31A-23-204(6).]~~

(2) (a) The commissioner may not state a continuing education requirement in terms of formal education.

(b) The commissioner may state a continuing education requirement in terms of classroom hours, or their equivalent, of insurance-related instruction received.

(c) Insurance-related formal education may be a substitute, in whole or in part, for classroom hours, or their equivalent, required under Subsection (2)(b).

(3) (a) The commissioner shall impose continuing education requirements in accordance with a two-year licensing period in which the licensee meets the requirements of this Subsection (3).

~~[(b) Except as provided in Subsection (3)(c), for a two-year licensing period described in Subsection (3)(a) the commissioner shall require that the licensee for each line of authority held by the licensee:]~~

- ~~[(i) receive five hours of continuing education; or]~~
- ~~[(ii) pass a line of authority continuing education examination.]~~
- ~~[(c) Notwithstanding Subsection (3)(b):]~~
- ~~[(i) the commissioner may not require continuing education for more than four lines of authority held by the licensee;]~~
- ~~[(ii) the commissioner shall require:]~~
- ~~[(A) a minimum of:]~~
- ~~[(I) 12 hours of continuing education;]~~
- ~~[(H) passage of two line of authority continuing education examinations; or]~~
- ~~[(HH) a combination of Subsections (3)(c)(ii)(A)(I) and (H);]~~
- ~~[(B) that the minimum continuing education requirement of Subsection (3)(c)(ii)(A) include:]~~
- ~~[(I) at least five hours or one line of authority continuing education examination for each line of authority held by the licensee not to exceed four lines of authority held by the licensee; and]~~
- ~~[(H) three hours of ethics training.]~~
- ~~[(d) (i) If a licensee completes the licensee's continuing education requirement without taking a line of authority continuing education examination, the licensee shall complete at least 1/2 of the required hours through classroom hours of insurance-related instruction.]~~
- ~~[(ii) The hours not completed through classroom hours in accordance with Subsection (3)(d)(i) may be obtained through:]~~
- ~~[(A) home study;]~~
- ~~[(B) video tape;]~~
- ~~[(C) experience credit; or]~~
- ~~[(D) other method provided by rule.]~~
- ~~[(e) (i) A licensee may obtain continuing education hours at any time during the two-year licensing period.]~~
- ~~[(ii) The licensee may not take a line of authority continuing education examination more~~

than 90 calendar days before the date on which the licensee's license is renewed.]

~~[(f) The commissioner shall make rules for the content and procedures for line of authority continuing education examinations.]~~

~~[(g) (i) Beginning May 3, 1999, a licensee is exempt from continuing education requirements under this section if:]~~

~~[(A) as of April 1, 1990, the licensee has completed 20 years of licensure in good standing;]~~

~~[(B) the licensee requests an exemption from the department; and]~~

~~[(C) the department approves the exemption.]~~

~~[(ii) If the department approves the exemption under Subsection (3)(g)(i), the licensee is not required to apply again for the exemption.]~~

~~[(h) A licensee with a variable contract line of authority is exempt from the requirement for continuing education for that line of authority so long as the:]~~

~~[(i) National Association of Securities Dealers requires continuing education for licensees having a securities license; and]~~

~~[(ii) licensee complies with the National Association of Securities Dealers' continuing education requirements for securities licensees.]~~

~~[(i) The commissioner shall, by rule:]~~

~~[(i) publish a list of insurance professional designations whose continuing education requirements can be used to meet the requirements for continuing education under Subsection (3)(c); and]~~

~~[(ii) authorize professional agent associations to:]~~

~~[(A) offer qualified programs for all classes of licenses on a geographically accessible basis; and]~~

~~[(B) collect reasonable fees for funding and administration of the continuing education program, subject to the review and approval of the commissioner.]~~

~~[(j) (i) The fees permitted under Subsection (3)(i)(ii) that are charged to fund and administer the program shall reasonably relate to the costs of administering the program.]~~

~~[(ii) Nothing in this section prohibits a provider of continuing education programs or courses from charging fees for attendance at courses offered for continuing education credit.]~~

~~[(iii) The fees permitted under Subsection (3)(i)(ii) that are charged for attendance at a professional agent association program may be less for an association member, based on the member's affiliation expense, but shall preserve the right of a nonmember to attend without affiliation.]~~

(b) The continuing education requirement shall require:

(i) a minimum of 12 hours of continuing education;

(ii) a maximum of 23 hours of continuing education;

(iii) three hours of ethics continuing education; and

(iv) for each line of authority authorized for a producer or consultant, not to exceed four lines of authority:

(A) five hours of continuing education;

(B) passing a line of authority examination; or

(C) a combination of Subsections (3)(b)(iv)(A) and (B).

(c) (i) If a licensee completes the licensee's continuing education requirement without taking a line of authority continuing education examination, the licensee shall complete at least half of the required hours through classroom hours of insurance-related instruction.

(ii) The hours not completed through classroom hours in accordance with Subsection (2)(b) may be obtained through:

(A) home study;

(B) video recording;

(C) experience credit; or

(D) other methods provided by rule.

(d) (i) A licensee may obtain continuing education hours at any time during the two-year licensing period.

(ii) The licensee may not take a line of authority continuing education examination more than 90 calendar days before the date on which the licensee's license is renewed.

(e) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the commissioner shall adopt rules for the content and procedures for line of authority continuing education examinations.

(f) (i) Beginning May 3, 1999, a licensee is exempt from continuing education requirements under this section if:

(A) as of April 1, 1990, the licensee has completed 20 years of licensure in good standing;

(B) the licensee requests an exemption from the department; and

(C) the department approves the exemption.

(ii) If the department approves the exemption under Subsection (3)(f)(i), the licensee is not required to apply again for the exemption.

(g) A licensee with a variable contract line of authority is exempt from the requirement for continuing education for that line of authority so long as the:

(i) National Association of Securities Dealers requires continuing education for licensees having a securities license; and

(ii) licensee complies with the National Association of Securities Dealers' continuing education requirements for securities licensees.

(h) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the commissioner shall, by rule:

(i) publish a list of insurance professional designations whose continuing education requirements can be used to meet the requirements for continuing education under Subsection (3)(b); and

(ii) authorize continuing education providers and professional producer or consultant associations to:

(A) offer qualified programs for all license types and lines of authority on a geographically accessible basis; and

(B) collect reasonable fees for funding and administration of the continuing education program, subject to the review and approval of the commissioner.

(iii) The fees permitted under Subsection (3)(h)(ii)(B) that are charged for attendance at a professional producer or consultant association program may be less for an association member, based on the member's affiliation expense, but shall preserve the right of a nonmember to attend without affiliation.

(4) The commissioner shall ~~[designate courses, including those presented by insurers,]~~ approve continuing education providers and continuing education courses which satisfy the requirements of this section.

(5) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the commissioner shall by rule set the processes and procedures for continuing education provider registration and course approval.

~~[(5)]~~ (6) The requirements of this section apply only to ~~[applicants]~~ producers or consultants who are natural persons.

~~[(6)]~~ (7) A nonresident producer or consultant is considered to have satisfied this state's continuing education requirements if ~~[(a)]~~ the nonresident producer or consultant satisfies the nonresident producer's or consultant's home state's continuing education requirements for a licensed insurance producer ~~[-and]~~ or consultant.

~~[(b) on the same basis as under this Subsection (6) the nonresident producer's home state considers satisfaction of Utah's continuing education requirements for a producer as satisfying the continuing education requirements of the home state.]~~

Section 54. Section **31A-23a-203**, which is renumbered from Section 31A-23-208 is renumbered and amended to read:

~~[31A-23-208].~~ **31A-23a-203. Training period requirements.**

(1) A ~~[person is eligible to become a broker only if he has been an insurance agent in this or another state in substantially the same license class for a period aggregating not less than two years during the three]~~ producer is eligible to add the surplus lines of authority to the person's producer's license if the producer:

(a) has passed the applicable examination;

(b) has been a producer for at least three years during the four years immediately

preceding the date of application ~~[, or has been regularly employed for that period by an insurer in a capacity which would provide the person with comparable preparation to act as an insurance broker. For the surplus lines broker license class, the applicable period is three of the last four years.]; and~~

(c) has paid the applicable fee under Section 31A-3-303.

(2) A person is eligible to become a consultant only if ~~[he]~~ the person has acted in a capacity ~~[which]~~ that would provide the person with preparation to act as an insurance consultant for a period aggregating not less than three years during the four years immediately preceding the date of application.

(3) A title producer is eligible to become a title agency only if the title producer has been licensed as a title producer in the search and escrow categories for at least three years during the four years immediately preceding the date of application.

~~[(3)]~~ (4) The training periods required under this section apply only to natural persons applying for licenses under this chapter.

Section 55. Section ~~31A-23a-204~~, which is renumbered from Section 31A-23-211 is renumbered and amended to read:

~~[31A-23-211].~~ **31A-23a-204. Special requirements for title insurance producers.**

Title insurance ~~[agents]~~ producers shall be licensed in accordance with this chapter, with the additional requirements listed in this section.

(1) (a) Every title insurance agency or ~~[agent]~~ producer appointed by an insurer shall maintain:

- (i) a fidelity bond;
 - (ii) a professional liability insurance policy; or
 - (iii) a financial protection:
 - (A) equivalent to that described in Subsection (1)(a)(i) or (ii); and
 - (B) that the commissioner considers adequate.
- (b) The bond or insurance required by this Subsection (1):

(i) shall be supplied under a contract approved by the commissioner to provide protection against the improper performance of any service in conjunction with the issuance of a contract or policy of title insurance; and

(ii) be in a face amount no less than \$50,000.

(c) The commissioner may by rule exempt title insurance [agents] producers from the requirements of this Subsection (1) upon a finding that, and only so long as, the required policy or bond is generally unavailable at reasonable rates.

(2) (a) (i) Every title insurance agency or [agent] producer appointed by an insurer shall maintain a reserve fund.

(ii) The reserve fund required by this Subsection (2) shall be:

(A) (I) composed of assets approved by the commissioner;

(II) maintained as a separate account; and

(III) charged as a reserve liability of the title insurance [agent] producer in determining the [agent's] producer's financial condition; and

(B) accumulated by segregating 1% of all gross income received from the title insurance business.

(iii) The reserve fund shall contain the accumulated assets for the immediately preceding ten years as defined in Subsection (2)(a)(ii).

~~[(iii) Assets accumulated within the reserve fund for more than ten full years shall be:]~~

(iv) That portion of the assets held in the reserve fund over ten years may be:

(A) withdrawn from the reserve fund; and

(B) restored to the income of the [agent] title insurance producer.

~~[(iv)]~~ (v) The title insurance [agent] producer may withdraw interest from the reserve fund related to the principal amount as it accrues.

(b) (i) A disbursement may not be made from the reserve fund except as provided in Subsection (2)(a) unless the title insurance [agent] producer ceases doing business as a result of:

(A) sale of assets;

(B) merger of the [agent] producer with another [agent] producer;

- (C) termination of the [agent's] producer's license;
- (D) insolvency; or
- (E) any cessation of business by the [agent] producer.

(ii) Any disbursements from the reserve fund may be made only to settle claims arising from the improper performance of the title insurance [agent] producer in providing services defined in Section [~~31A-23-307~~] 31A-23a-406.

(iii) The commissioner shall be notified ten days before any disbursements from the reserve fund.

(iv) The notice required by this Subsection (2)(b) shall contain:

- (A) the amount of claim;
- (B) the nature of the claim; and
- (C) the name of the payee.

(c) (i) The reserve fund shall be maintained by the title insurance [agent] producer or the title insurance [agent's] producer's representative for a period of two years after the [agent] producer ceases doing business.

(ii) Any assets remaining in the reserve fund at the end of the two years specified in Subsection (2)(c)(i) may be withdrawn and restored to the former [agent] producer.

(3) Any examination for licensure shall include questions regarding the search and examination of title to real property.

(4) A title insurance [agent] producer may not perform the functions of escrow unless the [agent] producer has been examined on the fiduciary duties and procedures involved in those functions.

(5) The commissioner shall adopt rules outlining an examination that will satisfy this section.

- (6) A license may be issued to a title insurance [agent] producer who has qualified:
- (a) to perform only searches and examinations of title as specified in Subsection (3);
 - (b) to handle only escrow arrangements as specified in Subsection (4); or
 - (c) to act as a title marketing representative.

(7) A person licensed to practice law in Utah is exempt from the requirements of Subsections (1) and (2) if that person issues 12 or ~~fewer~~ less policies in any 12-month period.

(8) A person licensed to practice law in Utah, whether exempt under Subsection (7) or not, shall maintain a trust account separate from a law firm trust account for all title and real estate escrow transactions.

Section 56. Section **31A-23a-205**, which is renumbered from Section 31A-23-211.5 is renumbered and amended to read:

~~[31A-23-211.5].~~ **31A-23a-205. Special requirements for bail bond producers and bail bond enforcement agents.**

(1) As used in this section, "bail bond ~~[agent]~~ producer" and "bail enforcement agent" have the same definitions as in Section 31A-35-102.

(2) A bail bond ~~[agent]~~ producer may not operate in this state without an appointment from one or more authorized bail bond surety insurers or licensed bail bond surety companies.

(3) A bail bond enforcement agent may not operate in this state without an appointment from one or more licensed bail bond ~~[agents]~~ producers.

Section 57. Section **31A-23a-206**, which is renumbered from Section 31A-23-211.7 is renumbered and amended to read:

~~[31A-23-211.7].~~ **31A-23a-206. Special requirements for variable contracts line of authority.**

(1) Before applying for a variable contracts line of authority, ~~[an agent, broker,]~~ a producer or consultant shall be licensed under Section 61-1-3 as a:

(a) broker-dealer; or

(b) agent.

(2) ~~[An agent's, broker's,]~~ A producer's or consultant's variable contracts line of authority is revoked on the day ~~[on which an agent's, broker's,]~~ the producer's or consultant's license under Section 61-1-3 is no longer valid.

Section 58. Section **31A-23a-207**, which is renumbered from Section 31A-23-214 is renumbered and amended to read:

~~[31A-23-214].~~ **31A-23a-207. Registration of motor club agents.**

~~(1)~~ Subsection ~~[31A-23-201]~~ 31A-23a-103(1) does not apply to persons who sell no insurance products other than motor club service contracts, if those contracts provide only for those services described in Subsections 31A-11-102(1)(b) through (f), and personal accident insurance provided automatically with the purchase of the motor club contract.

~~(2)~~ Section 31A-11-110 applies to those persons in Subsection (1).

~~(3)~~ Subsection ~~[31A-23-201]~~ 31A-23a-103(1) applies to persons selling motor club contracts providing services in addition to those described under Subsections 31A-11-102(1)(b) through (1)(f).

Section 59. Section **31A-23a-301** is enacted to read:

Part 3. Agencies

31A-23a-301. Agency license.

An insurance organization shall be licensed as an agency if the insurance organization acts as:

- (1) a producer;
- (2) a limited line producer;
- (3) a consultant;
- (4) a managing general agent; or
- (5) a reinsurance intermediary.

Section 60. Section **31A-23a-302**, which is renumbered from Section 31A-23-219 is renumbered and amended to read:

~~[31A-23-219].~~ **31A-23a-302. Agency designations.**

~~[(1) As used in this section, "insurer" includes a bail bond surety as defined in Section 31A-35-102.]~~

~~[(2)(a) (1) [An insurer shall appoint a natural person or agency that has an insurance agent or managing general agent]]~~ An agency shall designate a natural person that has a producer, limited line producer, customer service representative, consultant, managing general agent, or reinsurance intermediary license to act [as an insurance agent] on its behalf prior to [any agent]

the licensee doing business for the [insurer in this state] agency.

~~[(b)]~~ (2) ~~[All insurers]~~ An agency shall report to the commissioner, at intervals and in the form the commissioner establishes by rule, all new [appointments] designations, all renewed designations, and all [terminations of appointments] terminated designations.

~~[(c)]~~ ~~All insurers shall submit to the commissioner on or before July 1 of each odd-numbered year a list of all agent appointments then in force in this state.]~~

(3) (a) An ~~[insurer]~~ agency licensed under this chapter shall report to the commissioner the cause of termination of [an agent's appointment] a designation.

(b) The information provided ~~[to]~~ the commissioner under Subsection (3)(a) shall remain confidential.

~~[(b)]~~ (c) An ~~[insurer]~~ agency is immune from civil action, civil penalty, or damages if the [insurer] agency complies in good faith with this Subsection (3) in reporting to the commissioner the cause of termination of [agents' appointments] a designation.

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

~~[(4)]~~ ~~If an insurer appoints an agency as its agent, the insurer need not appoint, report, or pay appointment reporting fees for natural person agents designated on the agency's agent's license under Section 31A-23-212.]~~

(4) An agency licensed under this chapter may act in the capacities for which it is licensed only through natural persons who are licensed under this chapter to act in the same capacities.

~~[(5)]~~ (a) ~~Each insurer shall maintain with the department a list of natural persons with authority to appoint and remove the company's agents in this state on forms:]~~

~~[(i)]~~ ~~supplied by the department; and]~~

~~[(ii)]~~ ~~signed by any officer of the insurer.]~~

~~[(b)]~~ The insurer shall submit the list required under Subsection (5)(a) to the

commissioner pursuant to Subsection (2).]

(5) An agency licensed under this chapter shall report to the commissioner by rule the name of at least one natural person who has authority to act on behalf of the agency in all matters pertaining to compliance with this title and orders of the commissioner.

(6) If an [~~insurer lists~~] agency designates a licensee [~~as its agent~~] in reports submitted under Subsection (2), there is a rebuttable presumption that [~~in placing a risk with the insurer the appointed licensee or any of the licensee's licensed employees acted as the insurer's agent and not as a broker~~] the designated licensee acted on behalf of the agency.

Section 61. Section ~~31A-23a-401~~, which is renumbered from Section 31A-23-301 is renumbered and amended to read:

Part 4. Marketing Practices

~~[31A-23-301].~~ **31A-23a-401. Disclosure of conflicting interests.**

(1) (a) Except as provided under Subsection (1)(b), no licensee under this chapter may act in the same or any directly related transaction as a producer for the insured or consultant and [~~either agent or broker~~] producer for the insurer; nor may a producer for the insured or consultant recommend or encourage the purchase of insurance from or through an insurer[~~, agent,~~] or [~~broker~~] other producer of which the producer for the insured or consultant or producer for the insured's or consultant's spouse is an owner, executive, or employee or to which he has the type of relation that a material benefit would accrue to the consultant or spouse as a result of the purchase.

(b) Subsection (1)(a) does not apply if the following three conditions are met:

(i) Prior to performing the consulting services, the producer for the insured or consultant discloses to the client, prominently, in writing, the producer for the insured's or consultant's interest as [~~an agent or broker~~] a producer for the insurer, or the relationship to an insurer[~~; agent,~~] or [~~broker~~] other producer, and that as a result of those interests the consultant's recommendations should be given appropriate scrutiny.

(ii) The producer for the insured's or consultant's fee is agreed upon, in writing, after the disclosure required under Subsection (1)(b)(i), but prior to performing the [~~consulting~~] requested

services.

(iii) Any report resulting from [~~consulting~~] requested services contains a copy of the disclosure made under Subsection (1)(b)(i).

(2) No licensee under this chapter may act as to the same client as both [~~an agent~~] a producer for the insurer and [~~broker~~] a producer for the insured without the client's prior written consent based on full disclosure.

(3) Whenever a person applies for insurance coverage through a [~~broker~~] producer for the insured, the [~~broker~~] producer for the insured shall disclose to the applicant, in writing, that the [~~broker~~] producer for the insured is not the [~~agent~~] producer for the insurer of the potential insurer. This disclosure shall also inform the applicant that the applicant likely does not have the benefit of an insurer being financially responsible for the [~~broker's~~] producer for the insured's conduct.

Section 62. Section **31A-23a-402**, which is renumbered from Section 31A-23-302 is renumbered and amended to read:

~~[31A-23-302].~~ **31A-23a-402. Unfair marketing practices -- Communication -- Inducement -- Unfair Discrimination -- Coercion or intimidation -- Restriction on choice.**

(1) (a) (i) Any of the following may not make or cause to be made any communication that contains false or misleading information, relating to an insurance contract, any insurer, or other licensee under this title, including information that is false or misleading because it is incomplete:

(A) a person who is or should be licensed under this title;

(B) an employee or [~~agent~~] producer of a person described in Subsection (1)(a)(i)(A);

(C) a person whose primary interest is as a competitor of a person licensed under this title; and

(D) a person on behalf of any of the persons listed in this Subsection (1)(a)(i).

(ii) As used in this Subsection (1), "false or misleading information" includes:

(A) assuring the nonobligatory payment of future dividends or refunds of unused premiums in any specific or approximate amounts, but reporting fully and accurately past

experience is not false or misleading information; and

(B) with intent to deceive a person examining it, filing a report, making a false entry in a record, or wilfully refraining from making a proper entry in a record.

(iii) ~~[An insurer or other]~~ A licensee under this title may not:

(A) use any business name, slogan, emblem, or related device that is misleading or likely to cause the insurer or other licensee to be mistaken for another insurer or other licensee already in business; or

(B) use any advertisement or other insurance promotional material that would cause a reasonable person to mistakenly believe that a state or federal government agency:

(I) is responsible for the insurance sales activities of the person;

(II) stands behind the credit of the person;

(III) guarantees any returns on insurance products of or sold by the person; or

(IV) is a source of payment of any insurance obligation of or sold by the person.

(iv) A person who is not an insurer may not assume or use any name that deceptively implies or suggests that it is an insurer.

(v) A person other than persons licensed as health maintenance organizations under Chapter 8 may not use the term "Health Maintenance Organization" or "HMO" in referring to itself.

(b) If ~~[an insurance agent or third party administrator]~~ a licensee under this title distributes cards or documents, exhibits a sign, or publishes an advertisement that violates Subsection (1)(a), with reference to a particular insurer that the ~~[agent]~~ licensee represents, or for whom the ~~[third party administrator]~~ licensee processes claims, and if the cards, documents, signs, or advertisements are supplied or approved by that insurer, the ~~[agent's or the third party administrator's]~~ licensee's violation creates a rebuttable presumption that the violation was also committed by the insurer.

(2) (a) (i) ~~[An insurer or]~~ A licensee under this ~~[chapter]~~ title, or an officer or employee of ~~[either]~~ a licensee may not induce any person to enter into or continue an insurance contract or to terminate an existing insurance contract by offering benefits not specified in the policy to be

issued or continued, including premium or commission rebates.

(ii) An insurer may not make or knowingly allow any agreement of insurance that is not clearly expressed in the policy to be issued or renewed.

(iii) This Subsection (2)(a) does not preclude:

(A) insurers from reducing premiums because of expense savings;

(B) the usual kinds of social courtesies not related to particular transactions; or

(C) an insurer from receiving premiums under an installment payment plan.

(b) [~~An agent, broker, or insurer~~] A licensee under this title may not absorb the tax under Section 31A-3-301.

(c) (i) A title insurer or [~~agent~~] producer or any officer or employee of either may not pay, allow, give, or offer to pay, allow, or give, directly or indirectly, as an inducement to obtaining any title insurance business, any rebate, reduction, or abatement of any rate or charge made incident to the issuance of the insurance, any special favor or advantage not generally available to others, or any money or other consideration or material inducement.

(ii) "Charge made incident to the issuance of the insurance" includes escrow charges, and any other services that are prescribed by the commissioner.

(iii) An insured or any other person connected, directly or indirectly, with the transaction, including a mortgage lender, real estate broker, builder, attorney, or any officer, employee, or agent of any of them, may not knowingly receive or accept, directly or indirectly, any benefit referred to in Subsection (2)(c)(i).

(3) (a) An insurer may not unfairly discriminate among policyholders by charging different premiums or by offering different terms of coverage, except on the basis of classifications related to the nature and the degree of the risk covered or the expenses involved.

(b) Rates are not unfairly discriminatory if they are averaged broadly among persons insured under a group, blanket, or franchise policy, and the terms of those policies are not unfairly discriminatory merely because they are more favorable than in similar individual policies.

(4) A person who is or should be licensed under this title, an employee [~~or agent~~] of that

licensee or person who should be licensed, a person whose primary interest is as a competitor of a person licensed under this title, and one acting on behalf of any of these persons, may not commit or enter into any agreement to participate in any act of boycott, coercion, or intimidation that:

(a) tends to produce:

(i) an unreasonable restraint of the business of insurance; or

(ii) a monopoly in that business[-]; or

(b) results in an applicant purchasing or replacing an insurance contract.

(5) (a) A person may not restrict in the choice of an insurer or ~~[insurance agent or broker]~~ licensee under this chapter, another person who is required to pay for insurance as a condition for the conclusion of a contract or other transaction or for the exercise of any right under a contract. The person requiring the coverage may, however, reserve the right to disapprove the insurer or the coverage selected on reasonable grounds.

(b) The form of corporate organization of an insurer authorized to do business in this state is not a reasonable ground for disapproval, and the commissioner may by rule specify additional grounds that are not reasonable. This Subsection (5) does not bar an insurer from declining an application for insurance.

(6) A person may not make any charge other than insurance premiums and premium financing charges for the protection of property or of a security interest in property, as a condition for obtaining, renewing, or continuing the financing of a purchase of the property or the lending of money on the security of an interest in the property.

(7) (a) ~~[An agent]~~ A licensee under this title may not refuse or fail to return promptly all indicia of agency to the principal on demand.

(b) A licensee whose license is suspended, limited, or revoked under Section 31A-2-308, ~~[31A-23-216, or 31A-23-217]~~ 31A-23a-111, or 31A-23a-112 may not refuse or fail to return the license to the commissioner on demand.

(8) A person may not engage in any other unfair method of competition or any other unfair or deceptive act or practice in the business of insurance, as defined by the commissioner

by rule, after a finding that they are misleading, deceptive, unfairly discriminatory, provide an unfair inducement, or unreasonably restrain competition.

Section 63. Section **31A-23a-403**, which is renumbered from Section 31A-23-303 is renumbered and amended to read:

~~[31A-23-303].~~ **31A-23a-403. Inherent unsuitability.**

(1) If the commissioner finds after a hearing that a certain type of accident and health insurance, life insurance, or annuity product is inherently unsuitable for persons of certain ages or in certain conditions of health, the commissioner shall make a rule declaring the accident and health insurance, life insurance, or annuity product as inherently unsuitable for persons of certain ages or in certain conditions of health.

(2) An accident and health insurance, life insurance, or annuity product that is subject to the rule may not be sold to a person for whom the product has been determined as inherently unsuitable unless that person purchasing the product signs a receipt acknowledging having received a statement that expresses that the product has been determined by the commissioner to be inherently unsuitable for persons of certain ages or in certain conditions of health.

(3) Unless the insurer or its ~~[agent]~~ appointed licensee establishes that its sale of coverage is inconsistent with the rule made under Subsection (1) is due to excusable neglect, the purchaser may treat the sale as voidable, if acted upon by the insured within a two-year period from the date of sale.

Section 64. Section **31A-23a-404**, which is renumbered from Section 31A-23-304 is renumbered and amended to read:

~~[31A-23-304].~~ **31A-23a-404. Extension of credit on premiums.**

The extension of credit upon a premium by ~~[an agent or broker]~~ a licensee under this chapter to the insured, without interest for not exceeding 90 days from the effective date of the policy, or after that time with interest on the unpaid balance at not less than the legal rate under Section 15-1-1, is not a violation of Subsection ~~[31A-23-302]~~ 31A-23a-402(2). The installment or payroll deduction payment of premiums on policies issued under an insurer's mass marketing program is not an extension of credit.

Section 65. Section **31A-23a-405**, which is renumbered from Section 31A-23-305 is renumbered and amended to read:

~~[31A-23-305].~~ **31A-23a-405. Insurer liability.**

(1) As used in this section, "insurer" includes bail bond surety companies as defined in Section 31A-35-102.

(2) There is a rebuttable presumption that every insurer is bound by any act of its ~~[agent]~~ appointed licensee performed in this state that is within the scope of the ~~[agent's]~~ appointed licensee's actual (express or implied) or apparent authority, until the insurer has canceled the ~~[agent's]~~ appointed licensee's appointment and has made reasonable efforts to recover from the ~~[agent]~~ appointed licensee its policy forms and other indicia of agency. Reasonable efforts include a formal demand in writing for return of the indicia, and notice to the commissioner if the ~~[agent]~~ appointed licensee does not promptly comply with the demand. This Subsection (2) neither waives any common law defense available to insurers, nor precludes the insured from seeking redress against the ~~[agent]~~ appointed licensee individually or jointly against the insurer and ~~[agent]~~ licensee.

(3) When a ~~[property/liability insurance agent]~~ licensee under this chapter with authority to bind more than one insurer on a particular risk agrees to bind coverage on a particular risk, but fails to outwardly indicate the insurer with which the risk is placed, and before the risk is placed with a particular insurer a loss occurs, if there is no conclusive admissible evidence indicating the insurer with which the ~~[agent]~~ licensee exercised his binding authority, a court may equitably apportion the loss among all insurers with which the ~~[agent]~~ licensee had binding authority as to the particular type of risk.

Section 66. Section **31A-23a-406**, which is renumbered from Section 31A-23-307 is renumbered and amended to read:

~~[31A-23-307].~~ **31A-23a-406. Title insurance producer's business.**

(1) A title insurance ~~[agent]~~ producer may ~~[engage in the]~~ do escrow ~~[business]~~ involving real property transactions if all of the following exist:

(a) the title insurance ~~[agent]~~ producer is ~~[properly]~~ licensed ~~[under this chapter]~~ with the

title line of authority and the escrow subline of authority;

(b) the title insurance [agent] producer is appointed by a title insurer authorized to do business in the state;

(c) one or more of the following is to be issued as part of the transaction:

(i) an owner's policy of title insurance; or

(ii) a lender's policy of title insurance;

(d) (i) all funds deposited with the [agent] producer in connection with any escrow:

(A) are deposited:

(I) in a federally insured financial institution; and

(II) in a trust account that is separate from all other trust account funds that are not related to real estate transactions; and

(B) are the property of the persons entitled to them under the provisions of the escrow;

and

(ii) are segregated escrow by escrow in the records of the [agent] producer;

(e) earnings on funds held in escrow may be paid out of the escrow account to any person in accordance with the conditions of the escrow; and

(f) the escrow does not require the [agent] producer to hold:

(i) construction funds; or

(ii) funds held for exchange under Section 1031, Internal Revenue Code.

(2) Notwithstanding Subsection (1), a title insurance [agent] producer may engage in the escrow business if:

(a) the escrow involves:

(i) a mobile home;

(ii) a grazing right;

(iii) a water right; or

(iv) other personal property authorized by the commissioner; and

(b) the title insurance [agent] producer complies with all the requirements of this section except for the requirement of Subsection (1)(c).

(3) Funds held in escrow:

(a) are not subject to any debts of the [~~agent~~] producer;

(b) may only be used to fulfill the terms of the individual escrow under which the funds were accepted; and

(c) may not be used until all conditions of the escrow have been met.

(4) Assets or property other than escrow funds received by [~~an agent~~] a producer in accordance with an escrow shall be maintained in a manner that will:

(a) reasonably preserve and protect the asset or property from loss, theft, or damages; and

(b) otherwise comply with all general duties and responsibilities of a fiduciary or bailee.

(5) (a) A check may not be drawn, executed or dated, or funds otherwise disbursed unless the segregated escrow account from which funds are to be disbursed contains a sufficient credit balance consisting of collected or cleared funds at the time the check is drawn, executed or dated, or funds are otherwise disbursed.

(b) As used in this Subsection (5), funds are considered to be "collected or cleared," and may be disbursed as follows:

(i) cash may be disbursed on the same day the cash is deposited;

(ii) a wire transfer may be disbursed on the same day the wire transfer is deposited;

(iii) the following may be disbursed on the day following the date of deposit:

(A) a cashier's check;

(B) a certified check;

(C) a teller's check;

(D) a U.S. Postal Service money order; and

(E) a check drawn on a Federal Reserve Bank or Federal Home Loan Bank; and

(iv) any other check or deposit may be disbursed:

(A) within the time limits provided under the Expedited Funds Availability Act, 12 U.S.C. Section 4001 et seq., as amended, and related regulations of the Federal Reserve System;
or

(B) upon written notification from the financial institution to which the funds have been

deposited, that final settlement has occurred on the deposited item.

(6) The title insurance [~~agent~~] producer shall maintain records of all receipts and disbursements of escrow funds.

(7) The title insurance [~~agent~~] producer shall comply with:

(a) Section [~~31A-23-310~~] 31A-23a-409; and

(b) any rules adopted by the commissioner in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, that govern escrows.

Section 67. Section **31A-23a-407**, which is renumbered from Section 31A-23-308 is renumbered and amended to read:

~~[31A-23-308].~~ **31A-23a-407. Liability of title insurers for acts of title insurance producers.**

Any title company, represented by one or more title insurance [~~agents~~] producers, is directly and primarily liable to others dealing with the title insurance [~~agents~~] producers for the receipt and disbursement of funds deposited in escrows with the title insurance [~~agents~~] producers in all those transactions where a commitment or binder for or policy or contract of title insurance of that title insurance company has been ordered, or a preliminary report of the title insurance company has been issued or distributed. This liability does not modify, mitigate, impair, or affect the contractual obligations between the title insurance [~~agents~~] producers and the title insurance company.

Section 68. Section **31A-23a-408**, which is renumbered from Section 31A-23-309 is renumbered and amended to read:

~~[31A-23-309].~~ **31A-23a-408. Representations of agency.**

No person may represent himself as [~~the agent~~] acting in behalf of an insurer unless a written agency contract is in effect giving the person authority from the insurer and the insurer has appointed that person [~~as its agent~~] to act in behalf of the insurer.

Section 69. Section **31A-23a-409**, which is renumbered from Section 31A-23-310 is renumbered and amended to read:

~~[31A-23-310].~~ **31A-23a-409. Trust obligation for funds collected.**

(1) Every [~~agent or broker~~] licensee is a trustee for all funds received or collected [~~as an agent or broker~~] for forwarding to insurers or to insureds. Except for amounts necessary to pay bank charges, and except for funds paid by insureds and belonging in part to the [~~agent or broker~~] licensee as fees or commissions, [~~an agent or broker~~] a licensee may not commingle trust funds with the [~~agent or broker's~~] licensee's own funds or with funds held in any other capacity. Except as provided under Subsection (4), every [~~agent or broker~~] licensee owes to insureds and insurers the fiduciary duties of a trustee with respect to money to be forwarded to insurers or insureds through the [~~agent or broker~~] licensee. Unless the funds are sent to the appropriate payee by the close of the next business day after their receipt, the licensee shall deposit them in an account authorized under Subsection (2). Funds so deposited shall remain in an account authorized under Subsection (2) until sent to the appropriate payee.

(2) Funds required to be deposited under Subsection (1) shall be deposited:

- (a) in a federally insured trust account with a financial institution located in this state; or
- (b) in some other account, approved by the commissioner by rule or order, providing safety comparable to federally insured trust accounts.

(3) It is not a violation of Subsection (2)(a) if the amounts in the accounts exceed the amount of the federal insurance on the accounts.

(4) A trust account into which funds are deposited may be interest bearing. The interest accrued on the account may be paid to the [~~agent or broker~~] licensee, so long as the [~~agent or broker~~] licensee otherwise complies with this section and with the contract with the insurer.

(5) A financial institution or other organization holding trust funds under this section may not offset or impound trust account funds against debts and obligations incurred by the [~~agent or broker~~] licensee.

(6) Any licensee who, not being lawfully entitled thereto, diverts or appropriates any portion of the funds held under Subsection (1) to the licensee's own use, is guilty of theft under Title 76, Chapter 6, Part 4. Section 76-6-412 applies in determining the classification of the offense. Sanctions under Section 31A-2-308 also apply.

Section 70. Section **31A-23a-410**, which is renumbered from Section 31A-23-311 is

renumbered and amended to read:

~~[31A-23-311].~~ **31A-23a-410. Insurer's liability if insured pays premium to a licensee or group policyholder.**

(1) Subject to Subsections (2) and (5), as between the insurer and the insured, the insurer is considered to have received the premium and is liable to the insured for losses covered by the insurance and for any unearned premiums upon cancellation of the insurance if an insurer, including a surplus lines insurer:

- (a) has assumed a risk; and
- (b) the premium for that insurance has been received by:
 - (i) ~~[an agent or broker]~~ a licensee who placed the insurance;
 - (ii) a group policyholder;
 - (iii) an employer who deducts part or all of the premium from an employee's wages or salary; or
 - (iv) an employer who pays all or part of the premium for an employee.

(2) Subsection (1) does not apply if:

- (a) the insured pays ~~[an agent or broker]~~ a licensee, knowing the ~~[agent or broker]~~ licensee does not intend to submit the premium to the insurer; or
- (b) the insured has premium withheld from the insured's wages or salary knowing the employer does not intend to submit it to the insurer.

(3) In the case of an employer who has received the premium by deducting all or part of it from the wages or salaries of the certificate holders, the insurer may terminate its liability by giving certificate holders reasonable notice of coverage termination. The liability of the insurer for the losses covered by the insurance terminates at the later of:

- (a) the last day of the coverage period for which premium has been withheld by the employer; or
- (b) 15 days after the date the insurer mails actual notice to the certificate holder that coverage has terminated, but in the event the insurer fails to provide actual notice as required by this subsection, then the liability of the insurer for losses described in Subsection (1) shall

terminate 45 days from the last date for which premium was received. While the insurer shall be liable for losses as herein provided, the provisions of this section apply only to apportion the liability for those losses described and do not operate to extend any insurance contract policy or coverage beyond its date of termination nor alter or amend provisions thereof.

(4) Despite an employer's collection of premium under Subsection (1), the responsibility of an insurer to continue to cover the losses covered by the insurance to group policy certificate holders terminates upon the effective date of notice from the policyholder that:

- (a) coverage of a similar kind and quality has been obtained from another insurer; or
- (b) the policyholder is electing to voluntarily terminate the certificate holder's coverage and has given the employees notice of the termination.

(5) If the insurer is obligated to pay any claims pursuant to the provisions of this section, the ~~[agent, broker,]~~ licensee or employer who received the premium and failed to forward it shall be obligated to the insurer for the entire unpaid premium due under the policy of insurance together with reasonable expenses of suit and reasonable attorney's fees.

(6) If, under an employee health insurance plan, an employee builds up credit for future coverage because the employee has not used the policy protection, or in some other way, the insurer is obligated to the employee for that future coverage earned while the policy was in full effect.

Section 71. Section **31A-23a-411** is enacted to read:

31A-23a-411. Person's liability if premium received is not forwarded to the insurer.

(1) A person that knowingly fails to forward to the insurer a premium received from an applicant, policyholder, or certificate holder has committed insurance fraud under Subsection 31A-31-103(1)(c).

(2) A person that knowingly fails to forward to the insurer a premium collected from or on behalf of an insured employee under an insured employee benefit plan has committed insurance fraud under Subsection 31A-31-103(1)(c).

Section 72. Section **31A-23a-412**, which is renumbered from Section 31A-23-312 is renumbered and amended to read:

~~[31A-23-312].~~ 31A-23a-412. **Place of business and residence address --**

Records.

(1) (a) All licensees under this chapter shall register with the commissioner the address and telephone numbers of their principal place of business.

(b) If the licensee is an individual, in addition to complying with Subsection (1)(a) the individual shall provide to the commissioner the individual's residence address and telephone number.

(c) A licensee shall notify the commissioner~~[, in writing,]~~ within 30 days of any change of address or telephone number.

(2) (a) Except as provided under Subsection (3), every licensee under this chapter shall keep at the principal place of business address registered under Subsection (1), separate and distinct books and records of all transactions consummated under the Utah license.

(b) The books and records described in Subsection (2)(a) shall:

- (i) be in an organized form;
- (ii) be available to the commissioner for inspection upon reasonable notice; and
- (iii) include all of the following:

(A) if the licensee is ~~[an agent or broker]~~ a producer, limited line producer, consultant, managing general agent, or reinsurance intermediary:

(I) a record of each insurance contract procured by or issued through the licensee, with the names of insurers and insureds, the amount of premium and commissions or other compensation, and the subject of the insurance;

(II) the names of any other producers, limited line producers, consultants, managing general agents, or ~~[brokers]~~ reinsurance intermediaries from whom business is accepted, and of persons to whom commissions or allowances of any kind are promised or paid; and

(III) a record of all consumer complaints forwarded to the licensee by an insurance regulator;

(B) if the licensee is a consultant, a record of each agreement outlining the work performed and the fee for the work; and

(C) any additional information which:

(I) is customary for a similar business; or

(II) may reasonably be required by the commissioner by rule.

(3) Subsection (2) is satisfied if the books and records specified in Subsection (2) can be obtained immediately from a central storage place or elsewhere by on-line computer terminals located at the registered address.

(4) ~~[An agent]~~ A licensee who represents only a single insurer satisfies Subsection (2) if the insurer maintains the books and records pursuant to Subsection (2) at a place satisfying Subsections (1) and (5).

(5) (a) The books and records maintained under Subsection (2) or Section ~~[31A-23-313]~~ 31A-23a-413 shall be available for the inspection of the commissioner during all business hours for a period of time after the date of the transaction as specified by the commissioner by rule, but in no case for less than the current calendar year plus three years.

(b) Discarding books and records after the applicable record retention period has expired does not place the licensee in violation of a later-adopted longer record retention period.

Section 73. Section ~~31A-23a-413~~, which is renumbered from Section 31A-23-313 is renumbered and amended to read:

~~[31A-23-313].~~ **31A-23a-413. Title producer's annual report.**

Every title insurance ~~[agent]~~ producer shall annually file with the commissioner, by a date and in a form the commissioner specifies by rule, a verified statement of the ~~[agent's]~~ producer's financial condition, transactions, and affairs as of the end of the preceding calendar year.

Section 74. Section ~~31A-23a-414~~, which is renumbered from Section 31A-23-314 is renumbered and amended to read:

~~[31A-23-314].~~ **31A-23a-414. Consultant's duty to report illegal insurance.**

Section 31A-15-110 applies to a consultant's duty to report illegal insurance.

Section 75. Section ~~31A-23a-415~~, which is renumbered from Section 31A-23-315 is renumbered and amended to read:

~~[31A-23-315].~~ **31A-23a-415. Assessment on title insurance agencies or title**

insurers.

(1) For purposes of this section:

(a) "Premium" is as defined in Subsection 59-9-101(3).

(b) "Title insurer" means a person:

(i) making any contract or policy of title insurance as:

(A) insurer;

(B) guarantor; or

(C) surety;

(ii) proposing to make any contract or policy of title insurance as:

(A) insurer;

(B) guarantor; or

(C) surety; or

(iii) transacting or proposing to transact any phase of title insurance, including:

(A) soliciting;

(B) negotiating preliminary to execution;

(C) executing of a contract of title insurance;

(D) insuring; and

(E) transacting matters subsequent to the execution of the contract and arising out of the contract.

(c) "Utah risks" means insuring, guaranteeing, or indemnifying with regard to real or personal property located in Utah, an owner of real or personal property, the holders of liens or encumbrances on that property, or others interested in the property against loss or damage suffered by reason of:

(i) liens or encumbrances upon, defects in, or the unmarketability of the title to the property; or

(ii) invalidity or unenforceability of any liens or encumbrances on the property.

(2) (a) Beginning on July 1, 1998, the insurance commissioner may assess each title insurer and each title insurance agency an annual assessment determined in accordance with this

Subsection (2) to be used for the purposes described in Subsection (3).

(b) A title insurance agency shall be assessed up to:

(i) \$200 for the first office in each county in which the title insurance agency maintains an office; and

(ii) \$100 for each additional office the title insurance agency maintains in the county described in Subsection (2)(b)(i).

(c) A title insurer shall be assessed up to:

(i) \$200 for the first office in each county in which the title insurer maintains an office;

(ii) \$100 for each additional office the title insurer maintains in the county described in Subsection (2)(c)(i); and

(iii) an amount calculated by:

(A) aggregating the assessments imposed on:

(I) title insurance agencies under Subsection (2)(b); and

(II) title insurers under Subsections (2)(c)(i) and (2)(c)(ii);

(B) subtracting the amount determined under Subsection (2)(c)(iii)(A) from the total costs and expenses determined under Subsection (2)(d); and

(C) multiplying:

(I) the amount calculated under Subsection (2)(c)(iii)(B); and

(II) the percentage of total premiums for title insurance on Utah risk that are premiums of the title insurer.

(d) Notwithstanding Section 31A-3-103 and in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the department by rule shall establish the amount of costs and expenses described under Subsection (3) that will be covered by the assessment, except the costs or expenses to be covered by the assessment may not exceed \$75,000 annually.

(3) All money received by the state under this section:

(a) shall be deposited in the General Fund as a dedicated credit of the department; and

(b) may be expended by the department only to pay for any cost or expense incurred by the department in the administration, investigation, and enforcement of Chapter [23] 23a, Parts

[~~III and IV~~] 4 and 5, related to:

- (i) the marketing of title insurance; and
- (ii) audits of agencies.

(4) The assessment imposed by this section shall be in addition to any premium assessment imposed under Subsection 59-9-101(3).

Section 76. Section **31A-23a-416**, which is renumbered from Section 31A-23-316 is renumbered and amended to read:

~~[31A-23-316].~~ **31A-23a-416. Solicitations to loan applicants.**

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

- (i) the person authorized to engage in insurance activities also extends credit directly or through a subsidiary or an affiliate;
- (ii) the person requires a customer to obtain insurance in connection with an extension of credit; and
- (iii) the person offers to the person seeking an extension of credit the line of credit insurance required in connection with the extension of credit.

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

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

- (i) at the time of written application for an extension of credit; or
- (ii) if there is no written application, before the closing of the extension of credit.

(2) The disclosure required by Subsection (1)(c)(ii) may be in a verbal, electronic, or other unwritten form if a printed disclosure is included with the first printed statement of terms and conditions of the extension of credit sent to the person seeking the extension of credit.

(3) This section does not apply when:

(a) a person is contacting a person in the course of direct or mass marketing to a group of persons in a manner that bears no relation to the person's application for an extension of credit or credit decision; and

(b) an agreement for the extension of credit is changed or extended, if the person who originally sought the extension of credit is not required to purchase new or additional insurance.

(4) (a) For purposes of this section, "approved insurer" means an insurer that is approved to issue insurance related to the extension of credit by the person that extends the credit.

(b) The commissioner shall make rules establishing standards that govern the approval under Subsection (4)(a) of an insurer by a person that extends credit.

Section 77. Section **31A-23a-417**, which is renumbered from Section 31A-23-317 is renumbered and amended to read:

~~[31A-23-317].~~ **31A-23a-417. Financial services insurance activities regulation.**

(1) It is the intent of the Legislature that the regulation of insurance activities of any person in this state be based on functional regulation principles established in the Gramm-Leach-Bliley Act of 1999, Pub. L. No. 106-102.

(2) The insurance activities of any person in this state shall be functionally regulated by the commissioner subject to Sections 104, 301-308, 501-507, and 509 of the Gramm-Leach-Bliley Act of 1999, Pub. L. No. 106-102.

(3) Under Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the commissioner may adopt rules consistent with Section 104(d) of the Gramm-Leach-Bliley Act of 1999, Pub. L. No. 106-102, and the functional regulation of insurance activities of any person otherwise subject to the jurisdiction of the commissioner in this state described in Subsection (2).

(4) The commissioner shall consult and coordinate with the commissioner of the Department of Financial Institutions and the director of the Division of Securities for the purpose of assuring, to the extent possible, that the rules prescribed by the department are consistent and comparable with federal regulations governing the insurance, banking, and securities industries.

Section 78. Section **31A-23a-501**, which is renumbered from Section 31A-23-401 is renumbered and amended to read:

Part 5. Compensation of Producers and Consultants

~~[31A-23-401].~~ **31A-23a-501. Licensee compensation.**

(1) As used in this section:

(a) "Commission compensation" includes funds paid to or credited for the benefit of ~~[an agent or broker]~~ a licensee from:

(i) commission amounts deducted from insurance premiums on insurance sold by or placed through the ~~[agent or broker]~~ licensee; or

(ii) commission amounts received from an insurer~~[-]~~ or another [agent, or a broker, acting in their professional capacities,] licensee as a result of the sale or placement of insurance.

(b) (i) "Noncommission compensation" includes all funds paid to or credited for the benefit of ~~[an agent or broker]~~ a licensee other than commission compensation.

(ii) "Noncommission compensation" does not include charges for pass-through costs incurred by the licensee in connection with obtaining, placing, or servicing an insurance policy.

(c) "Pass-through costs" include:

(i) costs for copying documents to be submitted to the insurer; and

(ii) bank costs for processing cash or credit card payments.

(2) ~~[(a) Except as provided in Subsection (3), no insurance agent or broker]~~ A licensee may receive[-, for acting as an agent or broker,] from an insured or from a person purchasing an insurance policy, [compensation other than commission] noncommission compensation if the noncommission compensation is stated on a separate, written disclosure.

(a) The disclosure shall:

(i) include the signature of the insured or prospective insured acknowledging the noncommission compensation;

(ii) clearly specify the amount or extent of the noncommission compensation; and

(iii) be provided to the insured or prospective insured before the performance of the service.

(b) Noncommission compensation shall be:

(i) limited to actual or reasonable expenses incurred for services; and

(ii) uniformly applied to all insureds or prospective insureds in a class or classes of business or for a specific service or services.

(c) A copy of the signed disclosure must be maintained by any licensee who collects or receives the noncommission compensation or any portion thereof.

(d) All accounting records relating to noncommission compensation shall be maintained in a manner that facilitates an audit.

~~[(b) As used in this section, "acting as an agent or broker" includes the negotiation or procurement of any insurance contract made or negotiated in this state, and thereafter providing any other services on account of that insurance contract, including the adjustment of claims arising from that insurance contract.]~~

~~[(3) Subsection (2) does not apply to:]~~

~~(3) (a) [a broker's receipt of] A licensee may receive noncommission compensation when acting as a producer for the insured in connection with the actual sale or placement of insurance[; but only if the broker] if:~~

~~(i) the producer and the insured have agreed on the [broker's] producer's noncommission compensation[;]; and~~

~~(ii) the [broker] producer has disclosed to the insured the existence and source of [the commission] any other compensation that accrues to the [broker] producer as a result of the transaction[; which agreement and].~~

~~(b) The disclosure shall [be evidenced by]:~~

~~(i) [a written memorandum, signed by the broker and] include the signature of the insured[; disclosing the existence and source of commission compensation and providing that the insured will, in addition, pay] or prospective insured acknowledging the noncommission compensation;~~

~~(ii) [an application for insurance, signed by the insured, that specifies] clearly specify the amount or extent of the [broker's] noncommission compensation and [discloses] the existence~~

and source of [~~the commission~~] any other compensation; [~~or~~] and

~~[(iii) the insured's payment of an invoice from the broker for the noncommission compensation, which invoice discloses the existence and source of the commission compensation received by the broker with respect to the transaction;]~~

(iii) be provided to the insured or prospective insured before the performance of the service.

(c) The following additional noncommission compensation is authorized:

~~[(b)]~~ (i) compensation received by [~~an agent~~] a producer of a compensated corporate surety who under procedures approved by a rule or order of the commissioner is paid by surety bond principal debtors for extra services;

~~[(c)]~~ (ii) compensation received by an insurance [~~broker~~] producer who is also licensed as a public adjuster under Section 31A-26-203, for services performed for an insured in connection with a claim adjustment, so long as the [~~broker~~] producer does not receive or is not promised compensation for aiding in the claim adjustment prior to the occurrence of the claim;

~~[(d)]~~ (iii) compensation received by a consultant as a consulting fee, provided the consultant complies with the requirements of Section [~~31A-23-301~~] 31A-23a-401; or

~~[(e)]~~ (iv) other compensation arrangements approved by the commissioner after a finding that they do not violate Section [~~31A-23-301~~] 31A-23a-401 and are not harmful to the public.

(4) This section does not alter the right of any [~~agent or broker~~] licensee to recover from an insured the amount of any premium due for insurance effected by or through that [~~agent or broker~~] licensee or to charge a reasonable rate of interest upon past-due accounts.

(5) This section does not apply to bail bond [~~agents~~] producers or bail enforcement agents as defined in Section 31A-35-102.

Section 79. Section **31A-23a-502**, which is renumbered from Section 31A-23-402 is renumbered and amended to read:

~~[31A-23-402].~~ **31A-23a-502. Controlled business, except as to title insurance.**

(1) As used in this section, "controlled business" means insurance procured by:

(a) an insurance [~~agent or broker~~] producer who is a natural person upon the life, person,

or property of himself, his relative within the second degree by blood or marriage, his employer, employees, or organization; or

(b) an insurance ~~[agent or broker]~~ producer that is an organization upon its own property or upon the life, person, or property of its partners, shareholders, directors, or employees, or their relatives within the second degree by blood or marriage.

(2) No ~~[agent or broker]~~ producer may receive any compensation from an insurer for effecting insurance upon controlled business unless during the preceding 12 months the ~~[agent or broker]~~ producer had effected other insurance with aggregate premiums exceeding the premiums on the controlled business.

(3) This section does not apply to title insurance.

Section 80. Section **31A-23a-503**, which is renumbered from Section 31A-23-403 is renumbered and amended to read:

~~[31A-23-403].~~ **31A-23a-503. Controlled business in title insurance.**

(1) As used in this section:

(a) "Associate" means any:

(i) business organized for profit in which a ~~[producer of]~~ person who refers title business is a director, officer, partner, or employee;

(ii) spouse or relative within the second degree by blood or marriage of a ~~[producer of]~~ person who refers title business, who is a natural person;

(iii) employee of a ~~[producer of]~~ person who refers title business; or

(iv) person with whom a ~~[producer of]~~ person who refers title business or any associate of that producer has any agreement, arrangement, or understanding, or pursues any course of conduct, designed to avoid the provisions of this chapter.

(b) "Controlled business" means that portion of the title insurance business of a title insurer or ~~[agent]~~ producer in this state that is referred to it by all those producers of title business who have a financial interest in the title insurer or ~~[agent]~~ producer and by all associates of those producers. Business is referred if there is influence over the selection of the person with whom the business is placed.

(c) "[~~Producer of~~] A person who refers title business" includes any person engaged in this state in a business of:

- (i) buying or selling interests in real property;
- (ii) making loans secured by interests in real property; or
- (iii) acting as a representative or employee of a person who buys or sells any interest in real property or who lends or borrows money with interest as security, other than acting as a licensed title insurer or [~~agent~~] producer doing the business of title insurance.

(d) "Financial interest" means any legal or beneficial interest that together with other interests entitles the holder to more than 1% of the net profits or net worth of the business in which the interest is held.

(2) A title insurer or [~~agent~~] producer or person having a financial interest in a title insurer or [~~agent~~] producer may not knowingly be a party to or knowingly permit to continue in any arrangement in which the title insurer, [~~agent~~] producer, or person knows or has reason to believe that any [~~producer of~~] person who refers title business has or will have, directly or indirectly, a financial interest in the title insurer or [~~agent~~] producer, if it reasonably appears that a substantial factor in the [~~producer's~~] person who refers title business owning or acquiring the financial interest is the expected realization of financial profit or gain derived in whole or in part from controlled business.

(3) A title insurer may not appoint or knowingly continue its authorization of any title insurance [~~agent~~] producer in which the company knows or has reason to believe that any [~~producer of~~] person who refers title business has or will have, directly or indirectly, a financial interest, if it reasonably appears that a substantial factor in the [~~producer's~~] person who refers title business owning or acquiring the financial interest is the [~~producer's~~] person's expected realization of financial profit or gain derived in whole or part from controlled business.

(4) If for any calendar quarter, the gross operating revenues of a title insurer or [~~agent~~] producer derived from all sources of controlled business in this state amount to more than 1/3 of its gross operating revenues from all other sources of its business of title insurance in this state, it is presumed that the expected realization of financial profit or gain derived in whole or in part

from controlled business was a substantial factor in the ownership of financial interest in the title insurer or ~~[agent by producers]~~ producer. The title insurer or ~~[agent]~~ producer has the burden of overcoming this presumption. Subsection (4) does not authorize any controlled business if a violation of the standards set forth in Subsection (2) or (3) exists.

(5) No title insurance company or ~~[agent]~~ producer may accept any order for the business of title insurance that it knows or has reason to believe constitutes controlled business, unless it records and maintains in its permanent records on forms prescribed by the commissioner the facts relating to the transactions.

(6) An applicant for qualification as a title insurance company or ~~[agent]~~ producer may not be granted a license if it reasonably appears that the expected realization of financial profit or gain to be derived in whole or in part from controlled business is or will be a substantial factor in the applicant's plan of operation or in the ownership or acquisition of financial interests in the applicant by any ~~[producers of]~~ person who refers title business.

(7) Each title insurer and ~~[agent]~~ producer shall maintain permanent records relating to its controlled business on forms prescribed by the commissioner.

(8) (a) Each title insurer and ~~[agent]~~ producer shall file annually with the commissioner, on forms prescribed by the commissioner, reports setting forth:

(i) the names and addresses of any persons owning a financial interest in the title insurer or ~~[agent]~~ producer as of the last day of the calendar year, who are known or reasonably believed by the title insurance company or ~~[agent]~~ producer to be ~~[producers of]~~ a person who refers title business; and

(ii) a summary compiled from the title insurer's or ~~[agent's]~~ producer's records of the controlled business, sufficient to inform the commissioner as to the proportion of the title insurer's or ~~[agent's]~~ producer's gross operating revenues attributable to controlled business during the preceding calendar year.

(b) The reports shall be filed with the reports required under Section ~~[31A-23-313]~~ 31A-23a-413 and shall contain the certification of an officer of the title insurer or ~~[agent]~~ producer that the information contained in them is true to the best of the officer's knowledge,

information, and belief. Upon filing, the reports are public records.

(9) An attorney who is also a licensed title insurance ~~[agent]~~ producer and who issues as ~~[agent]~~ producer a policy of title insurance to a client on behalf of whom the attorney is also acting as an attorney and who, in so doing, acts consistently with the applicable ethical standards of the Utah State Bar pertaining to the billing and receipt of legal fees and the receipt of a commission on a policy of title insurance is not, without more, considered to be engaged in controlled business.

Section 81. Section **31A-23a-504**, which is renumbered from Section 31A-23-404 is renumbered and amended to read:

~~[31A-23-404].~~ **31A-23a-504. Sharing commissions.**

(1) (a) Except as provided in Subsection 31A-15-103(3), a licensee under this chapter or an insurer may only pay consideration or reimburse out-of-pocket expenses to a person if the licensee knows that the person is licensed under this chapter to act as ~~[an agent or broker]~~ a producer, limited line producer, customer service representative, consultant, managing general agent, or reinsurance intermediary in Utah as to the particular type of insurance.

(b) A person may only accept commission compensation or other compensation as ~~[an]~~ a producer, limited line producer, customer service representative, consultant, managing general agent, ~~[broker, or consultant]~~ or reinsurance intermediary that is directly or indirectly the result of any insurance transaction if that person is licensed under this chapter to act as ~~[an]~~ a producer, limited line producer, customer service representative, consultant, managing general agent, or ~~[broker]~~ reinsurance intermediary as to the particular type of insurance.

(2) (a) Except as provided in Section ~~[31A-23-301]~~ 31A-23a-501, a consultant may not pay or receive any commission or other compensation that is directly or indirectly the result of any insurance transaction.

(b) A consultant may share a consultant fee or other compensation received for consulting services performed within Utah only with another consultant licensed under this chapter, and only to the extent that the other consultant contributed to the services performed.

(3) This section does not prohibit the payment of renewal commissions to former

licensees under this chapter, former Title 31, Chapter 17, or their successors in interest under a deferred compensation or agency sales agreement.

(4) This section does not prohibit compensation paid to or received by ~~[an individual]~~ a person for referral of a potential customer that seeks to purchase or obtain an opinion or advice on an insurance product if:

- (a) the person is not licensed to sell insurance;
- (b) the person sells or provides opinions or advice on the product; and
- (c) the compensation does not depend on whether the referral results in a purchase or sale.

(5) In selling any policy of title insurance, no sharing of commissions under Subsection (1) may occur if it will result in an unlawful rebate, or in compensation in connection with controlled business, or in payment of a forwarding fee or finder's fee. A person may share compensation for the issuance of a title insurance policy only to the extent that he contributed to the search and examination of the title or other services connected with it.

(6) This section does not apply to bail bond ~~[agents]~~ producers or bail enforcement agents as defined in Section 31A-35-102.

Section 82. Section **31A-23a-505**, which is renumbered from Section 31A-23-406 is renumbered and amended to read:

~~[31A-23-406].~~ **31A-23a-505. Benefit plans for producers.**

An authorized insurer may establish retirement, insurance, and other benefit plans for ~~[agents]~~ producers on a basis approved by the commissioner.

Section 83. Section **31A-23a-601**, which is renumbered from Section 31A-23-501 is renumbered and amended to read:

Part 6. Managing General Agents

~~[31A-23-501].~~ **31A-23a-601. Licensure.**

(1) A person, firm, association, or corporation may not act in the capacity of managing general agent with respect to risks located in this state for an insurer licensed in this state unless the person is a licensed producer in this state.

(2) A person, firm, association, or corporation may not act in the capacity of a managing general agent representing an insurer domiciled in this state with respect to risks located outside this state unless the person is licensed as a producer in this state pursuant to this chapter. The license may be a nonresident license.

(3) The commissioner may require a bond in an amount he finds acceptable for the protection of each insurer represented.

(4) The commissioner may require the managing general agent to maintain an errors and omissions policy or other security acceptable to the commissioner.

Section 84. Section **31A-23a-602**, which is renumbered from Section 31A-23-502 is renumbered and amended to read:

~~31A-23-502~~. 31A-23a-602. Required contract provisions.

A person, firm, association, or corporation acting in the capacity of a managing general agent may not place business with an insurer unless there is in force a written contract between the parties which sets forth the responsibilities of each party, and where both parties share responsibility for a particular function, the contract specifies the division of shared responsibilities. The written contract shall contain the following minimum provisions:

(1) The insurer may terminate the contract for cause upon written notice to the managing general agent. The insurer may suspend the underwriting authority of the managing general agent during the pendency of any dispute regarding the cause for termination.

(2) The managing general agent will render accounts to the insurer detailing all transactions and remit all funds due under the contract to the insurer at least monthly.

(3) All funds collected for the account of an insurer will be held by the managing general agent in a fiduciary capacity in a bank which is insured by the FDIC. This account shall be used for all payments on behalf of the insurer. The managing general agent may retain no more than three months estimated claims payments and allocated loss adjustment expenses.

(4) Separate records of business written by the managing general agent shall be maintained. The insurer shall have access and the right to copy all accounts and records related to its business and shall have access to all books, bank accounts, and records of the managing

general agent. The records shall be retained according to Section [~~31A-23-312~~] 31A-23a-412 and shall be kept in a form usable by the insurer and the commissioner.

(5) The contract may not be assigned in whole or part by the managing general agent.

(6) The insurer shall have the right to cancel or nonrenew any policy of insurance subject to the applicable laws and rules. The contract shall contain appropriate underwriting guidelines including:

- (a) the maximum annual premium volume;
- (b) the basis of the rates to be charged;
- (c) the types of risks which may be written;
- (d) maximum limits of liability;
- (e) applicable exclusions;
- (f) territorial limitations;
- (g) policy cancellation provisions; and
- (h) the maximum policy period.

(7) If the contract permits the managing general agent to settle claims on behalf of the insurer:

- (a) All claims must be reported to the company in a timely manner.
- (b) A copy of the claim file shall be sent to the insurer at its request, or as soon as it

becomes known that the claim:

(i) has the potential to exceed the lesser of an amount determined by the commissioner or the limit set by the company;

- (ii) involves a coverage dispute;
- (iii) may exceed the managing general agent's claims settlement authority;
- (iv) is open for more than six months; or

(v) is closed by payment the lesser of an amount set by the commissioner or an amount set by the company.

(c) All claim files will be the joint property of the insurer and managing general agent.

However, upon an order of liquidation of the insurer, the files become the sole property of the

insurer or its estate. The managing general agent shall have reasonable access to and the right to copy the files on a timely basis.

(d) Any settlement authority granted to the managing general agent may be terminated for cause upon the insurer's written notice to the managing general agent or upon the termination of the contract. The insurer may suspend the settlement authority during the pendency of any dispute regarding the cause for termination.

(8) Where electronic claims files are in existence, the contract must address the timely transmission of the data.

(9) If the contract provides for a sharing of interim profits by the managing general agent, and the managing general agent has the authority to determine the amount of the interim profits by establishing loss reserves, controlling claim payments, or in any other manner, interim profits may not be paid to the managing general agent until one year after they are earned for property insurance business, and five years after they are earned on casualty business, but not until the profits have been verified by a review conducted pursuant to Section ~~[31A-23-503]~~ 31A-23a-603.

(10) The managing general agent may not:

(a) bind reinsurance or retrocessions on behalf of the insurer, except that the managing general agent may bind facultative reinsurance contracts pursuant to obligatory facultative agreements if the contract with the insurer contains reinsurance underwriting guidelines including, for both reinsurance assumed and ceded, a list of reinsurers with which the automatic agreements are in effect, the coverages and amounts or percentages that may be reinsured, and commission schedules;

(b) commit the insurer to participate in insurance or reinsurance syndicates;

(c) appoint any producer without assuring that the producer is lawfully licensed to transact the type of insurance for which he is appointed;

(d) without prior approval of the insurer, pay or commit the insurer to pay a claim over a specified amount, net of reinsurance, which shall not exceed 1% of the insurer's policyholder's surplus as of December 31 of the last completed calendar year;

(e) collect any payment from a reinsurer or commit the insurer to any claim settlement with a reinsurer without prior approval of the insurer; if prior approval is given, a report must be promptly forwarded to the insurer;

(f) permit its subproducer to serve on the insurer's board of directors;

(g) jointly employ an individual who is employed with the insurer; or

(h) appoint a submanaging general agent.

Section 85. Section **31A-23a-603**, which is renumbered from Section 31A-23-503 is renumbered and amended to read:

~~[31A-23-503].~~ **31A-23a-603. Duties of insurers.**

(1) The insurer shall have on file an independent financial examination, in a form acceptable to the commissioner, of each managing general agent with which the insurer has done business.

(2) (a) If a managing general agent establishes loss reserves, the insurer shall annually obtain the opinion of an actuary attesting to the adequacy of loss reserves established for losses incurred and outstanding on business produced by the managing general agent.

(b) The requirement of Subsection (2)(a) is in addition to any other required loss reserve certification.

(3) The insurer shall at least semiannually conduct an on-site review of the underwriting and claims processing operations of the managing general agent.

(4) Binding authority for all reinsurance contracts or participation in insurance or reinsurance syndicates shall rest with an officer of the insurer, who may not be affiliated with the managing general agent.

(5) (a) Within 30 days after entering into or terminating a contract with a managing general agent, the insurer shall provide written notification of the appointment or termination to the commissioner.

(b) A notice of appointment of a managing general agent shall include:

(i) a statement of duties that the applicant is expected to perform on behalf of the insurer;

(ii) the lines of insurance for which the applicant is to be authorized to act; and

(iii) any other information the commissioner may request.

(6) (a) An insurer shall review the insurer's books and records each quarter to determine if any producer, as defined in Section ~~[31A-23-102]~~ 31A-1-301, has become a managing general agent as defined in Section ~~[31A-23-102]~~ 31A-23a-102.

(b) If the insurer determines that a producer has become a managing general agent:

(i) the insurer shall promptly notify the producer and the commissioner of the determination; and

(ii) the insurer and producer shall fully comply with the provisions of this chapter within 30 days.

(7) (a) An insurer may not appoint officers, directors, employees, subproducers, or controlling shareholders of the insurer's managing general agents to the insurer's board of directors.

(b) This Subsection (7) does not apply to relationships governed by:

(i) Chapter 16, Insurance Holding Companies; or

(ii) Chapter ~~[23]~~ 23a, Part ~~[6, Broker]~~ 7, Producer Controlled Insurers, if it applies.

Section 86. Section ~~31A-23a-604~~, which is renumbered from Section 31A-23-504 is renumbered and amended to read:

~~[31A-23-504].~~ 31A-23a-604. Examination authority.

The acts of the managing general agent are considered to be the acts of the insurer on whose behalf it is acting. A managing general agent may be examined as if it were the insurer.

Section 87. Section ~~31A-23a-605~~, which is renumbered from Section 31A-23-505 is renumbered and amended to read:

~~[31A-23-505].~~ 31A-23a-605. Penalties and liabilities.

(1) If the commissioner finds after a hearing that any person has violated any provision of this part, the commissioner may order:

(a) for each separate violation, a penalty in an amount of \$5,000;

(b) revocation or suspension of the producer's license; and

(c) the managing general agent to reimburse the insurer, the rehabilitator, or liquidator of

the insurer for any losses incurred by the insurer caused by the managing general agent's violation.

(2) Nothing contained in this section affects the right of the commissioner to impose any other penalties provided for in this title.

(3) Nothing contained in this part is intended to, or in any manner limits or restricts the rights of policyholders, claimants, and auditors.

Section 88. Section **31A-23a-701**, which is renumbered from Section 31A-23-601 is renumbered and amended to read:

Part 7. Producer Controlled Insurers

~~[31A-23-601].~~ **31A-23a-701. Applicability.**

(1) This part applies to licensed insurers, as defined in Section ~~[31A-23-102]~~ 31A-23a-102, that are domiciled:

- (a) in this state; or
- (b) in a state that does not have a substantially similar law.

(2) All provisions of Chapter 16, Insurance Holding Companies, to the extent they are not superseded by this part, continue to apply to all parties within holding company systems subject to this part.

Section 89. Section **31A-23a-702**, which is renumbered from Section 31A-23-602 is renumbered and amended to read:

~~[31A-23-602].~~ **31A-23a-702. Minimum standards.**

(1) This section applies if, in any calendar year, the aggregate amount of gross written premium on business placed with a controlled insurer by a controlling ~~[broker]~~ producer is equal to or greater than 5% of the admitted assets of the controlled insurer, as reported in the controlled insurer's quarterly statement filed as of September 30 of the prior year.

(2) Notwithstanding Subsection (1), this section does not apply if:

- (a) the controlling ~~[broker]~~ producer places insurance only with the controlled insurer, or only with the controlled insurer and members of the controlled insurer's holding company system, or with the controlled insurer's parent, affiliate, or subsidiary and receives no

compensation based upon the amount of premiums written in connection with the insurance placed;

(b) the controlling [broker] producer accepts insurance placements only from nonaffiliated [subbrokers] producers who are not controlling producers, and not directly from insureds; and

(c) the controlled insurer, except for insurance business written through a residual market facility, accepts insurance business only from a controlling [broker] producer, a [broker] producer controlled by the controlled insurer, or a [broker] producer that is a subsidiary of the controlled insurer.

(3) A controlled insurer may not accept business from a controlling [broker] producer and a controlling [broker] producer may not place business with a controlled insurer unless there is a written contract between the controlling [broker] producer and the insurer that specifies the responsibilities of each party and that has been approved by the board of directors of the insurer. The contract shall contain the following minimum provisions:

(a) The controlled insurer may terminate the contract for cause, upon written notice to the controlling [broker] producer. The controlled insurer shall suspend the authority of the controlling [broker] producer to write business during the pendency of any dispute regarding the cause for the termination.

(b) The controlling [broker] producer shall render accounts to the controlled insurer detailing all material transactions, including information necessary to support all commissions, charges, and other fees received by, or owing to, the controlling [broker] producer.

(c) The controlling [broker] producer shall remit all funds due under the terms of the contract to the controlled insurer at least monthly. The due date shall be fixed so that premiums or premium installments collected shall be remitted no later than 90 days after the effective date of any policy placed with the controlled insurer under the contract.

(d) All funds collected for the controlled insurer's account shall be held by the controlling [broker] producer in a fiduciary capacity, in one or more appropriately identified bank accounts in banks that are members of the Federal Reserve System FDIC, in accordance with applicable

provisions of this title. However, funds of a controlling ~~[broker]~~ producer not required to be licensed in this state shall be maintained in compliance with the requirements of the controlling ~~[broker's]~~ producer's domiciliary jurisdiction.

(e) The controlling ~~[broker]~~ producer shall maintain separately identifiable records of business written for the controlled insurer.

(f) The contract may not be assigned in whole or in part by the controlling ~~[broker]~~ producer.

(g) The controlled insurer shall provide the controlling ~~[broker]~~ producer with its underwriting standards, rules, procedures, and manuals setting forth the rates to be charged, and the conditions for the acceptance or rejection of risks. The controlling ~~[broker]~~ producer shall adhere to the standards, rules, procedures, rates, and conditions. The standards, rules, procedures, rates, and conditions shall be the same as those applicable to comparable business placed with the controlled insurer by a ~~[broker]~~ producer other than the controlling ~~[broker]~~ producer.

(h) The contract shall state the rates and terms of the controlling ~~[broker's]~~ producer's commissions, charges, or other fees and the purposes for those charges or fees. The rates of the commissions, charges, and other fees may not be greater than those applicable to comparable business and services placed with the controlled insurer by ~~[brokers]~~ producers other than controlling ~~[brokers]~~ producers. For purposes of ~~[this subsection and Subsection (g)]~~ Subsections (3)(g) and (h), examples of "comparable business and services" include the same lines of insurance, same kinds of insurance, same kinds of risks, similar policy limits, and similar quality of business.

(i) If the contract provides that the controlling ~~[broker]~~ producer, on insurance business placed with the insurer, is to be compensated contingent upon the insurer's profits on that business, then the compensation may not be determined and paid until at least five years after the premiums on liability insurance are earned, and at least one year after the premiums are earned on any other insurance. In no event may the commissions be paid until the adequacy of the controlled insurer's reserves on remaining claims has been independently verified pursuant to

Subsection [(3)] (5).

(j) The contract shall include a limit on the controlling [~~broker's~~] producer's writings in relation to the controlled insurer's surplus and total writings. The insurer may establish a different limit to each line or subline of business. The controlled insurer shall notify the controlling [~~broker~~] producer when the applicable limit is approached and shall not accept business from the controlling [~~broker~~] producer if the limit is reached. The controlling [~~broker~~] producer may not place business with the controlled insurer if it has been notified by the controlled insurer that the limit has been reached.

(k) The controlling [~~broker~~] producer may negotiate but may not bind reinsurance on behalf of the controlled insurer on business the controlling [~~broker~~] producer places with the controlled insurer. However, the controlling [~~broker~~] producer may bind facultative reinsurance contracts pursuant to obligatory facultative agreements if the contract with the controlled insurer contains underwriting guidelines including, for both reinsurance assumed and ceded, a list of reinsurers with which the automatic agreements are in effect, the coverages and amounts or percentages that may be reinsured, and commission schedules.

(4) Each controlled insurer shall have an audit committee of the board of directors. The audit committee shall annually meet to review the adequacy of the insurer's loss reserves. The committee shall meet with management, the insurer's independent certified public accountants, and an independent casualty actuary or any other independent loss reserve specialists acceptable to the commissioner.

(5) (a) In addition to any other required loss reserve certification, the controlled insurer shall file with the commissioner on April 1 of each year an opinion of an independent casualty actuary, or any other independent loss reserve specialist acceptable to the commissioner. The opinion shall report loss ratios for each line of business written and shall attest to the adequacy of loss reserves established for losses incurred and outstanding as of year-end on business placed by the producer including losses incurred but not reported.

(b) The controlled insurer shall annually report to the commissioner the amount of commissions paid to the [~~broker~~] producer, the percentage that amount represents of the net

premiums written, and comparable amounts and percentage paid to noncontrolling [~~brokers~~ producers] for placements of the same kinds of insurance.

Section 90. Section ~~31A-23a-703~~, which is renumbered from Section 31A-23-603 is renumbered and amended to read:

~~[31A-23-603].~~ 31A-23a-703. Disclosure.

The [~~broker~~] producer, prior to the effective date of the policy, shall deliver written notice to the prospective insured disclosing the relationship between the [~~broker~~] producer and the controlled insurer. However, if the business is placed through a [~~sub-broker~~] producer who is not a controlling [~~broker~~] producer, the controlling [~~broker~~] producer shall retain in his records a signed commitment from the [~~sub-broker~~] noncontrolling producer that the [~~sub-broker~~] noncontrolling producer is aware of the relationship between the insurer and the [~~broker~~] producer and that the [~~sub-broker~~] noncontrolling producer has, or will, notify the insured.

Section 91. Section ~~31A-23a-704~~, which is renumbered from Section 31A-23-604 is renumbered and amended to read:

~~[31A-23-604].~~ 31A-23a-704. Penalties.

(1) (a) If, after notice and opportunity to be heard, the commissioner finds that the controlling [~~broker~~] producer or any other person has not materially complied with this part, or any rule made or order issued under the part, the commissioner may order the controlling [~~broker~~] producer to cease placing business with the controlled insurer.

(b) If the commissioner finds that because of the material noncompliance that the controlled insurer or any policyholder of the controlled insurer has suffered any loss or damage, the commissioner may maintain a civil action or may intervene in an action brought by or on behalf of the insurer or policyholder for recovery of compensatory damages for the benefit of the insurer or policyholder or he may seek other appropriate relief.

(2) If an order for liquidation or rehabilitation of the controlled insurer has been entered pursuant to Title 31A, Chapter 27, Insurers Rehabilitation and Liquidation, and the receiver appointed under that order believes that the controlling [~~broker~~] producer or any other person has not materially complied with this part, or any rule made or order issued under this part, and the

insurer suffered any loss or damage as a result of the noncompliance, the receiver may maintain a civil action for recovery of damages or other appropriate sanctions for the benefit of the insurer.

(3) Nothing in this section affects the right of the commissioner to impose any other penalties provided for in this title.

(4) Nothing contained in this section is intended to or shall in any manner alter or affect the rights of policyholders, claimants, creditors, or other third parties.

Section 92. Section **31A-23a-801**, which is renumbered from Section 31A-23-701 is renumbered and amended to read:

Part 8. Reinsurance Intermediaries

~~[31A-23-701].~~ **31A-23a-801. Licensure.**

(1) A person, firm, association, or corporation may not act as a reinsurance intermediary-broker in this state if the reinsurance intermediary-broker maintains an office either directly or as a member or employee of a firm or association, or an officer, director, or employee of a corporation unless:

(a) in this state, the reinsurance intermediary-broker is a licensed producer in this state; or

(b) in another state, the reinsurance intermediary-broker is a licensed producer in this state or another state having a licensing law substantially similar to this part, or the reinsurance intermediary-broker is licensed in this state as a nonresident reinsurance intermediary.

(2) A person, firm, association, or corporation may not act as a reinsurance intermediary-manager:

(a) for a reinsurer domiciled in this state, unless the reinsurance intermediary-manager is a licensed producer in this state;

(b) in this state, if the reinsurance intermediary-manager maintains an office either directly or as a member or employee of a firm or association, or as an officer, director, or employee of a corporation in this state, unless the reinsurance intermediary-manager is a licensed producer in this state; or

(c) in another state for a nondomestic insurer, unless the reinsurance

intermediary-manager is a licensed producer in this state or another state having a licensing law substantially similar to this chapter, or the person is licensed in this state as a nonresident reinsurance intermediary.

(3) The commissioner may require a bond in an amount he finds acceptable for the protection of each reinsurer represented.

(4) (a) The commissioner may issue a reinsurance intermediary license to any person, firm, association, or corporation which has complied with the requirements of this chapter.

(i) Any license issued to a firm or association will authorize all the members of the firm or association, and any designated employees, to act as reinsurance intermediaries under the license. Each member, employee, or similar person shall be named in the application and any supplements to the application.

(ii) Any license issued to a corporation shall authorize all of the officers, directors, and any designated employees to act as reinsurance intermediaries on behalf of the corporation, and all authorized persons shall be named in the application and any supplements to the application.

(b) If the applicant for a reinsurance intermediary license is a nonresident, the applicant, as a condition precedent to receiving or holding a license, shall designate the commissioner as agent for service of process in the manner, and with the same legal effect, provided for by this title for designation of service of process upon unauthorized insurers. The applicant also shall furnish the commissioner with the name and address of a resident of this state upon whom notices or orders of the commissioner or process affecting the nonresident reinsurance intermediary may be served. The licensee shall promptly notify the commissioner in writing of every change in its designated agent for service of process, and the change does not become effective until acknowledged by the commissioner.

(5) The commissioner may refuse to issue a reinsurance intermediary license if he determines that the applicant, any one named on the application, or any member, principal, officer, or director of the applicant, is not trustworthy, or that any controlling person of the applicant is not trustworthy to act as a reinsurance intermediary, or that any of the persons named has given cause for revocation or suspension of the license, or has failed to comply with any

prerequisite for the issuance of the license. Upon written request the commissioner will furnish a summary of the basis for his refusal to issue a license. The summary document shall be confidential.

(6) Licensed attorneys-at-law of this state when acting in their professional capacity as attorneys are exempt from this section.

Section 93. Section **31A-23a-802**, which is renumbered from Section 31A-23-702 is renumbered and amended to read:

~~[31A-23-702].~~ **31A-23a-802. Required contract provisions -- Reinsurance intermediary-broker.**

Transactions between a reinsurance intermediary-broker and the insurer it represents in that capacity may only be entered into pursuant to a written authorization, which specifies the responsibilities of each party. The authorization shall, at a minimum, provide that the reinsurance intermediary-broker:

- (1) may have his authority terminated by the insurer at any time;
- (2) will render accounts to the insurer accurately detailing all material transactions, including information necessary to support all commissions, charges and other fees received by, or owing to the reinsurance intermediary-broker, and that he will remit all funds due to the insurer within 30 days of receipt;
- (3) shall hold, in a fiduciary capacity, all funds collected for the insurer's account in a ~~[bank]~~ financial institution, which is a qualified United States financial institution;
- (4) will comply with Section ~~[31A-23-703]~~ 31A-23a-803;
- (5) will comply with the written standards established by the insurer for the cession or retrocession of all risks; and
- (6) will disclose to the insurer any relationship with any reinsurer to which business will be ceded or retroceded.

Section 94. Section **31A-23a-803**, which is renumbered from Section 31A-23-703 is renumbered and amended to read:

~~[31A-23-703].~~ **31A-23a-803. Books and records -- Reinsurance**

intermediary-broker.

(1) For at least ten years after expiration of each contract of reinsurance transacted by the reinsurance intermediary-broker, he will keep a complete record for each transaction showing:

- (a) the type of contract, limits, underwriting restrictions, classes or risks, and territory;
- (b) the period of coverage, including the effective and expiration dates, cancellation provisions, and notice required of cancellation;
- (c) reporting and settlement requirements of balances;
- (d) the rate used to compute the reinsurance premium;
- (e) the names and addresses of assuming reinsurers;
- (f) the rates of all reinsurance commissions, including the commissions on any retrocessions handled by the reinsurance intermediary-broker;
- (g) related correspondence and memoranda;
- (h) proof of placement;
- (i) details regarding retrocessions handled by the reinsurance intermediary-broker, including the identity of retrocessionaires and percentage of each contract assumed or ceded;
- (j) financial records including premium and loss accounts; and
- (k) when the reinsurance intermediary-broker procures a reinsurance contract on behalf of a licensed ceding insurer:

(i) directly from any assuming reinsurer, written evidence that the assuming reinsurer has agreed to assume the risk; or

(ii) if placed through a representative of the assuming reinsurer, other than an employee, written evidence that the reinsurer has delegated binding authority to the representative.

(2) The insurer will have access and the right to copy and audit all accounts and records maintained by the reinsurance intermediary-broker related to its business in a form usable by the insurer.

Section 95. Section **31A-23a-804**, which is renumbered from Section 31A-23-704 is renumbered and amended to read:

[31A-23-704]. 31A-23a-804. Duties of insurers utilizing the services of a

reinsurance intermediary-broker.

(1) An insurer may not engage the services of any person, firm, association, or corporation to act as a reinsurance intermediary-broker on its behalf unless the person is licensed as required by Subsection [~~31A-23-701~~] 31A-23a-801(1).

(2) An insurer may not employ an individual who is employed by a reinsurance intermediary-broker with which it transacts business, unless the reinsurance intermediary-broker is under common control with the insurer and subject to Title 31A, Chapter 16, Insurance Holding Companies.

(3) The insurer shall annually obtain a copy of statements of the financial condition of each reinsurance intermediary-broker with which it transacts business.

Section 96. Section **31A-23a-805**, which is renumbered from Section 31A-23-705 is renumbered and amended to read:

~~[31A-23-705].~~ **31A-23a-805. Required contract provisions -- Reinsurance intermediary-manager.**

Transactions between a reinsurance intermediary-manager and the reinsurer it represents in that capacity may only be entered into pursuant to a written contract, which specifies the responsibilities of each party, and which shall be approved by the reinsurer's board of directors. At least 30 days before the reinsurer assumes or cedes business through the producer, a true copy of the approved contract shall be filed with the commissioner for approval. The contract shall, at a minimum, provide or require the following:

(1) The reinsurer may terminate the contract for cause upon written notice to the reinsurance intermediary-manager. The reinsurer may immediately suspend the authority of the reinsurance intermediary-manager to assume or cede business during the pendency of any dispute regarding the cause for termination.

(2) The reinsurance intermediary-manager will render accounts to the reinsurer accurately detailing all material transactions, including information necessary to support all commissions, charges, and other fees received by, or owing to the reinsurance intermediary-manager, and he shall remit all funds due under the contract to the reinsurer at least

monthly.

(3) All funds collected for the reinsurer's account will be held by the reinsurance intermediary-manager in a fiduciary capacity in a ~~[bank]~~ financial institution which is a qualified United States financial institution. The reinsurance intermediary-manager may retain no more than three months estimated claims payments and allocated loss adjustment expenses. The reinsurance intermediary-manager shall maintain a separate ~~[bank]~~ account for each reinsurer that it represents.

(4) For at least ten years after expiration of each contract of reinsurance transacted by the reinsurance intermediary-manager, he shall keep a complete record for each transactions showing:

- (a) the type of contract, limits, underwriting restrictions, classes of risks, and territory;
- (b) period of coverage, including effective and expiration dates, cancellation provisions and notice required of cancellation, and disposition of outstanding reserves on covered risks;
- (c) reporting and settlement requirements of balances;
- (d) rates used to compute the reinsurance premium;
- (e) names and addresses of reinsurers;
- (f) rates of all reinsurance commissions, including the commissions on any retrocessions handled by the reinsurance intermediary-manager;
- (g) related correspondence and memoranda;
- (h) proof of placement;
- (i) details regarding retrocessions handled by the reinsurance intermediary-manager, as permitted by Subsection ~~[31A-23-707]~~ 31A-23a-807(4), including the identity of retrocessionaires and percentage of each contract assumed or ceded;
- (j) financial records, including premium and loss accounts; and
- (k) when the reinsurance intermediary-manager places a reinsurance contract on behalf of a ceding insurer:
 - (i) directly from any assuming reinsurer, written evidence that the assuming reinsurer has agreed to assume the risk; or

(ii) if placed through a representative of the assuming reinsurer, other than an employee, written evidence that the reinsurer has delegated binding authority to the representative.

(5) The reinsurer will have access and the right to copy all accounts and records maintained by the reinsurance intermediary-manager which are related to its business, in a form usable by the reinsurer.

(6) The contract cannot be assigned in whole or in part by the reinsurance intermediary-manager.

(7) The reinsurance intermediary-manager will comply with the written underwriting and rating standards established by the insurer for the acceptance, rejection, or cession of all risks.

(8) The contract shall set forth the rates, terms, and purposes of commissions, charges, and other fees which the reinsurance intermediary-manager may levy against the reinsurer.

(9) If the contract permits the reinsurance intermediary-manager to settle claims on behalf of the reinsurer:

(a) All claims will be reported to the reinsurer in a timely manner.

(b) A copy of the claim file will be sent to the reinsurer at its request or as soon as it becomes known that the claim:

(i) has the potential to exceed the lesser of an amount determined by the commissioner or the limit set by the reinsurer;

(ii) involves a coverage dispute;

(iii) may exceed the reinsurance intermediary-manager claims settlement authority;

(iv) is open for more than six months; or

(v) is closed by payment of the lesser of an amount set by the commissioner or an amount set by the reinsurer.

(c) All claim files will be the joint property of the reinsurer and reinsurance intermediary-manager. However, upon an order of liquidation of the reinsurer the files shall become the sole property of the reinsurer or its estate. The reinsurance intermediary-manager shall have reasonable access to and the right to copy the files on a timely basis.

(d) Any settlement authority granted to the reinsurance intermediary-manager may be

terminated for cause upon the reinsurer's written notice to the reinsurance intermediary-manager, or upon the termination of the contract. The reinsurer may suspend the settlement authority during the pendency of the dispute regarding the cause of termination.

(10) If the contract provides for a sharing of interim profits by the reinsurance intermediary-manager, that the contract shall provide interim profits will not be paid until one year after the end of each underwriting period for property business and five years after the end of each underwriting period for casualty business, or a later time period set by the commissioner for specified lines of insurance, and not until the adequacy of reserves on remaining claims has been verified pursuant to Subsection [~~31A-23-707~~] 31A-23a-807(3).

(11) The reinsurance intermediary-manager will annually provide the reinsurer with a statement of its financial condition prepared by an independent certified public accountant.

(12) The reinsurer shall at least semi-annually conduct an on-site review of the underwriting and claims processing operations of the reinsurance intermediary-manager.

(13) The reinsurance intermediary-manager will disclose to the reinsurer any relationship it has with any insurer prior to ceding or assuming any business with the insurer pursuant to this contract.

(14) Within the scope of its actual or apparent authority the acts of the reinsurance intermediary-manager shall be considered to be the acts of the reinsurer on whose behalf it is acting.

Section 97. Section **31A-23a-806**, which is renumbered from Section 31A-23-706 is renumbered and amended to read:

~~[31A-23-706].~~ **31A-23a-806. Prohibited acts.**

(1) The reinsurance intermediary-manager may not cede retrocessions on behalf of the reinsurer, except that the reinsurance intermediary-manager may cede facultative retrocessions pursuant to obligatory facultative agreements if the contract with the reinsurer contains reinsurance underwriting guidelines for facultative retrocessions. The guidelines shall include a list of reinsurers with which automatic agreements are in effect, and for each listed reinsurer, the coverages and amounts or percentages that may be reinsured, and commission schedules.

(2) The reinsurance intermediary-manager may not commit the reinsurer to participate in reinsurance syndicates.

(3) The reinsurance intermediary-manager may not appoint any producer without assuring that the producer is lawfully licensed to transact the type of reinsurance for which he is appointed.

(4) The reinsurance intermediary-manager may not, without prior approval of the reinsurer, pay or commit the reinsurer to pay a claim, net of retrocessions, that exceeds the lesser of an amount specified by the reinsurer or 1% of the reinsurer's policyholder's surplus as of December 31 of the last complete calendar year.

(5) The reinsurance intermediary-manager may not collect any payment from a retrocessionaire or commit the reinsurer to any claim settlement with a retrocessionaire, without prior approval of the reinsurer. If prior approval is given, a report must be promptly forwarded to the reinsurer.

(6) The reinsurance intermediary-manager may not jointly employ an individual who is employed by the reinsurer unless the reinsurance intermediary-manager is under common control with the reinsurer subject to Title 31A, Chapter 16, Insurance Holding Companies.

(7) The reinsurance intermediary-manager may not appoint a subreinsurance intermediary-manager.

Section 98. Section **31A-23a-807**, which is renumbered from Section 31A-23-707 is renumbered and amended to read:

~~[31A-23-707].~~ **31A-23a-807.** **Duties of reinsurers utilizing the services of reinsurance.**

(1) A reinsurer may not engage the services of any person, firm, association, or corporation to act as a reinsurance intermediary-manager on its behalf unless the person is licensed as required by Subsection ~~[31A-23-707]~~ 31A-23a-801(2).

(2) The reinsurer shall annually obtain a copy of statements of the financial condition of each reinsurance intermediary-manager which the reinsurer has engaged, which shall be prepared by an independent certified public accountant in a form acceptable to the commissioner.

(3) If a reinsurance intermediary-manager establishes loss reserves, the reinsurer shall annually obtain the opinion of an actuary attesting to the adequacy of loss reserves established for losses incurred and outstanding on business produced by the reinsurance intermediary-manager. The actuary's opinion shall be in addition to any other required loss reserve certification.

(4) Binding authority for all retrocessional contracts or participation in reinsurance syndicates shall rest with an officer of the reinsurer, who may not be affiliated with the reinsurance intermediary-manager.

(5) Within 30 days of termination of a contract with a reinsurance intermediary-manager, the reinsurer shall provide written notification of the termination to the commissioner.

(6) A reinsurer may not appoint to its board of directors, any officer, director, employee, controlling shareholder, or subproducer of its reinsurance intermediary-manager. This subsection does not apply to relationships governed by Title 31A, Chapter 16, Insurance Holding Companies, or Chapter ~~[23]~~ 23a, Part ~~[6, Broker]~~ 7, Producer Controlled Insurers, if it applies.

Section 99. Section ~~31A-23a-808~~, which is renumbered from Section 31A-23-708 is renumbered and amended to read:

~~[31A-23-708].~~ **31A-23a-808. Examination authority.**

(1) A reinsurance intermediary shall be subject to examination by the commissioner. The commissioner shall have access to all books, bank accounts, and records of the reinsurance intermediary, which shall be kept in a form usable to the commissioner.

(2) A reinsurance intermediary-manager may be examined as if it were the reinsurer.

Section 100. Section ~~31A-23a-809~~, which is renumbered from Section 31A-23-709 is renumbered and amended to read:

~~[31A-23-709].~~ **31A-23a-809. Penalties and liabilities.**

(1) A reinsurance intermediary, insurer, or reinsurer found by the commissioner, after a hearing conducted in accordance with Title 63, Chapter 46b, Administrative Procedures Act, to be in violation of any provisions of this title, shall:

- (a) for each separate violation, pay a civil penalty in an amount not exceeding \$5,000;
- (b) be subject to revocation or suspension of its license; and

(c) if a violation was committed by the reinsurance intermediary, the reinsurance intermediary shall make restitution to the insurer, reinsurer, rehabilitator, or liquidator of the insurer or reinsurer for the net losses incurred by the insurer or reinsurer attributable to the violation.

(2) Nothing contained in this section affects the right of the commissioner to impose any other penalties provided in this title.

(3) Nothing contained in this part is intended to, or in any manner limits or restricts the rights of policyholders, claimants, creditors, or other third parties; nor does it confer any rights to such persons.

Section 101. Section **31A-26-201** is amended to read:

31A-26-201. Requirement of license.

(1) Except as provided in Subsection (2), no person may perform, offer to perform, or solicit the opportunity to perform any act of insurance adjusting without a valid license under Section 31A-26-203; and no person may use the insurance adjusting services of another if the person knows or should know that the one providing these services does not have a license as required by law.

(2) The following are exempt from the license requirement of Subsection (1), when acting in the indicated capacities:

(a) a person engaged in insurance adjusting as a regular salaried employee of, and not an independent contractor for, an insurer;

(b) an arbitrator or an umpire selected by the claimant and insurer to decide, alone or with others, whether a claim should be paid and how much should be paid;

(c) an attorney at law acting in an attorney-client relationship;

(d) an insurance ~~[agent]~~ producer, but only as to the classes of insurance for which he is licensed under Section ~~[31A-23-204]~~ 31A-23a-106 and only as to claims adjusted on the request of an insurer for which he is ~~[an agent]~~ a producer;

(e) a regular salaried employee of, and not an independent contractor for, a policyholder or claimant under an insurance policy;

(f) an employee of a licensed insurance adjuster who provides only administrative or clerical assistance;

(g) person who does not do insurance adjusting under Section 31A-26-102, but who is specially employed to obtain facts about a loss for or furnish technical assistance to a licensed adjuster or a company adjuster, including a photographer, estimator or appraiser, marine surveyor, private detective, engineer, and handwriting expert;

(h) a holder of a group insurance policy, with respect to administrative activities in connection with that policy, who receives no compensation for his services beyond the actual expenses estimated on a reasonable basis;

(i) a person engaged in insurance adjusting as a regular salaried employee of, and not an independent contractor for, an administrator licensed under Chapter 25; and

(j) a person who gives advice or assistance without compensation or expectation of compensation, direct or indirect.

(3) No claim settlement between an insurer and an insured or a claimant under an insurance contract is invalid as a result of a violation of this section.

Section 102. Section **31A-27-103** is amended to read:

31A-27-103. Jurisdiction and venue.

(1) Except as provided in Subsection (2), a delinquency proceeding may not be commenced under this chapter by anyone other than the Utah commissioner.

(2) (a) Three or more judgment creditors holding unrelated judgments against an insurer, which judgments aggregate more than \$5,000 in excess of any security held by those creditors may commence proceedings against the insurer under the conditions and in the manner prescribed in this Subsection (2), by serving notice upon the commissioner and the insurer of intention to file a petition for liquidation under Section 31A-27-307 or 31A-27-402.

(b) Each of the judgments described in Subsection (2)(a):

(i) shall have been rendered against the insurer by a Utah court having jurisdiction over the subject matter and the insurer;

(ii) shall have been entered more than 60 days before the service of notice under

Subsection (2)(a);

(iii) may not have been satisfied in full;

(iv) may not be the subject of a valid contract between the insurer and any judgment creditor for payment of the judgment, unless that contract has been breached by the insurer;

(v) may not be a judgment assigned in order to institute proceedings under this

Subsection (2); and

(vi) may not be a judgment on which an appeal or review is pending or may yet be brought.

(c) If any one of the judgments in favor of a petitioning creditor remains unpaid for 30 days after service of the notice under Subsection (2)(a), and the commissioner has not then filed a petition for liquidation:

(i) the creditor may file a verified petition for liquidation of the insurer:

(A) in the manner prescribed by Section 31A-27-307 or 31A-27-402; and

(B) alleging the conditions stated in this Subsection (2); and

(ii) the commissioner shall be served and joined in the action.

(3) Except in accordance with this chapter, a court of this state does not have jurisdiction to entertain, hear, or determine any complaint praying for:

(a) the dissolution, liquidation, rehabilitation, sequestration, conservation, or receivership of any insurer; or

(b) an injunction or restraining order or other relief preliminary to, incidental to, or relating to the type of proceedings described in Subsection (3)(a).

(4) (a) Venue for proceedings arising under this chapter shall be laid initially as specified in the sections providing for those proceedings.

(b) All other actions and proceedings initiated by the receiver may be commenced and tried where:

(i) the delinquency proceedings are then pending; or

(ii) venue would be laid by applicable Utah law.

(c) All other actions and proceedings against the receiver shall be commenced and tried

in the county where the delinquency proceedings are pending.

(d) Upon motion of any party, venue may be changed by order of the court or the presiding judge of the court to any other district court in Utah, whenever the convenience of the parties and witnesses and the ends of justice require it.

(e) This Subsection (4) relates only to venue and is not jurisdictional.

(5) In addition to other grounds for jurisdiction provided by the law of Utah, a Utah court having jurisdiction of the subject matter has jurisdiction over a person properly served in an action brought by the receiver of a domestic insurer or an alien insurer domiciled in Utah:

(a) if the person served is obligated to the insurer in any way as an incident to any agency or brokerage arrangement that may exist or has existed between them, in any action on or incident to the obligation;

(b) if the person served is a reinsurer who has at any time written a policy of reinsurance for an insurer against which a rehabilitation or liquidation order is in effect when the action is commenced;

(c) if the person served is ~~[an agent of or broker]~~ a producer for the reinsurer described in Subsection (5)(b), in any action on or incident to the reinsurance contract; or

(d) if the person served is or has been an officer, manager, trustee, organizer, promoter, or person in a position of comparable authority or influence in an insurer against which a rehabilitation or liquidation order is in effect when the action is commenced, in any action resulting from the relationship with the insurer.

(6) (a) Subject to Sections 31A-27-305 and 31A-27-317, the court in which a delinquency proceeding is pending has exclusive jurisdiction for:

(i) all actions and proceedings brought against the receiver of a rehabilitation or liquidation estate of the insurer; or

(ii) any action or proceeding in any way related to a rehabilitation or liquidation estate of an insurer.

(b) An action described in Subsection (6)(a) shall be commenced and tried in the court having exclusive jurisdiction.

(7) If the court on the motion of any party finds that any action commenced under Subsection (5) should, as a matter of substantial justice, be tried in a forum outside Utah, the court may enter an order to stay further proceedings on the action in Utah.

Section 103. Section **31A-27-316** is amended to read:

31A-27-316. Duties of producers.

Any [~~agent or broker~~] producer doing business with an insurer subject to a liquidation order shall, upon the liquidator's request, provide the liquidator with information in the [~~agent or broker's~~] producer's possession relative to the policyholders of the insurer who is subject to the liquidation order. The commissioner's request under this section shall impose a time limit within which the requested information shall be provided. This time limit may not be less than five working days.

Section 104. Section **31A-27-324** is amended to read:

31A-27-324. Recovery of premiums owed.

(1) An insured is obligated to pay any unpaid earned premium due the insurer at the time of the termination of coverage under Subsection 31A-27-311(1).

(2) Any person other than the insured who is responsible for the payment of a premium is obligated to pay any unpaid premium, including the amount representing the commission for the full policy term due the insurer at the time of the termination of coverage under Subsection 31A-27-311(1), whether earned or unearned, as shown on the records of the insurer. Credits or setoffs may not be allowed to [~~an agent, broker~~] a producer, or premium finance company for any amounts advanced to the insurer by the [~~agent, broker,~~] producer or premium finance company on behalf of, but in the absence of a payment by, the insured.

Section 105. Section **31A-30-104** is amended to read:

31A-30-104. Applicability and scope.

- (1) This chapter applies to any:
 - (a) health benefit plan that provides coverage to:
 - (i) individuals;
 - (ii) small employers; or

(iii) both Subsections (1)(a)(i) and (ii); or

(b) individual conversion policy for purposes of Sections 31A-30-106.5 and 31A-30-107.5.

(2) This chapter applies to a health benefit plan that provides coverage to small employers or individuals regardless of:

(a) whether the contract is issued to:

(i) an association;

(ii) a trust;

(iii) a discretionary group; or

(iv) other similar grouping; or

(b) the situs of delivery of the policy or contract.

(3) This chapter does not apply to:

(a) a large employer health benefit plan; or

(b) short-term limited duration health insurance.

(4) (a) Except as provided in Subsection (4)(b), for the purposes of this chapter:

(i) carriers that are affiliated companies or that are eligible to file a consolidated tax return shall be treated as one carrier; and

(ii) any restrictions or limitations imposed by this chapter shall apply as if all health benefit plans delivered or issued for delivery to covered insureds in this state by the affiliated carriers were issued by one carrier.

(b) Upon a finding of the commissioner, an affiliated carrier that is a health maintenance organization having a certificate of authority under this title may be considered to be a separate carrier for the purposes of this chapter.

(c) Unless otherwise authorized by the commissioner, a covered carrier may not enter into one or more ceding arrangements with respect to health benefit plans delivered or issued for delivery to covered insureds in this state if the ceding arrangements would result in less than 50% of the insurance obligation or risk for the health benefit plans being retained by the ceding carrier.

(d) Section 31A-22-1201 applies if a covered carrier cedes or assumes all of the insurance obligation or risk with respect to one or more health benefit plans delivered or issued for delivery to covered insureds in this state.

(5) (a) A Taft Hartley trust created in accordance with Section 302(c)(5) of the Federal Labor Management Relations Act, or a carrier with the written authorization of such a trust, may make a written request to the commissioner for a waiver from the application of any of the provisions of Subsection 31A-30-106(1) with respect to a health benefit plan provided to the trust.

(b) The commissioner may grant a trust or carrier described in Subsection (5)(a) a waiver if the commissioner finds that application with respect to the trust would:

- (i) have a substantial adverse effect on the participants and beneficiaries of the trust; and
- (ii) require significant modifications to one or more collective bargaining arrangements under which the trust is established or maintained.

(c) A waiver granted under this Subsection (5) may not apply to an individual if the person participates in a Taft Hartley trust as an associate member of any employee organization.

(6) Sections 31A-30-106, 31A-30-106.5, 31A-30-106.7, 31A-30-107, 31A-30-108, and 31A-30-111 apply to:

(a) any insurer engaging in the business of insurance related to the risk of a small employer for medical, surgical, hospital, or ancillary health care expenses of the small employer's employees provided as an employee benefit; and

(b) any contract of an insurer, other than a workers' compensation policy, related to the risk of a small employer for medical, surgical, hospital, or ancillary health care expenses of the small employer's employees provided as an employee benefit.

(7) The commissioner may make rules requiring that the marketing practices be consistent with this chapter for:

- (a) a small employer carrier;
- (b) a small employer carrier's agent;
- (c) an insurance [~~broker~~] producer; and

(d) an insurance consultant.

Section 106. Section **31A-35-102** is amended to read:

31A-35-102. Definitions.

As used in this chapter:

(1) "Bail bond" means a bond for a specified monetary amount that is:

(a) executed by a bail bond ~~[agent]~~ producer licensed in accordance with Section 31A-35-401; and

(b) issued to a court, magistrate, or authorized officer as security for the subsequent court appearance of the defendant upon the defendant's release from actual custody pending the appearance.

(2) "Bail bond ~~[agent]~~ producer" means an individual who:

(a) is appointed by:

(i) a surety insurer that issues bail bonds; or

(ii) a bail bond surety company licensed under this chapter;

(b) is appointed to execute or countersign undertakings of bail in connection with judicial proceedings; and

(c) receives or is promised money or other things of value for engaging in an act described in Subsection (2)(b).

(3) "Bail bond surety" means a person that:

(a) (i) is a bail bond surety company licensed under this chapter; or

(ii) a surety insurer; and

(b) issues bonds to secure:

(i) the release of a person from incarceration; and

(ii) the appearance of that person at court hearings.

(4) "Bail bond surety company" means any sole proprietor or entity who:

(a) (i) is the agent of a surety insurer that issues a bail bond in connection with judicial proceedings;

(ii) pledges the assets of a letter of credit from a Utah depository institution for a bail

bond in connection with judicial proceedings; or

(iii) pledges personal or real property, or both, as security for a bail bond in connection with judicial proceedings; and

(b) receives or is promised money or other things of value for a service described in Subsection (4)(a).

(5) "Bail enforcement agent" means an individual who:

(a) is employed or contracted with to:

(i) enforce the terms and conditions of a defendant's release on bail in a civil or criminal proceeding;

(ii) apprehend a defendant or surrender a defendant to custody; or

(iii) both Subsections (5)(a)(i) and (ii); and

(b) receives or is promised monies or other things of value for the services described in Subsection (5)(a).

(6) "Board" means the Bail Bond Surety Oversight Board created in Section 31A-35-201.

(7) "Certificate" means a certificate of authority issued under this chapter to allow an insurer to operate as a surety insurer.

(8) "Indemnitor" means an entity or natural person who enters into an agreement with a bail bond surety to hold the bail bond surety harmless from loss incurred as a result of executing a bail bond.

(9) "Liquid assets" means financial holdings that can be converted into cash in a timely manner without the loss of principal.

(10) "Principal" means an individual or corporation whose performance is guaranteed by bond.

(11) "Surety insurer" means an insurer that:

(a) is licensed under Chapter 4, 5, or 14;

(b) receives a certificate under this title; and

(c) issues bail bonds.

(12) "Utah depository institution" is a depository institution, as defined in Section

7-1-103, that:

- (a) has Utah as its home state; or
- (b) operates a branch in Utah.

Section 107. Section **31A-35-301** is amended to read:

31A-35-301. The commissioner's authority.

- (1) The commissioner shall:
 - (a) make rules as necessary for the administration of this chapter;
 - (b) with information as provided by the board, issue or deny licensure under this chapter;
 - (c) take action regarding a license, including suspension or revocation; and
 - (d) maintain and publish a current list of licensed bail bond surety companies and ~~[agents]~~ producers.
- (2) The commissioner may establish fees for the issuance, renewal, and reinstatement of a bail bond surety company license in accordance with Section 63-38-3.2.

Section 108. Section **31A-35-401** is amended to read:

31A-35-401. Requirement for license or certificate of authority -- Process -- Fees -- Limitations.

- (1) (a) A person may not engage in the bail bond surety insurance business unless that person:
 - (i) is a bail bond surety company licensed under this chapter;
 - (ii) is a surety insurer that is granted a certificate under this section in the same manner as other insurers doing business in this state are granted certificates of authority under this title; or
 - (iii) is a bail bond ~~[agent]~~ producer licensed in accordance with this section.
 - (b) A bail bond surety company shall be licensed under this chapter as an agency.
 - (c) A bail bond ~~[agent]~~ producer shall be licensed under Chapter ~~[23]~~ 23a, Insurance Marketing - Licensing Producers, Consultants, and Reinsurance Intermediaries, as ~~[an agent]~~ a limited lines producer.
- (2) A person applying for a bail bond surety company license under this chapter shall submit to the commissioner:

- (a) a completed application form as prescribed by the commissioner;
 - (b) a fee as determined by the commissioner in accordance with Section 63-38-3.2; and
 - (c) any additional information required by rule.
- (3) Fees required under this section are not refundable.
- (4) Fees collected from a bail bond surety company shall be deposited in a restricted account created in Section 31A-35-407.
- (5) (a) A bail bond surety company shall be domiciled in Utah.
- (b) A bail bond [~~agent~~] producer shall be a resident of Utah.
- (c) A foreign surety insurer that is granted a certificate to issue bail bonds may only issue bail bonds through a bail bond surety company licensed under this chapter.

Section 109. Section **31A-35-402** is amended to read:

31A-35-402. Authority related to bail bonds.

- (1) A bail bond surety company may only issue bail bonds.
- (2) [~~A~~] In accordance with Section 31A-23a-205, a bail bond [~~agent~~] producer may not execute or issue a bail bond in this state without holding a current appointment from a bail bond surety or current designation from a bail bond company.
- (3) A bail bond surety may not allow any person who is not a bail bond [~~agent~~] producer to engage in the bail bond surety business on the bail bond surety's behalf, except for individuals:
- (a) employed solely for the performance of clerical, stenographic, investigative, or other administrative duties that do not require a license as:
 - (i) a bail bond surety company; or
 - (ii) a bail bond [~~agent~~] producer; and
 - (b) whose compensation is not related to or contingent upon the number of bonds written.

Section 110. Section **31A-35-403** is amended to read:

31A-35-403. Exemptions to licensing requirements.

This chapter does not affect the negotiation through a licensed [~~broker or agent~~] producer for, or the execution or delivery of, an undertaking of bail executed by an insurer for its insured

under a policy of automobile insurance or of liability insurance upon the automobile of the insured.

Section 111. Section **31A-35-502** is amended to read:

31A-35-502. Notification of violation of chapter.

If the commissioner has reason to believe a person licensed as a bail bond surety company or a bail bond [agent] producer has violated this chapter, written notice shall be sent to that person, advising the person of:

- (1) the alleged violation;
- (2) the commissioner's authority to take action against the person's license;
- (3) the person's right to an administrative hearing under Title 63, Chapter 46b, Administrative Procedures Act; and
- (4) the period of time within which the hearing described in Subsection (3) shall be requested if the person requests a hearing.

Section 112. Section **31A-35-503** is amended to read:

31A-35-503. Disciplinary action -- Hearing -- Appeal.

(1) Based on information the commissioner receives during a hearing described in Section 31A-35-502 regarding a person licensed as a bail bond surety company or bail bond [agent] producer, the commissioner may:

- (a) dismiss the complaint if the commissioner finds it is without merit;
 - (b) fix a period and terms of probation best adopted to educate the person;
 - (c) place the license on suspension for a period of not more than 12 months; or
 - (d) revoke the license.
- (2) The commissioner shall advise the person described in Subsection (1) in writing of:
- (a) the commissioner's findings based on the hearing; and
 - (b) the person's rights of appeal under this chapter.

(3)(a) Unless the conditions of Subsection (3)(b) are met, if a bail bond surety company license is suspended or revoked under this chapter, a member, employee, officer, or director of that corporation may not:

(i) be licensed as a bail bond surety company or bail bond ~~[agent]~~ producer; or
(ii) be designated in any license to exercise authority under this chapter during the period of the suspension or revocation.

(b) Subsection (3)(a) does not apply if the commissioner determines upon substantial evidence that the member, employee, officer, or director:

(i) was not personally at fault; and
(ii) did not acquiesce in the matter on account of which the license was suspended or revoked.

Section 113. Section **31A-35-601** is amended to read:

31A-35-601. Acts of agent.

(1) As used in this section[;]:

(a) "Bail recovery agent" means an individual employed by a bail enforcement agent to assist the bail enforcement agent regarding civil or criminal defendants released on bail by:

(i) presenting a defendant for required court appearances;
(ii) apprehending or surrendering a defendant to a court; or
(iii) keeping the defendant under necessary surveillance.

(b) "Bail recovery apprentice" means an individual who:

(i) is employed by a bail enforcement agent; and
(ii) works under the direct supervision of that bail enforcement agent or under the direct supervision of a bail recovery agent employed also by the bail enforcement agent, unless the bail recovery apprentice is conducting activities at the direction of the employing bail enforcement agent that do not require direct supervision.

(2) The acts or conduct of any bail bond ~~[agent]~~ producer or bail enforcement agent, bail recovery agent, or bail recovery apprentice who acts within the scope of the authority delegated to him by the bail bond surety, are considered to be the acts or conduct of the bail bond surety for which the bail bond ~~[agent]~~ producer or bail bond enforcement agent, bail recovery agent, or bail recovery apprentice is acting as agent.

(3) The acts or conduct of any bail bond ~~[agent]~~ producer or bail enforcement agent, bail

recovery agent, or bail recovery apprentice who acts within the scope of the authority delegated to him by the bail bond [agent] producer are considered to be the acts or conduct of the bail bond [agent] producer for which the bail enforcement agent is acting as agent.

Section 114. Section **31A-35-603** is amended to read:

31A-35-603. Collateral security.

(1) A bail bond [agent] producer may accept collateral security in connection with a bail transaction, if the collateral security is reasonable in relation to the face amount of the bail bond.

(2) (a) The collateral security described in Subsection (1) shall be received by the bail bond [agent] producer in the bail bond [agent's] producer's fiduciary capacity.

(b) Before any judgment of forfeiture of bail, the bail bond [agent] producer shall keep the collateral separate and apart from any other funds or assets of the licensee.

(3) (a) Any collateral that is deposited with a bail bond [agent] producer or bail bond surety shall be returned to the person who deposited it within ten days after the return is requested by the person who deposited it if:

(i) the bail bond has been exonerated; and

(ii) all fees owed to the bail bond [agent] producer or bail bond surety have been paid.

(b) A certified copy of the minute order from the court stating the bail or undertaking was ordered exonerated is prima facie evidence of exoneration or termination of liability.

(4) (a) If a bail bond [agent] producer accepts collateral, the bail bond [agent] producer shall give a written receipt for the collateral.

(b) The receipt required by Subsection (4)(a) shall include a fully detailed account of the collateral received.

(5) Upon return of collateral to the person who posted it, if any amount has been deducted by the bail bond surety or bail bond [agent] producer as expense, the bail bond surety or bail bond [agent] producer shall:

(a) include with the returned collateral an itemized statement of all expenses deducted from the collateral; and

(b) maintain a copy of the statement required by Subsection (5)(a) in the records of the

bail bond surety or bail bond [agent] producer.

(6) If the bail bond secured by the collateral is forfeited and the bail bond [agent] producer or bail bond surety retains possession of the collateral in payment of the forfeiture or otherwise disposes of the collateral, the person retaining possession or disposing of the property shall maintain a written record of the collateral, including any disposition.

(7) (a) If a document that conveys title to real property is used as collateral in a bail bond transaction, the document shall state on its face that it is executed as part of a security transaction.

(b) If the document described in Subsection (7)(a) is recorded, the bail bond [agent] producer or the bail bond surety shall:

(i) execute a reconveyance of the property, executed so that the reconveyance can be recorded; and

(ii) promptly deliver the reconveyance document to:

(A) the person executing the original conveyance; or

(B) the heirs, legal representative, or successor in interest of the person described in Subsection (7)(b)(ii)(A).

Section 115. Section **31A-35-604** is amended to read:

31A-35-604. Records.

(1) A bail bond [agent] producer shall maintain at the bail bond [agent's] producer's place of business:

(a) records of all bail bonds the bail bond [agent] producer executes or countersigns, so the public may obtain all necessary information concerning those bail bonds for at least one year after the liability of the bail bond surety has been terminated; and

(b) any additional information the commissioner may reasonably require by rule.

(2) Records required to be maintained under Subsection (1) shall be available for examination by the commissioner or the commissioner's representatives during regular business hours.

(3) The bail bond surety company shall maintain for three years after receipt all records

of any bail bond executed or countersigned by a bail bond [agent] producer appointed by the bail bond surety company.

Section 116. Section **31A-35-605** is amended to read:

31A-35-605. Guarantors -- Agreement and enforcement.

(1) All agreements of persons to act as guarantor for a bail bond shall be in writing or reduced to writing as soon as possible after completion.

(2) When a person executes an agreement to act as a guarantor, the bail bond surety company or the bail bond [agent] producer shall deliver to that person a copy of the agreement promptly upon that person's execution of the agreement.

(3) A bail bond [agent] producer may not enforce any guarantor agreement without disclosing to the guarantor all collateral held by the bail bond [agent] producer indemnifying the bond to which the agreement relates, and the identity of each other guarantor.

Section 117. Section **31A-35-606** is amended to read:

31A-35-606. Bail agreement prior to commission of offense prohibited.

A bail bond surety or bail bond [agent] producer may not enter into an agreement or arrangement with any person, guaranteeing or assuring in advance of the commission of any offense that bail will be furnished to that person or any other party if arrested.

Section 118. Section **31A-35-608** is amended to read:

31A-35-608. Premiums and authorized charges.

(1) A bail bond surety or bail bond [agent] producer may not, in any bail transaction or in connection with that transaction, directly or indirectly, charge or collect money or other valuable consideration from any person except to:

- (a) pay the premium on the bail at the rates established by the bail bond surety;
- (b) provide collateral;
- (c) reimburse himself for actual expenses, as described in Subsection (2), incurred in connection with the bail bond transaction; or
- (d) to reimburse himself, or to establish a right of action against the principal or any indemnitor, for actual expenses the bail bond surety or bail bond [agent] producer incurred:

(i) in good faith; and

(ii) which were by reason of breach by the defendant of any of the terms of the written agreement under which the undertaking of bail or bail bond was written.

(2) (a) A bail bond surety may bring an action in a court of law to enforce its equitable rights against the principal and the principal's indemnitors in exoneration if:

(i) a bail bond [agent] producer did not establish a written agreement; or

(ii) there is only an incomplete writing.

(b) Reimbursement claimed under this Subsection (2) may not exceed the sum of:

(i) the principal sum of the bail bond or undertaking; and

(ii) any reasonable expenses that:

(A) are verified by receipt;

(B) in total do not amount to more than the principal sum of the bail bond or undertaking; and

(C) are incurred in good faith by the bail bond surety, its [agents] producers, and employees by reason of the principal's breach.

(3) This section does not affect or impede the right of a bail bond [agent] producer to execute undertaking of bail on behalf of a nonresident [agent] producer of the bail bond surety the bail bond [agent] producer represents.

Section 119. Section **31A-35-701** is amended to read:

31A-35-701. Prohibited acts.

(1) A bail bond [agent] producer or bail bond surety may not:

(a) solicit business in or about:

(i) any place where persons in the custody of the state or any local law enforcement or correctional agency are confined; or

(ii) any court;

(b) pay a fee or rebate or give or promise anything of value to any person in order to secure a settlement, compromise, remission, or reduction of the amount of any undertaking or bail bond;

(c) pay a fee or rebate or give anything of value to an attorney in regard to any bail bond matter, except payment for legal services actually rendered for the bail bond [agent] producer or bail bond surety;

(d) pay a fee or rebate or give or promise anything of value to the principal or anyone in the principal's behalf; or

(e) engage in any other act prohibited by the commissioner by rule.

(2) The following persons may not act as bail bond [agents] producers and may not, directly or indirectly, receive any benefits from the execution of any bail bond:

(a) a person employed at any jail, correctional facility, or other facility used for the incarceration of persons;

(b) a peace officer;

(c) a judge; and

(d) a trustee or prisoner incarcerated in any jail, correctional facility, or other facility used for the incarceration of persons.

(3) A bail bond [agent] producer may not:

(a) sign or countersign in blank any bail bond; or

(b) give the power of attorney to, or otherwise authorize anyone to, countersign in the bail bond [agent's] producer's name to a bail bond.

(4) A bail bond [agent] producer may not advertise or hold himself out to be a bail bond surety.

(5) The following persons or members of their immediate families may not solicit business on behalf of a bail bond surety or bail bond [agent] producer:

(a) a person employed at any jail, correctional facility, or other facility used for the incarceration of persons;

(b) a peace officer;

(c) a judge; and

(d) a trustee or prisoner incarcerated in any jail, correctional facility, or other facility used for the incarceration of persons.

Section 120. Section **31A-35-702** is amended to read:

31A-35-702. Early surrender without cause.

(1) The bail or bail bond premium shall be returned in full if a bail bond [agent] producer without good cause surrenders a defendant to custody before:

(a) the time specified in the undertaking of bail or the bail bond for the appearance of the defendant; or

(b) any other occasion where the presence of the defendant in court is lawfully required.

(2) As used in this section, "good cause" includes:

(a) the defendant providing materially false information on the application for bail or a bail bond;

(b) the court's increasing the amount of bail beyond sound underwriting criteria employed by:

(i) the bail bond [agent] producer; or

(ii) the bail bond surety;

(c) a material and detrimental change in the collateral posted by:

(i) the defendant; or

(ii) a person acting on the defendant's behalf;

(d) the defendant changing the defendant's address or telephone number without giving reasonable notice to:

(i) the bail bond [agent] producer; or

(ii) the bail bond surety;

(e) the defendant commits another crime, other than a minor traffic violation, as defined by department rule, while on bail;

(f) failure by the defendant to appear in court at the appointed time; or

(g) a finding of guilt against the defendant by a court of competent jurisdiction.

Section 121. Section **31A-35-703** is amended to read:

31A-35-703. Disciplinary action.

(1) A person found to be in violation of the statutes or rules governing the conduct of bail

bond [~~agents~~] producers and bail bond sureties under this chapter is subject to:

- (a) disciplinary action by the commissioner against that person's:
 - (i) license, if the person is a bail bond surety company or bail bond [~~agent~~] producer; or
 - (ii) certificate, if the person is a surety insurer; and
- (b) imposition of civil penalties, as authorized under Title 31A, Chapter 2,

Administration of the Insurance Laws.

(2) Penalties collected under this section shall be deposited in the restricted account created in Section 31A-35-407.

Section 122. Section **31A-35-704** is amended to read:

31A-35-704. Submission of bail bond sureties and producers to jurisdiction of court.

By applying for and receiving a license or certificate to engage in the bail bond surety insurance business in accordance with this chapter, a bail bond surety or bail bond [~~agent~~] producer:

- (1) submits to the jurisdiction of the court;
- (2) irrevocably appoints the clerk of the court as agent upon whom any papers affecting the bail bond surety's or bail bond [~~agent's~~] producer's liability on the undertaking may be served; and
- (3) acknowledges that liability may be enforced on motion and upon notice as the court may require, without the necessity of an independent action.

Section 123. Section **34A-2-104** is amended to read:

34A-2-104. "Employee," "worker," and "operative" defined -- Mining lessees and sublessees -- Corporate officers and directors -- Real estate agents and brokers -- Prison inmates -- Insurance producers -- Certain domestic workers.

(1) As used in this chapter and Chapter 3, Utah Occupational Disease Act, "employee," "worker," and "operative" mean:

- (a) (i) each elective and appointive officer and any other person:
 - (A) in the service of:

- (I) the state;
- (II) a county, city, or town within the state; or
- (III) a school district within the state;

(B) serving the state, or any county, city, town, or school district under:

- (I) an election;
- (II) appointment; or
- (III) any contract of hire, express or implied, written or oral; and

(ii) including:

- (A) an officer or employee of the state institutions of learning; and
- (B) a member of the National Guard while on state active duty; and

(b) each person in the service of any employer, as defined in Section 34A-2-103, who employs one or more workers or operatives regularly in the same business, or in or about the same establishment:

- (i) under any contract of hire:
 - (A) express or implied; and
 - (B) oral or written;
- (ii) including aliens and minors, whether legally or illegally working for hire; and
- (iii) not including any person whose employment:
 - (A) is casual; and
 - (B) not in the usual course of the trade, business, or occupation of the employee's employer.

(2) (a) Unless a lessee provides coverage as an employer under this chapter and Chapter 3, any lessee in mines or of mining property and each employee and sublessee of the lessee shall be:

- (i) covered for compensation by the lessor under this chapter and Chapter 3;
- (ii) subject to this chapter and Chapter 3; and
- (iii) entitled to the benefits of this chapter and Chapter 3, to the same extent as if the lessee, employee, or sublessee were employees of the lessor drawing the wages paid employees

for substantially similar work.

(b) The lessor may deduct from the proceeds of ores mined by the lessees an amount equal to the insurance premium for that type of work.

(3) (a) A partnership or sole proprietorship may elect to include any partner of the partnership or owner of the sole proprietorship as an employee of the partnership or sole proprietorship under this chapter and Chapter 3.

(b) If a partnership or sole proprietorship makes an election under Subsection (3)(a), the partnership or sole proprietorship shall serve written notice upon its insurance carrier naming the persons to be covered.

(c) A partner of a partnership or owner of a sole proprietorship may not be considered an employee of the partner's partnership or the owner's sole proprietorship under this chapter or Chapter 3 until the notice described in Subsection (3)(b) is given.

(d) For premium rate making, the insurance carrier shall assume the salary or wage of the partner or sole proprietor electing coverage under Subsection (3)(a) to be 100% of the state's average weekly wage.

(4) (a) A corporation may elect not to include any director or officer of the corporation as an employee under this chapter and Chapter 3.

(b) If a corporation makes an election under Subsection (4)(a), the corporation shall serve written notice upon its insurance carrier naming the persons to be excluded from coverage.

(c) A director or officer of a corporation is considered an employee under this chapter and Chapter 3 until the notice described in Subsection (4)(b) is given.

(5) As used in this chapter and Chapter 3, "employee," "worker," and "operative" do not include:

(a) a real estate sales agent or real estate broker, as defined in Section 61-2-2, who performs services in that capacity for a real estate broker if:

(i) substantially all of the real estate sales agent's or associated broker's income for services is from real estate commissions; and

(ii) the services of the real estate sales agent or associated broker are performed under a

written contract that:

- (A) the real estate agent is an independent contractor; and
- (B) the real estate sales agent or associated broker is not to be treated as an employee for federal income tax purposes;
- (b) an offender performing labor under Section 64-13-16 or 64-13-19, except as required by federal statute or regulation;
- (c) an individual who for an insurance [~~agent or broker~~] producer, as defined in Section 31A-1-301, solicits, negotiates, places or procures insurance if:
 - (i) substantially all of the individual's income from those services is from insurance commissions; and
 - (ii) the services of the individual are performed under a written contract that states that the individual:
 - (A) is an independent contractor;
 - (B) is not to be treated as an employee for federal income tax purposes; and
 - (C) can derive income from more than one insurance company; or
 - (d) notwithstanding Subsection 34A-2-103(4), an individual who provides domestic work for a person if:
 - (i) the person for whom the domestic work is being provided receives or is eligible to receive the domestic work under a state or federal program designed to pay the costs of domestic work to prevent the person from being placed in:
 - (A) an institution; or
 - (B) a more restrictive placement than where that person resides at the time the person receives the domestic work;
 - (ii) the individual is paid by a person designated by the Secretary of the Treasury in accordance with Section 3504, Internal Revenue Code, as a fiduciary, agent, or other person that has the control, receipt, custody, or disposal of, or pays the wages of the individual; and
 - (iii) the domestic work is performed under a written contract that notifies the individual that the individual is not an employee under this chapter or Chapter 3.

(6) An individual described in Subsection (5)(d) may become an employee under this chapter and Chapter 3 if the employer of the individual complies with:

- (a) this chapter and Chapter 3; and
- (b) commission rules.

Section 124. Section **35A-4-205** is amended to read:

35A-4-205. Exempt employment.

(1) If the services are also exempted under the Federal Unemployment Tax Act, as amended, employment does not include:

(a) service performed prior to January 1, 1973, in the employ of a state, except as provided in Subsection 35A-4-204(2)(d);

(b) service performed in the employ of a political subdivision of a state, except as provided in Subsection 35A-4-204(2)(d);

(c) service performed in the employ of the United States Government or an instrumentality of the United States immune under the United States Constitution from the contributions imposed by this chapter, except that, to the extent that the Congress of the United States shall permit, this chapter shall apply to those instrumentalities and to services performed for the instrumentalities to the same extent as to all other employers, employing units, individuals and services; provided, that if this state is not certified for any year by the Secretary of Labor under Section 3304 of the Federal Internal Revenue Code of 1954, 26 U.S.C. 3304, the payments required of the instrumentalities with respect to that year shall be refunded by the division from the fund in the same manner and within the same period as is provided in Subsection 35A-4-306(5) with respect to contributions erroneously collected;

(d) service performed after June 30, 1939, as an employee representative as defined in the Railroad Unemployment Insurance Act, 45 U.S.C. 351 et seq., and service performed after June 30, 1939, for an employer as defined in that act except that if the division determines that any employing unit which is principally engaged in activities not included in those definitions constitutes such an employer only to the extent of an identifiable and separable portion of its activities, this exemption applies only to services performed for the identifiable and separable

portion of its activities;

(e) agricultural labor as defined in Section 35A-4-206;

(f) domestic service in a private home, local college club, or local chapter of a college fraternity or sorority, except as provided in Subsection 35A-4-204(2)(k);

(g) (i) service performed in the employ of a school, college, or university, if the service is performed:

(A) by a student who is enrolled and is regularly attending classes at that school, college, or university; or

(B) by the spouse of the student, if the spouse is advised, at the time the spouse commences to perform that service, that the employment of that spouse to perform that service is provided under a program to provide financial assistance to the student by the school, college, or university, and that the employment will not be covered by any program of unemployment insurance;

(ii) service performed by an individual who is enrolled at a nonprofit or public educational institution, that normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on, as a student in a full-time program taken for credit at the institution, that combines academic instruction with work experience, if the service is an integral part of the program and the institution has so certified to the employer, but this Subsection (1) does not apply to service performed in a program established for or on behalf of an employer or group of employers; or

(iii) service performed in the employ of a hospital, if the service is performed by a patient of the hospital;

(h) service performed by an individual in the employ of the individual's son, daughter, or spouse, and service performed by a child under the age of 21 in the employ of the child's parent;

(i) for the purposes of Subsections 35A-4-204(2)(d) and (e), service performed:

(i) in the employ of:

(A) a church or convention or association of churches; or

(B) an organization that is operated primarily for religious purposes and that is operated, supervised, controlled, or principally supported by a church or convention or association of churches;

(ii) by a duly ordained, commissioned, or licensed minister of a church in the exercise of the minister's ministry or by a member of a religious order in the exercise of duties required by the order;

(iii) after December 31, 1977, in the employ of a governmental entity referred to in Subsection 35A-4-204(2) if the service is performed by an individual in the exercise of the individual's duties:

(A) as an elected official;

(B) as a member of a legislative body or the judiciary of the state or its political subdivisions;

(C) as a member of the National Guard or Air National Guard;

(D) as an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood, or similar emergency; or

(E) in an advisory position or a policymaking position the performance of the duties of which ordinarily does not require more than eight hours per week;

(iv) in a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age, physical or mental deficiency, injury, or providing a remunerative work for individuals who, because of their impaired physical or mental capacity, cannot be readily absorbed in the competitive labor market by an individual receiving that rehabilitation or remunerative work;

(v) as part of an unemployment work-relief or work-training program, assisted or financed in whole or in part by any federal agency or an agency of a state or political subdivision of the state, by an individual receiving the work-relief or work-training; and

(vi) prior to January 1, 1978, for a hospital in a state prison or other state correctional institution by an inmate of the prison or correctional institution and after December 31, 1977, by an inmate of a custodial or penal institution;

- (j) casual labor not in the course of the employing unit's trade or business;
- (k) service performed in any calendar quarter in the employ of any organization exempt from income tax under Subsection 501(a), Internal Revenue Code, other than an organization described in Subsection 401(a) or Section 521 Internal Revenue Code, if the remuneration for the service is less than \$50;
- (l) service is performed in the employ of a foreign government, including service as a consular or other officer, other employee, or a nondiplomatic representative;
- (m) service performed in the employ of an instrumentality wholly owned by a foreign government:
 - (i) if the service is of a character similar to that performed in foreign countries by employees of the United States government or its instrumentalities; and
 - (ii) if the division finds that the United States Secretary of State has certified to the United States Secretary of the Treasury that the foreign government with respect to whose instrumentality exemption is claimed grants an equivalent exemption with respect to similar service performed in the foreign country by employees of the United States government and its instrumentalities;
- (n) service performed by an individual for a person as an insurance ~~agent~~ producer or as an insurance solicitor, if all the service performed by the individual for that person is performed for remuneration solely by way of commission;
- (o) service performed by an individual in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution;
- (p) service covered by an arrangement between the division and the agency charged with the administration of any other state or federal unemployment compensation law under which all services performed by an individual for an employing unit during the period covered by the employing unit's duly approved election, are considered to be performed entirely within the agency's state or under the federal law;
- (q) service performed by lessees engaged in metal mining under lease agreements, unless

the individual lease agreement, or the practice in actual operation under the agreement, is such as would constitute the lessees' employees of the lessor at common law;

(r) service performed by an individual for a person as a licensed real estate agent or salesman if all the service performed by the individual for that person is performed for remuneration solely by way of commission;

(s) service performed by an individual for a person as a licensed securities agent or salesman, registered representative, if the service performed by the individual for that person is performed for remuneration solely by way of commission;

(t) services as an outside salesman paid solely by way of commission if the services were performed outside of all places of business of the enterprises for which the services are performed except:

(i) as provided in Subsection 35A-4-204(2)(i); or

(ii) if the services would constitute employment at common law;

(u) service performed by an individual as a telephone survey conductor or pollster if:

(i) the individual does not perform the service on the principal's premises; and

(ii) the individual is paid for the service solely on a piece-rate or commission basis; or

(v) service performed by a nurse licensed or registered under Title 58, Chapter 31b,

Nurse Practice Act, if:

(i) the service of the nurse is performed in the home of the patient;

(ii) substantially all of the nurse's compensation for the service is from health insurance proceeds; and

(iii) no compensation or fee for the service is paid to any agency or company as a business furnishing nursing services.

(2) "Included and excluded service" means if the services performed during 1/2 or more of any pay period by an individual for the person employing the individual constitute employment, all the services of the individual for the period are considered to be employment; but if the services performed during more than half of any such pay period by an individual for the person employing the individual do not constitute employment, then none of the services of

the individual for the period are considered to be employment. As used in this Subsection (2), "pay period" means a period of not more than 31 consecutive days for which payment of remuneration is ordinarily made to the individual by the person employing the individual.

Section 125. Section **41-12a-303.2** is amended to read:

41-12a-303.2. Evidence of owner's or operator's security to be carried when operating motor vehicle -- Defense -- Penalties.

(1) As used in this section:

(a) "Division" means the Motor Vehicle Division of the State Tax Commission.

(b) "Registration materials" means the evidences of motor vehicle registration, including all registration cards, license plates, temporary permits, and nonresident temporary permits.

(2) (a) (i) A person operating a motor vehicle shall:

(A) have in the person's immediate possession evidence of owner's or operator's security for the motor vehicle the person is operating; and

(B) display it upon demand of a peace officer.

(ii) A person is exempt from the requirements of Subsection (2)(a)(i) if the person is operating:

(A) a government-owned or leased motor vehicle; or

(B) an employer-owned or leased motor vehicle and is driving it with the employer's permission.

(b) Evidence of owner's or operator's security includes any one of the following:

(i) a copy of the operator's valid:

(A) insurance policy;

(B) insurance policy declaration page;

(C) binder notice;

(D) renewal notice; or

(E) card issued by an insurance company as evidence of insurance;

(ii) a certificate of insurance issued under Section 41-12a-402;

(iii) a certified copy of a surety bond issued under Section 41-12a-405;

- (iv) a certificate of the state treasurer issued under Section 41-12a-406;
- (v) a certificate of self-funded coverage issued under Section 41-12a-407; or
- (vi) information that the vehicle or driver is insured from the Uninsured Motorist

Identification Database Program created under Title 41, Chapter 12a, Part 8.

(c) Evidence of owner's or operator's security from the Uninsured Motorist Identification Database Program described under Subsection (2)(b)(vi) supercedes any evidence of owner's or operator's security described under Subsection (2)(b)(i)(D) or (E).

(3) It is an affirmative defense to a charge under this section that the person had owner's or operator's security in effect for the vehicle the person was operating at the time of the person's citation or arrest.

(4) (a) Evidence of owner's or operator's security as defined under Subsection (2)(b) except Subsections (2)(b)(i)(D) and (E) or a written statement from an insurance ~~agent~~ producer or company verifying that the person had the required motor vehicle insurance coverage on the date specified is considered proof of owner's or operator's security for purposes of Subsection (3) and Section 41-12a-804.

(b) The court considering a citation issued under this section shall allow the evidence or a written statement under Subsection (4)(a) and a copy of the citation to be faxed or mailed to the clerk of the court to satisfy Subsection (3).

(c) The notice under Section 41-12a-804 shall specify that the written statement under Subsection (4)(a) and a copy of the notice shall be faxed or mailed to the designated agent to satisfy the proof of owner's or operator's security required under Section 41-12a-804.

(5) A violation of this section is a class B misdemeanor, and the fine shall be not less than:

- (a) \$400 for a first offense; and
- (b) \$1,000 for a second and subsequent offense within three years of a previous

conviction or bail forfeiture.

(6) Upon receiving notification from a court of a conviction for a violation of this section, the department:

(a) shall suspend the person's driver license; and

(b) may not renew the person's driver license or issue a driver license to the person until the person gives the department proof of owner's or operator's security.

(i) This proof of owner's or operator's security shall be given by any of the ways required under Section 41-12a-401.

(ii) This proof of owner's or operator's security shall be maintained with the department for a three-year period.

(iii) An insurer that provides a certificate of insurance as provided under Section 41-12a-402 or 41-12a-403 may not terminate the insurance policy unless notice of termination is filed with the department no later than ten days after termination as required under Section 41-12a-404.

(iv) If a person who has canceled the certificate of insurance applies for a license within three years from the date proof of owner's or operator's security was originally required, the department shall refuse the application unless the person reestablishes proof of owner's or operator's security and maintains the proof for the remainder of the three-year period.

Section 126. Section **57-1-39** is amended to read:

57-1-39. Definitions.

As used in Sections 57-1-40 and 57-1-44:

(1) "Beneficiary" means the record owner of the beneficiary's interest under a trust deed, including successors in interest.

(2) "Deliver" or "delivered" means:

(a) by overnight delivery by a reputable carrier; or

(b) by United States certified mail or express mail.

(3) "Mortgage" is as described in Section 57-1-14.

(4) "Mortgagee" means the record owner of the mortgagee's interest under a mortgage, including a successor in interest.

(5) "Satisfactory evidence of the full payment of the obligation secured by a trust deed or mortgage" means written information adequate, in the opinion of a title insurer or title agent, to

establish that the obligation secured by the trust deed or mortgage has been paid in full.

(6) "Servicer" means a person or entity that collects loan payments on behalf of a beneficiary or mortgagee.

(7) "Title agent" means a title insurance ~~[agent]~~ producer licensed as an organization under Title 31A, Chapter ~~[23, Part H, Licensing of Agents, Brokers]~~ 23a, Part 2, Producers and Consultants.

(8) "Title insurer" means a title insurer authorized to conduct business in the state under Title 31A, Chapter ~~[23, Part H, Licensing of Agents, Brokers]~~ 23a, Part 2, Producers and Consultants.

(9) "Trust deed" is as defined in Subsection 57-1-19(3).

Section 127. 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:

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

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

(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)(c)(i) and (1)(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~~ producer, 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.

Section 128. Section **63-2-202** is amended to read:

63-2-202. Access to private, controlled, and protected documents.

(1) Upon request, a governmental entity shall disclose a private record to:

(a) the subject of the record;

(b) the parent or legal guardian of an unemancipated minor who is the subject of the record;

(c) the legal guardian of a legally incapacitated individual who is the subject of the record;

(d) any other individual who:

(i) has a power of attorney from the subject of the record;

(ii) submits a notarized release from the subject of the record or his legal representative dated no more than 90 days before the date the request is made; or

(iii) if the record is a medical record described in Subsection 63-2-302(1)(b), is a health care provider, as defined in Section 26-33a-102, if releasing the record or information in the record is consistent with normal professional practice and medical ethics; or

(e) any person to whom the record must be provided pursuant to court order as provided in Subsection (7) or a legislative subpoena as provided in Title 36, Chapter 14.

(2) (a) Upon request, a governmental entity shall disclose a controlled record to:

(i) a physician, psychologist, certified social worker, insurance provider or ~~[agent]~~ producer, or a government public health agency upon submission of a release from the subject of the record that is dated no more than 90 days prior to the date the request is made and a signed acknowledgment of the terms of disclosure of controlled information as provided by Subsection (2)(b); and

(ii) any person to whom the record must be disclosed pursuant to court order as provided in Subsection (7) or a legislative subpoena as provided in Title 36, Chapter 14.

(b) A person who receives a record from a governmental entity in accordance with Subsection (2)(a)(i) may not disclose controlled information from that record to any person, including the subject of the record.

(3) If there is more than one subject of a private or controlled record, the portion of the record that pertains to another subject shall be segregated from the portion that the requester is entitled to inspect.

(4) Upon request, a governmental entity shall disclose a protected record to:

- (a) the person who submitted the record;
 - (b) any other individual who:
 - (i) has a power of attorney from all persons, governmental entities, or political subdivisions whose interests were sought to be protected by the protected classification; or
 - (ii) submits a notarized release from all persons, governmental entities, or political subdivisions whose interests were sought to be protected by the protected classification or from their legal representatives dated no more than 90 days prior to the date the request is made;
 - (c) any person to whom the record must be provided pursuant to a court order as provided in Subsection (7) or a legislative subpoena as provided in Title 36, Chapter 14; or
 - (d) the owner of a mobile home park, subject to the conditions of Subsection 41-1a-116(5).
- (5) A governmental entity may disclose a private, controlled, or protected record to another governmental entity, political subdivision, another state, the United States, or a foreign government only as provided by Section 63-2-206.
- (6) Before releasing a private, controlled, or protected record, the governmental entity shall obtain evidence of the requester's identity.
- (7) A governmental entity shall disclose a record pursuant to the terms of a court order signed by a judge from a court of competent jurisdiction, provided that:
- (a) the record deals with a matter in controversy over which the court has jurisdiction;
 - (b) the court has considered the merits of the request for access to the record; and
 - (c) the court has considered and, where appropriate, limited the requester's use and further disclosure of the record in order to protect privacy interests in the case of private or controlled records, business confidentiality interests in the case of records protected under Subsections 63-2-304(1) and (2), and privacy interests or the public interest in the case of other protected records;
 - (d) to the extent the record is properly classified private, controlled, or protected, the interests favoring access, considering limitations thereon, outweigh the interests favoring restriction of access; and

(e) where access is restricted by a rule, statute, or regulation referred to in Subsection 63-2-201(3)(b), the court has authority independent of this chapter to order disclosure.

(8) (a) A governmental entity may disclose or authorize disclosure of private or controlled records for research purposes if the governmental entity:

(i) determines that the research purpose cannot reasonably be accomplished without use or disclosure of the information to the researcher in individually identifiable form;

(ii) determines that the proposed research is bona fide, and that the value of the research outweighs the infringement upon personal privacy;

(iii) requires the researcher to assure the integrity, confidentiality, and security of the records and requires the removal or destruction of the individual identifiers associated with the records as soon as the purpose of the research project has been accomplished;

(iv) prohibits the researcher from disclosing the record in individually identifiable form, except as provided in Subsection (8)(b), or from using the record for purposes other than the research approved by the governmental entity; and

(v) secures from the researcher a written statement of his understanding of and agreement to the conditions of this Subsection (8) and his understanding that violation of the terms of this Subsection (8) may subject him to criminal prosecution under Section 63-2-801.

(b) A researcher may disclose a record in individually identifiable form if the record is disclosed for the purpose of auditing or evaluating the research program and no subsequent use or disclosure of the record in individually identifiable form will be made by the auditor or evaluator except as provided by this section.

(c) A governmental entity may require indemnification as a condition of permitting research under this Subsection (8).

(9) (a) Under Subsections 63-2-201(5)(b) and 63-2-401(6), a governmental entity may disclose records that are private under Section 63-2-302, or protected under Section 63-2-304 to persons other than those specified in this section.

(b) Under Subsection 63-2-403(11)(b), the Records Committee may require the disclosure of records that are private under Section 63-2-302, controlled under Section 63-2-303,

or protected under Section 63-2-304 to persons other than those specified in this section.

(c) Under Subsection 63-2-404(8), the court may require the disclosure of records that are private under Section 63-2-302, controlled under Section 63-2-303, or protected under Section 63-2-304 to persons other than those specified in this section.

Section 129. Section **63-2-302 (Effective 07/01/03)** is amended to read:

63-2-302 (Effective 07/01/03). Private records.

(1) The following records are private:

(a) records concerning an individual's eligibility for unemployment insurance benefits, social services, welfare benefits, or the determination of benefit levels;

(b) records containing data on individuals describing medical history, diagnosis, condition, treatment, evaluation, or similar medical data;

(c) records of publicly funded libraries that when examined alone or with other records identify a patron;

(d) records received or generated for a Senate or House Ethics Committee concerning any alleged violation of the rules on legislative ethics, prior to the meeting, and after the meeting, if the ethics committee meeting was closed to the public;

(e) records received or generated for a Senate confirmation committee concerning character, professional competence, or physical or mental health of an individual:

(i) if prior to the meeting, the chair of the committee determines release of the records:

(A) reasonably could be expected to interfere with the investigation undertaken by the committee; or

(B) would create a danger of depriving a person of a right to a fair proceeding or impartial hearing;

(ii) after the meeting, if the meeting was closed to the public;

(f) employment records concerning a current or former employee of, or applicant for employment with, a governmental entity that would disclose that individual's home address, home telephone number, Social Security number, insurance coverage, marital status, or payroll deductions;

(g) records or parts of records under Section 63-2-302.5 that a current or former employee identifies as private according to the requirements of that section;

(h) that part of a record indicating a person's Social Security number if provided under Section ~~[31A-23-202]~~ 31A-23a-104, 31A-26-202, 58-1-301, 61-1-4, or 61-2-6;

(i) that part of a voter registration record identifying a voter's driver license or identification card number, Social Security number, or last four digits of the Social Security number; ~~[and]~~

(j) a record that:

(i) contains information about an individual;

(ii) is voluntarily provided by the individual; and

(iii) goes into an electronic database that:

(A) is designated by and administered under the authority of the Chief Information Officer; and

(B) acts as a repository of information about the individual that can be electronically retrieved and used to facilitate the individual's online interaction with a state agency[-]; and

(k) information provided to the Commissioner of Insurance under Subsection 31A-23a-115(2)(a).

(2) The following records are private if properly classified by a governmental entity:

(a) records concerning a current or former employee of, or applicant for employment with a governmental entity, including performance evaluations and personal status information such as race, religion, or disabilities, but not including records that are public under Subsection 63-2-301(1)(b) or 63-2-301(2)(o), or private under Subsection 63-2-302(1)(b);

(b) records describing an individual's finances, except that the following are public:

(i) records described in Subsection 63-2-301(1);

(ii) information provided to the governmental entity for the purpose of complying with a financial assurance requirement; or

(iii) records that must be disclosed in accordance with another statute;

(c) records of independent state agencies if the disclosure of those records would conflict

with the fiduciary obligations of the agency;

(d) other records containing data on individuals the disclosure of which constitutes a clearly unwarranted invasion of personal privacy; and

(e) records provided by the United States or by a government entity outside the state that are given with the requirement that the records be managed as private records, if the providing entity states in writing that the record would not be subject to public disclosure if retained by it.

(3) (a) As used in this Subsection (3), "medical records" means medical reports, records, statements, history, diagnosis, condition, treatment, and evaluation.

(b) Medical records in the possession of the University of Utah Hospital, its clinics, doctors, or affiliated entities are not private records or controlled records under Section 63-2-303 when the records are sought:

(i) in connection with any legal or administrative proceeding in which the patient's physical, mental, or emotional condition is an element of any claim or defense; or

(ii) after a patient's death, in any legal or administrative proceeding in which any party relies upon the condition as an element of the claim or defense.

(c) Medical records are subject to production in a legal or administrative proceeding according to state or federal statutes or rules of procedure and evidence as if the medical records were in the possession of a nongovernmental medical care provider.

Section 130. Section **63-2-302 (Superseded 07/01/03)** is amended to read:

63-2-302 (Superseded 07/01/03). Private records.

(1) The following records are private:

(a) records concerning an individual's eligibility for unemployment insurance benefits, social services, welfare benefits, or the determination of benefit levels;

(b) records containing data on individuals describing medical history, diagnosis, condition, treatment, evaluation, or similar medical data;

(c) records of publicly funded libraries that when examined alone or with other records identify a patron;

(d) records received or generated for a Senate or House Ethics Committee concerning

any alleged violation of the rules on legislative ethics, prior to the meeting, and after the meeting, if the ethics committee meeting was closed to the public;

(e) records received or generated for a Senate confirmation committee concerning character, professional competence, or physical or mental health of an individual:

(i) if prior to the meeting, the chair of the committee determines release of the records:

(A) reasonably could be expected to interfere with the investigation undertaken by the committee; or

(B) would create a danger of depriving a person of a right to a fair proceeding or impartial hearing;

(ii) after the meeting, if the meeting was closed to the public;

(f) records concerning a current or former employee of, or applicant for employment with, a governmental entity that would disclose that individual's home address, home telephone number, social security number, insurance coverage, marital status, or payroll deductions;

(g) that part of a record indicating a person's social security number if provided under Section [~~31A-23-202~~] 31A-23a-104, 31A-26-202, 58-1-301, 61-1-4, or 61-2-6;

(h) that part of a voter registration record identifying a voter's driver license or identification card number, Social Security number, or last four digits of the Social Security number; [~~and~~]

(i) a record that:

(i) contains information about an individual;

(ii) is voluntarily provided by the individual; and

(iii) goes into an electronic database that:

(A) is designated by and administered under the authority of the Chief Information Officer; and

(B) acts as a repository of information about the individual that can be electronically retrieved and used to facilitate the individual's online interaction with a state agency[.]; and

(j) information provided to the Commissioner of Insurance under Subsection 31A-23a-115(2)(a).

- (2) The following records are private if properly classified by a governmental entity:
- (a) records concerning a current or former employee of, or applicant for employment with a governmental entity, including performance evaluations and personal status information such as race, religion, or disabilities, but not including records that are public under Subsection 63-2-301(1)(b) or 63-2-301(2)(o), or private under Subsection 63-2-302(1)(b);
 - (b) records describing an individual's finances, except that the following are public:
 - (i) records described in Subsection 63-2-301(1);
 - (ii) information provided to the governmental entity for the purpose of complying with a financial assurance requirement; or
 - (iii) records that must be disclosed in accordance with another statute;
 - (c) records of independent state agencies if the disclosure of those records would conflict with the fiduciary obligations of the agency;
 - (d) other records containing data on individuals the disclosure of which constitutes a clearly unwarranted invasion of personal privacy; and
 - (e) records provided by the United States or by a government entity outside the state that are given with the requirement that the records be managed as private records, if the providing entity states in writing that the record would not be subject to public disclosure if retained by it.
- (3) (a) As used in this Subsection (3), "medical records" means medical reports, records, statements, history, diagnosis, condition, treatment, and evaluation.
- (b) Medical records in the possession of the University of Utah Hospital, its clinics, doctors, or affiliated entities are not private records or controlled records under Section 63-2-303 when the records are sought:
- (i) in connection with any legal or administrative proceeding in which the patient's physical, mental, or emotional condition is an element of any claim or defense; or
 - (ii) after a patient's death, in any legal or administrative proceeding in which any party relies upon the condition as an element of the claim or defense.
- (c) Medical records are subject to production in a legal or administrative proceeding according to state or federal statutes or rules of procedure and evidence as if the medical records

were in the possession of a nongovernmental medical care provider.

Section 131. Section **63-55b-131** is amended to read:

63-55b-131. Repeal dates, Title 31A.

(1) Section 31A-22-626 is repealed July 1, 2004.

(2) Section [~~31A-23-315~~] 31A-23a-415 is repealed July 1, 2006.

Section 132. Section **73-1-10** is amended to read:

73-1-10. Conveyance of water rights -- Deed -- Exceptions -- Filing and recording of deed -- Report of water right conveyance.

(1) (a) A water right, whether evidenced by a decree, a certificate of appropriation, a diligence claim to the use of surface or underground water, or a water user's claim filed in general determination proceedings, shall be transferred by deed in substantially the same manner as is real estate.

(b) The deed must be recorded in the office of the recorder of the county where the point of diversion of the water is located and in the county where the water is used.

(c) A recorded deed of a water right shall from the time of its recording in the office of the county recorder constitute notice of its contents to all persons.

(2) The right to the use of water evidenced by shares of stock in a corporation shall be transferred in accordance with the procedures applicable to securities set forth in Title 70A, Chapter 8, Uniform Commercial Code - Investment Securities.

(3) (a) To update water right ownership on the records of the state engineer, a water right owner shall submit a report of water right conveyance to the state engineer.

(b) The report of water right conveyance shall be on forms provided by the state engineer.

(c) The report shall be prepared by:

(i) or prepared under the direction of and certified by, any of the following persons licensed in Utah:

(A) an attorney;

(B) a professional engineer;

- (C) a title insurance ~~[agent]~~ producer; or
- (D) a professional land surveyor; or
- (ii) the water right owner as authorized by rule of the state engineer.

(d) The filing and processing of a report of water right conveyance with the state engineer is neither an adjudication of water right ownership nor an opinion as to title or validity of the water right.

- (e) The state engineer shall adopt rules that specify:
 - (i) the information required in a report of water right conveyance; and
 - (ii) the procedures for processing the reports.

Section 133. Section **73-18c-304** is amended to read:

73-18c-304. Evidence of owner's or operator's security to be carried when operating personal watercraft -- Defense -- Penalties.

(1) (a) (i) Except as provided in Subsection (1)(a)(ii), a person operating a personal watercraft shall:

(A) have in the person's immediate possession evidence of owner's or operator's security for the personal watercraft the person is operating; and

(B) display it upon demand of a peace officer.

(ii) A person operating a government-owned or government-leased personal watercraft is exempt from the requirements of Subsection (1)(a)(i).

(b) Evidence of owner's or operator's security includes any one of the following:

(i) the operator's:

(A) insurance policy;

(B) binder notice;

(C) renewal notice; or

(D) card issued by an insurance company as evidence of insurance;

(ii) a copy of a surety bond, certified by the surety, which conforms to Section 73-18c-102;

(iii) a certificate of the state treasurer issued under Section 73-18c-305; or

(iv) a certificate of self-funded coverage issued under Section 73-18c-306.

(2) It is an affirmative defense to a charge under this section that the person had owner's or operator's security in effect for the personal watercraft the person was operating at the time of the person's citation or arrest.

(3) (a) A letter from an insurance [~~agent~~] producer or company verifying that the person had the required liability insurance coverage on the date specified is considered proof of owner's or operator's security for purposes of Subsection (2).

(b) The court considering a citation issued under this section shall allow the letter under Subsection (3)(a) and a copy of the citation to be faxed or mailed to the clerk of the court to satisfy Subsection (2).

(4) A violation of this section is a class B misdemeanor.

(5) If a person is convicted of a violation of this section and if the person is the owner of a personal watercraft, the court shall:

(a) require the person to surrender the person's registration materials to the court; and

(b) forward the registration materials, together with a copy of the conviction, to the division.

(6) (a) Upon receiving notification from a court of a conviction for a violation of this section, the division shall revoke the person's personal watercraft registration.

(b) Any registration revoked may not be renewed for a period of one year following the date of revocation.

Section 134. Section **76-10-915** is amended to read:

76-10-915. Exempt activities.

(1) No provision of this act shall be construed to prohibit:

(a) the activities of any public utility to the extent that those activities are subject to regulation by the public service commission, the state or federal department of transportation, the federal energy regulatory commission, the federal communications commission, the interstate commerce commission, or successor agencies;

(b) the activities of any insurer, insurance [~~agent, insurance broker~~] producer,

independent insurance adjuster or rating organization including, but not limited to, making or participating in joint underwriting or reinsurance arrangements, to the extent that those activities are subject to regulation by the commissioner of insurance;

(c) the activities of securities dealers, issuers or agents, to the extent that those activities are subject to regulation under the laws of either this state or the United States;

(d) the activities of any state or national banking institution, to the extent that such activities are regulated or supervised by state government officers or agencies under the banking laws of this state or by federal government officers or agencies under the banking laws of the United States;

(e) the activities of any state or federal savings and loan association to the extent that those activities are regulated or supervised by state government officers or agencies under the banking laws of this state or federal government officers or agencies under the banking laws of the United States;

(f) the activities of a municipality to the extent authorized or directed by state law; or

(g) the activities of an emergency medical service provider licensed under Title 26, Chapter 8a, Utah Emergency Medical Service System Act, to the extent that those activities are regulated by state government officers or agencies under that act.

(2) The labor of a human being is not a commodity or article of commerce. Nothing contained in the antitrust laws shall be construed to forbid the existence and operation of labor, agricultural or horticultural organizations, instituted for the purpose of mutual help and not having capital stock or conducted for profit, or to forbid or restrain individual members of such organizations from lawfully carrying out the legitimate object thereof; nor shall such organizations or membership in them be held to be illegal combinations or conspiracies in restraint of trade under the antitrust laws.

Section 135. Repealer.

This act repeals:

Section 31A-23-103, Transition provisions.

Section 31A-23-215, Agency licensees -- Reports -- Suspension, revocation, or

limitation of license.

Section 136. **Effective date.**

This act takes effect May 5, 2003, except that the amendments to Section 63-2-302 (Effective 07/01/03) take effect on July 1, 2003.

Section 137. **Coordination clause.**

(1) If this bill and H.B. 4, Viatical Settlements, both pass, it is the intent of the Legislature that the Office of Legislative Research and General Counsel in preparing the Utah Code database for publication, shall:

(a) replace the references in Subsection 31A-36-104(2) of H.B. 4 to "Sections 31A-23-216 and 31A-23-217" with references to "Sections 31A-23a-111, 31A-23a-112, and 31A-23a-113";

(b) renumber Section 31A-23-221, enacted in H.B. 4, as 31A-23a-117;

(c) merge the language from H.B. 4, Subsection 31A-23-203(1)(g) into this bill as Subsection 31A-23a-105(1)(g), modify the language to read "(g) if an applicant for a license to act as a provider or producer of viatical settlements, has satisfied the requirements of Section 31A-23a-117", and renumber remaining subsections accordingly; and

(d) merge the language from H.B. 4, Subsection 31A-23-204(2)(h) into this bill as Subsection 31A-23a-106(2)(g).

(2) If this bill and H.B. 373, Insurance Law Revisions, both pass, it is the intent of the Legislature that the Office of Legislative Research and General Counsel in preparing the Utah Code database for publication, shall:

(a) replace the phrase "title insurance agent" in Subsection 31A-19a-209(2)(a)(i) of H.B. 373 with the phrase "title insurance producer"; and

(b) merge the language from H.B. 373, Subsection 31A-23-202(4) into this bill as Subsection 31A-23a-104(4).